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3:04-CV-00768 PINNOCK V. LA QUINTA INN

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SOUTHERN DISTRICT OF CALIFORNIA

DEPUTY

BY:

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

'04 CV 0768

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MANTIC ASHANTI'S CAUSE, SUING
ON BEHALF OF THEODORE A.
PINNOCK AND ITS MEMBERS; and
THEODORE A. PINNOCK, An
Individual,

Case No.:

CIVIL COMPLAINT:

DISCRIMINATORY PRACTICES IN
PUBLIC ACCOMMODATIONS

[42 U.S.C. 12182(a) ET. SEQ;
CIVIL CODE 51, 52, 54, 54.1]

Plaintiffs,

NEGLIGENCE

[CIVIL CODE 1714(a), 2338,
3333; EVIDENCE CODE 669(a)]

v.

DEMAND FOR JURY TRIAL

[F.R.Civ.P. rule 38(b);
Civ.L.R. 38.1]

LA QUINTA INN; LA QUINTA
INVESTMENTS, INC., d.b.a. LQ
INVESTMENTS II, d.b.a. LA
QUINTA INN; LA QUINTA INNS,
INC., d.b.a. LQ INVESTMENTS
II, d.b.a. LA QUINTA INN;
MEDITRUST CORPORATION; LA
QUINTA PROPERTIES, INC.; And
DOES 1 THROUGH 10, Inclusive

Defendants.

INTRODUCTION

Plaintiffs MANTIC ASHANTI'S CAUSE SUING ON BEHALF OF THEODORE
A. PINNOCK AND ITS MEMBERS and THEODORE A. PINNOCK, An Individual,
herein complain, by filing this Civil Complaint in accordance with
rule 8 of the Federal Rules of Civil Procedure in the Judicial
District of the United States District Court of the Southern

1 District of California, that Defendants have in the past, and
2 presently are, engaging in discriminatory practices against
3 individuals with disabilities, specifically including minorities
4 with disabilities. Plaintiffs allege this civil action and others
5 substantial similar thereto are necessary to compel access
6 compliance because empirical research on the effectiveness of
7 Title III of the Americans with Disabilities Act indicates this
8 Title has failed to achieve full and equal access simply by the
9 executive branch of the Federal Government funding and promoting
10 voluntary compliance efforts. Further, empirical research shows
11 when individuals with disabilities give actual notice of potential
12 access problems to places of public accommodation without a
13 federal civil rights action, the public accommodations do not
14 remove the access barriers. Therefore, Plaintiffs make the
15 following allegations in this federal civil rights action:

16
17 **JURISDICTION AND VENUE**

18 1. The federal jurisdiction of this action is based on the
19 Americans with Disabilities Act, 42 United States Code 12101-
20 12102, 12181-12183 and 12201, et seq. Venue in the Judicial
21 District of the United States District Court of the Southern
22 District of California is in accordance with 28 U.S.C. § 1391(b)
23 because a substantial part of Plaintiffs' claims arose within the
24 Judicial District of the United States District Court of the
25 Southern District of California.

26 **SUPPLEMENTAL JURISDICTION**

27 2. The Judicial District of the United States District Court of
28 the Southern District of California has supplemental jurisdiction

1 over the state claims as alleged in this Complaint pursuant to 28
2 U.S.C. § 1367(a). The reason supplemental jurisdiction is proper
3 in this action is because all the causes of action or claims
4 derived from federal law and those arising under state law, as
5 herein alleged, arose from common nucleus of operative facts. The
6 common nucleus of operative facts, include, but are not limited
7 to, the incidents where Plaintiff's Member Theodore A. Pinnock was
8 denied full and equal access to Defendants' facilities, goods,
9 and/or services in violation of both federal and state laws when
10 they attempted to enter, use, and/or exit Defendants' facilities
11 as described below within this Complaint. Further, due to this
12 denial of full and equal access, Theodore A. Pinnock and other
13 persons with disabilities were injured. Based upon the said
14 allegations, the state actions, as stated herein, are so related
15 to the federal actions that they form part of the same case or
16 controversy and the actions would ordinarily be expected to be
17 tried in one judicial proceeding.

18 **NAMED DEFENDANTS AND NAMED PLAINTIFFS**

19 3. Defendants are, and, at all times mentioned herein, were, a
20 business or corporation or franchise organized and existing and/or
21 doing business under the laws of the State of California.
22 Defendant LA QUINTA INN is located at 10185 Paseo Montril, San
23 Diego, California, 92129. Plaintiffs are informed and believe and
24 thereon allege that Defendants LA QUINTA INVESTMENTS, INC. and/or
25 LA QUINTA INNS, INC., are the owners, operators, and/or doing
26 business as LQ INVESTMENTS II, which are the owners, operators,
27 and/or doing business as LA QUINTA INN. Defendant LA QUINTA
28

1 INNS, INC. is located at 909 Hidden Ridge, Suite 600, Irving,
2 Texas 75038. Plaintiffs are informed and believe and thereon
3 allege that Defendant MEDITRUST CORPORATION and/or LA QUINTA
4 PROPERTIES, INC., are the owners, operators, and/or lessors of the
5 property located at 10185 Paseo Montril, San Diego, California,
6 92129, Assessor Parcel Number 315-070-42. Defendant LA QUINTA
7 PROPERTIES, INC. is located at P.O. Box 2636, San Antonio, Texas
8 78299. The words "Plaintiffs" and "Plaintiff's Member" as used
9 herein specifically include the organization MANTIC ASHANTI'S
10 CAUSE, its Members, its member Theodore A. Pinnock and persons
11 associated with its Members who accompanied Members to Defendants'
12 facilities, as well as THEODORE A. PINNOCK, An Individual.

13 4. Defendants Does 1 through 10, were at all times relevant
14 herein subsidiaries, employers, employees, agents, of LA QUINTA
15 INN; LA QUINTA INVESTMENTS, INC., d.b.a. LQ INVESTMENTS II, d.b.a.
16 LA QUINTA INN; LA QUINTA INNS, INC., d.b.a. LQ INVESTMENTS II,
17 d.b.a. LA QUINTA INN; MEDITRUST CORPORATION; LA QUINTA PROPERTIES,
18 INC. Plaintiffs are ignorant of the true names and capacities of
19 Defendants sued herein as Does 1 through 10, inclusive, and
20 therefore sues these Defendants by such fictitious names.

21 Plaintiffs will pray leave of the court to amend this complaint to
22 allege the true names and capacities of the Does when ascertained.

23 5. Plaintiffs are informed and believe, and thereon allege, that
24 Defendants and each of them herein were, at all times relevant to
25 the action, the owner, lessor, lessee, franchiser, franchisee,
26 general partner, limited partner, agent, employee, representing
27 partner, or joint venturer of the remaining Defendants and were
28

1 acting within the course and scope of that relationship.
2 Plaintiffs are further informed and believe, and thereon allege,
3 that each of the Defendants herein gave consent to, ratified,
4 and/or authorized the acts alleged herein to each of the remaining
5 Defendants.

6 CONCISE SET OF FACTS

7 6. Plaintiff MANTIC ASHANTI'S CAUSE is an organization that
8 advocates on the behalf of its members with disabilities when
9 their civil rights and liberties have been violated. Plaintiff's
10 member THEODORE A. PINNOCK is a member of Plaintiff Organization
11 and has an impairment in that he has Cerebral Palsy and due to
12 this impairment he has learned to successfully operate a
13 wheelchair.

14 7. On June 23, 2003, Plaintiff's member THEODORE A. PINNOCK went
15 to Defendants' LA QUINTA INN facilities to utilize their goods
16 and/or services. When Plaintiff's member patronized Defendants'
17 LA QUINTA INN facilities, he was unable to use and/or had
18 difficulty using the public accommodations' disabled parking,
19 exterior path of travel, entrance to the office, registration
20 counter, elevator, guestroom, guestroom operable controls, and
21 guestroom bathroom facilities at Defendants' business
22 establishment because they failed to comply with ADA Access
23 Guidelines For Buildings and Facilities (hereafter referred to as
24 "ADAAG") and/or California's Title 24 Building Code Requirements.
25 Defendants failed to remove access barriers within the disabled
26 parking, exterior path of travel, entrance to the office, entrance
27 to the pool, pool, public seating at the pool, entrance to the
28

1 vending room, public seating in the vending room, entrance to the
2 lobby area by the vending room, lobby public seating, lobby men's
3 restroom, registration counter, elevator, guestroom, guestroom
4 entrance, guestroom interior path of travel, guestroom operable
5 controls, and guestroom bathroom facilities of Defendants' LA
6 QUINTA INN establishment.

7 8. Plaintiff's member personally experienced difficulty with
8 said access barriers at Defendants' LA QUINTA INN facilities. For
9 example, the parking facility of Defendants' establishment is
10 inaccessible. The parking facility has a total of one hundred and
11 fifty-four (154) parking spaces including six (6) disabled parking
12 spaces. Two (2) of the six (6) existing disabled parking spaces
13 are designated as "van accessible" and are only sixteen feet (16')
14 long with an impermissible encroachment of a ramp into their
15 access aisle. The other four (4) disabled parking spaces are also
16 only sixteen feet (16') long with an encroachment of a ramp into
17 their access aisles. The parking facility fails to have any of
18 the required "van accessible" disabled parking spaces. It is
19 required that there is one (1) compliant "regular" disabled
20 parking space, that is at least eighteen feet (18') long with an
21 access aisle that is not encroached upon. It is also required that
22 there is at least four (4) compliant "regular" parking spaces,
23 that are at least eighteen feet (18') long with access aisles that
24 are not encroached upon.
25

26 9. The exterior path of travel is inaccessible. The path of
27 travel from the public sidewalk to the primary accessible entrance
28 fails to be accessible, as members of the disability community are

1 forced to traverse through vehicular traffic without the benefit
2 of a marked path of travel.

3 10. The front entrance to the office is inaccessible, as it fails
4 to have the required disability signage.

5 11. The registration counter is inaccessible because it is
6 thirty-six inches (36") high, which does not meet the minimum
7 height requirement of thirty-four inches (34") high.

8 12. The elevator in the Defendants' establishment is
9 inaccessible, as the elevator does not have the required numbers
10 on the doorjams. Doorjams at all landings should identify the
11 floor by both raised Arabic numerals (a minimum of 2" in height)
12 and Braille symbols (immediately to the left of the numerals).

13 13. The hotel has a total of one hundred and twenty (120)
14 guestrooms, six (6) of which are designated as accessible
15 guestrooms. None of the six (6) designated accessible guestrooms
16 have a roll-in shower facility. If a hotel has between one
17 hundred and one and one hundred and fifty (101 and 150)
18 guestrooms, the hotel shall provide five (5) accessible guestrooms
19 and two (2) additional accessible rooms with a roll-in shower. If
20 a hotel has between one hundred and one and one hundred and fifty
21 (101 and 150) guestrooms, the hotel shall provide five (5)
22 accessible guestrooms for members of the disability community who
23 are hearing impaired. The accessible guestrooms must be dispersed
24 among the various classes of sleeping accommodations, providing a
25 range of options applicable to room sizes, costs, amenities
26 provided, and the number of beds provided. The hotel room that
27 was given to Plaintiffs' Member and Plaintiff THEODORE A. PINNOCK,
28

1 a designated accessible guestroom, was inaccessible. Plaintiffs
2 allege that the designated accessible guestroom that was given to
3 Plaintiffs' Member and Plaintiff THEODORE A. PINNOCK, during his
4 visit of June 23, 2003, fails to be accessible for the reasons
5 stated below.

6 14. The light fixtures located in the guestroom failed to be
7 accessible, as they required tight grasping and/or twisting of the
8 wrist to operate. The entrance into the bathroom fails to be
9 accessible, as it is too narrow, therefore, Plaintiff THEODORE A.
10 PINNOCK was forced to get out of his wheelchair and crawl into the
11 bathroom in order gain access. The bathroom fails to have any of
12 the required grab bars around the commode and the shower. The
13 sink knobs are inaccessible, as they require tight grasping and/or
14 twisting of the wrist to operate.

15 15. In addition to the violations personally experienced by
16 Plaintiff's Member and Plaintiff THEODORE A. PINNOCK, additional
17 violations of federal and state disability laws exist at
18 Defendants' LA QUINTA INN. For example, the entrance to the pool
19 is inaccessible. The entrance door fails to have the required
20 smooth and uninterrupted surface on the bottom ten inches (10") of
21 the door that allows the door to be opened with a wheelchair
22 footrest without creating a hazard. The pressure that is required
23 to open the pool door is an impermissible twelve pounds (12 lbs.),
24 when it is required to be no more than eight and one half pounds
25 (8 ½ lbs.) of pressure. The clear opening width of the pool
26 doorway is only twenty-five inches (25"), when it is required to
27 be at least thirty-two inches (32"). The locking mechanism is
28

1 located at an impermissible height of sixty-seven inches (67"),
2 when it is required to be mounted no higher than forty-eight
3 inches (48"). The pool fails to have the required device that
4 assists disabled patrons in and out of the water. There are
5 twelve (12) seats by the pool with a knee clearance depth of only
6 five inches (5"). It is required that 5% of all seats must have a
7 knee clearance depth of nineteen inches (19"), a width of thirty
8 inches (30") and a height of twenty-seven inches (27") minimum.
9 16. The vending room door by the lobby is inaccessible, as the
10 pressure that is required to open the vending room door by the
11 lobby is an impermissible ten pounds (10 lbs.), when it is
12 required to be no more than eight and one half pounds (8 ½ lbs.)
13 of pressure. The public seating located in the vending room is
14 inaccessible. There are four (4) seats with a knee clearance
15 depth of only five inches (5"). It is required that 5% of all
16 seats must have a knee clearance depth of nineteen inches (19"), a
17 width of thirty inches (30") and a height of twenty-seven inches
18 (27") minimum.

19 17. The lobby door by the vending room is inaccessible, as the
20 pressure that is required to open the vending room door by the
21 lobby is an impermissible twelve pounds (12 lbs.), when it is
22 required to be no more than eight and one half pounds (8 ½ lbs.)
23 of pressure. The public seating located in the lobby is
24 inaccessible. There are twenty-six (26) seats with a knee
25 clearance depth of only three inches (3"). It is required that 5%
26 of all seats must have a knee clearance depth of nineteen inches
27 (19"), a width of thirty inches (30") and a height of twenty-seven
28

1 inches (27") minimum.

2 18. The men's restroom located in the lobby is inaccessible. The
3 restroom door fails to have the required disability signage. The
4 hot water and drainpipes fail to have the required covering. The
5 restroom fails to have the required audible and visual alarm
6 system.

7 19. Guestroom 218 is designated as an "accessible room", however
8 it remains inaccessible. The round locking mechanism on the room
9 entrance door is inaccessible, as it requires tight grasping
10 and/or twisting of the wrist to operate.

11 20. The path of travel from the entrance door of the room to the
12 bathroom is only thirty-five inches (35"). It is required to be
13 thirty-six inches (36") minimum.

14 21. The lamp-switches are not compliant. They should be the kind
15 that does not require grasping or twisting by the wrist to
16 operate.

17 22. The curtain control rod is inaccessible, as it is located
18 fifty-seven inches (57") from the floor surface. It is required
19 to be no higher than forty-eight inches (48").

20 23. The window is inaccessible, as it requires an impermissible
21 thirteen pounds (13 lbs.) of pressure to operate.

22 24. The iron is inaccessible, as it is located at fifty-six
23 inches (56") from the floor surface, when it is required to be
24 located no higher than forty inches (40").

25 25. Guestroom 218 fails to have the required audible/visual alarm
26 system.

27 26. The bathroom inside guestroom 218 is inaccessible. The
28

1 doorknob on the bathroom entrance is not compliant. The
2 requirement is that it does not require grasping or twisting by
3 the wrist. The locking mechanism on the restroom doorknob is
4 inaccessible, as it requires tight grasping and/or twisting of the
5 wrist to operate. The bathtub does not have a required seat. The
6 requirement is that it must have a seat ("head end" or "in-tub"
7 type). There is only one (1) L-shaped grab bar inside the
8 bathtub. The "seat in tub design" should have a twenty-four inch
9 (24") minimum length grab bar mounted at the foot of the tub
10 between thirty-three inches and thirty-six inches (33"-36") in
11 height from the floor surface. A twelve-inch (12") minimum grab
12 bar should be mounted at the head of the tub between thirty-three
13 inches and thirty-six inches (33"-36") in height from the floor
14 surface. The back wall should have two (2) twenty-four inch (24")
15 minimum length grab bars, the top one mounted between thirty-three
16 inches and thirty-six inches (33"-36") from the floor surface and
17 the bottom one mounted at nine inches (9") from the rim of the
18 tub. The round mixing valve in the bathtub is not compliant. The
19 requirement is that it has one that does not require grasping or
20 twisting by the wrist.

21
22 27. The length of the rear grab bar of the commode is only
23 twenty-four inches (24"), when it is required to be at least
24 thirty-six inches (36") long.

25 28. The hair dryer is mounted at fifty inches (50") from the
26 floor surface; the maximum requirement is forty inches (40") high.
27 The required audible/visual alarm system is not installed.

28 29. Pursuant to federal and state law, Defendants are required to

1 remove barriers to their existing facilities. Further, Defendants
2 had actual knowledge of their barrier removal duties under the
3 Americans with Disabilities Act and the Civil Code before January
4 26, 1992. Also, Defendants should have known that individuals
5 with disabilities are not required to give notice to a
6 governmental agency before filing suit alleging Defendants failed
7 to remove architectural barriers.

8 30. Plaintiffs believe and herein allege Defendants' facilities
9 have access violations not directly experienced by Plaintiff's
10 Member which preclude or limit access by others with disabilities,
11 including, but not limited to, Space Allowance and Reach Ranges,
12 Accessible Route, Protruding Objects, Ground and Floor Surfaces,
13 Parking and Passenger Loading Zones, Curb Ramps, Ramps, Stairs,
14 Elevators, Platform Lifts (Wheelchair Lifts), Windows, Doors,
15 Entrances, Drinking Fountains and Water Coolers, Water Closets,
16 Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks, Storage,
17 Handrails, Grab Bars, and Controls and Operating Mechanisms,
18 Alarms, Detectable Warnings, Signage, and Telephones. Accordingly,
19 Plaintiffs allege Defendants are required to remove all
20 architectural barriers, known or unknown. Also, Plaintiffs allege
21 Defendants are required to utilize the ADA checklist for Readily
22 Achievable Barrier Removal approved by the United States
23 Department of Justice and created by Adaptive Environments.

24 31. Based on these facts, Plaintiffs allege Plaintiff's Member
25 and Plaintiff Theodore A. Pinnock was discriminated against each
26 time he patronized Defendants' establishments. Plaintiff's Member
27 and Plaintiff Theodore A. Pinnock was extremely upset due to
28

1 Defendants' conduct. . Further, Plaintiff's Member and Plaintiff
2 THEODORE A. PINNOCK experienced pain in his legs, back, arms,
3 shoulders and wrists when he attempted to enter, use, and exit
4 Defendants' LA QUINTA INN establishment.
5

6 WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED DEFENDANT

7 32. LA QUINTA INN; LA QUINTA INVESTMENTS, INC., d.b.a. LQ
8 INVESTMENTS II, d.b.a. LA QUINTA INN; LA QUINTA INNS, INC., d.b.a.
9 LQ INVESTMENTS II, d.b.a. LA QUINTA INN; MEDITRUST CORPORATION; LA
10 QUINTA PROPERTIES, INC.; and Does 1 through 10 will be referred to
11 collectively hereinafter as "Defendants."

12 33. Plaintiffs aver that the Defendants are liable for the
13 following claims as alleged below:
14

15 DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS

16 FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS- Claims Under The
17 Americans With Disabilities Act Of 1990

18 CLAIM I AGAINST ALL DEFENDANTS: Denial Of Full And Equal
19 Access

20 34. Based on the facts plead at ¶¶ 6-31 above and elsewhere in
21 this complaint, Plaintiff's Member was denied full and equal
22 access to Defendants' goods, services, facilities, privileges,
23 advantages, or accommodations. Plaintiffs allege Defendants are a
24 public accommodation owned, leased and/or operated by Defendants.
25 Defendants' existing facilities and/or services failed to provide
26 full and equal access to Defendants' facility as required by 42
27 U.S.C. § 12182(a). Thus, Plaintiff's Member was subjected to
28

1 discrimination in violation of 42 United States Code
2 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's
3 Member was denied equal access to Defendants' existing facilities.

4 35. Plaintiff's member Theodore A. Pinnock has physical
5 impairments as alleged in ¶ 6 above because his conditions affect
6 one or more of the following body systems: neurological,
7 musculoskeletal, special sense organs, and/or cardiovascular.
8 Further, Plaintiff's member Theodore A. Pinnock's said physical
9 impairments substantially limits one or more of the following
10 major life activities: walking. In addition, Plaintiff's member
11 Theodore A. Pinnock cannot perform one or more of the said major
12 life activities in the manner, speed, and duration when compared
13 to the average person. Moreover, Plaintiff's member Theodore A.
14 Pinnock has a history of or has been classified as having a
15 physical impairment as required by 42 U.S.C. § 12102(2)(A).
16

17 CLAIM II AGAINST ALL DEFENDANTS: Failure To Make Alterations
18 In Such A Manner That The Altered Portions Of The Facility Are
Readily Accessible And Usable By Individuals With Disabilities

19 36. Based on the facts plead at ¶¶ 6-31 above and elsewhere in
20 this complaint, Plaintiff's Member Theodore A. Pinnock was denied
21 full and equal access to Defendants' goods, services, facilities,
22 privileges, advantages, or accommodations within a public
23 accommodation owned, leased, and/or operated by Defendants.
24 Defendants altered their facility in a manner that affects or
25 could affect the usability of the facility or a part of the
26 facility after January 26, 1992. In performing the alteration,
27 Defendants failed to make the alteration in such a manner that, to
28 the maximum extent feasible, the altered portions of the facility

1 are readily accessible to and usable by individuals with
2 disabilities, including individuals who use wheelchairs, in
3 violation of 42 U.S.C. §12183(a)(2).

4 37. Additionally, the Defendants undertook an alteration that
5 affects or could affect the usability of or access to an area of
6 the facility containing a primary function after January 26, 1992.
7 Defendants further failed to make the alterations in such a manner
8 that, to the maximum extent feasible, the path of travel to the
9 altered area and the bathrooms, telephones, and drinking fountains
10 serving the altered area, are readily accessible to and usable by
11 individuals with disabilities in violation 42 U.S.C. §12183(a)(2).

12 38. Pursuant to 42 U.S.C. §12183(a), this failure to make the
13 alterations in a manner that, to the maximum extent feasible, are
14 readily accessible to and usable by individuals with disabilities
15 constitutes discrimination for purposes of 42 U.S.C. §12183(a).
16 Therefore, Defendants discriminated against Plaintiff's Member
17 Theodore A. Pinnock in violation of 42 U.S.C. § 12182(a).

18 39. Thus, Plaintiff's Member Theodore A. Pinnock was subjected to
19 discrimination in violation of 42 U.S.C. § 12183(a), 42 U.S.C.
20 §12182(a) and 42 U.S.C. §12188 because said Member Theodore A.
21 Pinnock was denied equal access to Defendants' existing
22 facilities.

23
24 **CLAIM III AGAINST ALL DEFENDANTS: Failure To Remove**
25 **Architectural Barriers**

26 40. Based on the facts plead at ¶¶ 6-31 above and elsewhere in
27 this complaint, Plaintiff's Member was denied full and equal
28 access to Defendants' goods, services, facilities, privileges,

1 advantages, or accommodations within a public accommodation owned,
2 leased, and/or operated by Defendants. Defendants failed to
3 remove barriers as required by 42 U.S.C. § 12182(a). Plaintiffs
4 are informed, believe, and thus allege that architectural barriers
5 which are structural in nature exist within the following physical
6 elements of Defendants' facilities: Space Allowance and Reach
7 Ranges, Accessible Route, Protruding Objects, Ground and Floor
8 Surfaces, Parking and Passenger Loading Zones, Curb Ramps, Ramps,
9 Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows,
10 Doors, Entrances, Drinking Fountains and Water Coolers, Water
11 Closets, Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks,
12 Storage, Handrails, Grab Bars, and Controls and Operating
13 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.
14 Title III requires places of public accommodation to remove
15 architectural barriers that are structural in nature to existing
16 facilities. [See, 42 United States Code 12182(b)(2)(A)(iv).]
17 Failure to remove such barriers and disparate treatment against a
18 person who has a known association with a person with a disability
19 are forms of discrimination. [See 42 United States Code
20 12182(b)(2)(A)(iv).] Thus, Plaintiff's Member was subjected to
21 discrimination in violation of 42 United States Code
22 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was
23 denied equal access to Defendants' existing facilities.
24

25 **CLAIM IV AGAINST ALL DEFENDANTS: Failure To Modify Practices,**
26 **Policies And Procedures**

27 41. Based on the facts plead at ¶¶ 6-31 above and elsewhere in
28 this complaint, Defendants failed and refused to provide a

1 reasonable alternative by modifying its practices, policies and
2 procedures in that they failed to have a scheme, plan, or design
3 to assist Plaintiff's Member and/or others similarly situated in
4 entering and utilizing Defendants' services, as required by 42
5 U.S.C. § 12188(a). Thus, said Member was subjected to
6 discrimination in violation of 42 United States Code
7 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was
8 denied equal access to Defendants' existing facilities.

9 42. Based on the facts plead at ¶¶ 6-31 above, Claims I, II, and
10 III of Plaintiffs' First Cause Of Action above, and the facts
11 elsewhere herein this complaint, Plaintiffs will suffer
12 irreparable harm unless Defendants are ordered to remove
13 architectural, non-architectural, and communication barriers at
14 Defendants' public accommodation. Plaintiffs allege that
15 Defendants' discriminatory conduct is capable of repetition, and
16 this discriminatory repetition adversely impacts Plaintiffs and a
17 substantial segment of the disability community. Plaintiffs
18 allege there is a national public interest in requiring
19 accessibility in places of public accommodation. Plaintiffs have
20 no adequate remedy at law to redress the discriminatory conduct of
21 Defendants. Plaintiff's Member desires to return to Defendants'
22 places of business in the immediate future. Accordingly, the
23 Plaintiffs allege that a structural or mandatory injunction is
24 necessary to enjoin compliance with federal civil rights laws
25 enacted for the benefit of individuals with disabilities.

26 43. WHEREFORE, Plaintiffs pray for judgment and relief as
27 hereinafter set forth.
28

1 SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER
2 CALIFORNIA ACCESSIBILITY LAWS

3 CLAIM I: Denial Of Full And Equal Access

4 44. Based on the facts plead at ¶¶ 6-31 above and elsewhere in
5 this complaint, Plaintiff's Member was denied full and equal
6 access to Defendants' goods, services, facilities, privileges,
7 advantages, or accommodations within a public accommodation owned,
8 leased, and/or operated by Defendants as required by Civil Code
9 Sections 54 and 54.1. Defendants' facility violated California's
10 Title 24 Accessible Building Code by failing to provide access to
11 Defendants' facilities due to violations pertaining to the Space
12 Allowance and Reach Ranges, Accessible Route, Protruding Objects,
13 Ground and Floor Surfaces, Parking and Passenger Loading Zones,
14 Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair
15 Lifts), Windows, Doors, Entrances, Drinking Fountains and Water
16 Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and
17 Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and
18 Operating Mechanisms, Alarms, Detectable Warnings, Signage, and
19 Telephones.

20 45. These violations denied Plaintiff's Member full and equal
21 access to Defendants' facility. Thus, said Member was subjected
22 to discrimination pursuant to Civil Code §§ 51, 52, and 54.1
23 because Plaintiff's Member was denied full, equal and safe access
24 to Defendants' facility, causing severe emotional distress.

25 CLAIM II: Failure To Modify Practices, Policies And
26 Procedures

27 46. Based on the facts plead at ¶¶ 6-31 above and elsewhere
28 herein this complaint, Defendants failed and refused to provide a

1 reasonable alternative by modifying its practices, policies, and
2 procedures in that they failed to have a scheme, plan, or design
3 to assist Plaintiff's Member and/or others similarly situated in
4 entering and utilizing Defendants' services as required by Civil
5 Code § 54.1. Thus, said Member was subjected to discrimination in
6 violation of Civil Code § 54.1.

7 **CLAIM III: Violation Of The Unruh Act**

8 47. Based on the facts plead at ¶¶ 6-31 above and elsewhere
9 herein this complaint and because Defendants violated the Civil
10 Code § 51 by failing to comply with 42 United States Code §
11 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and
12 continue to discriminate against Plaintiff's Member and persons
13 similarly situated in violation of Civil Code §§ 51, 52, and 54.1.

14 48. Based on the facts plead at ¶¶ 6-31 above, Claims I, II, and
15 III of Plaintiffs' Second Cause Of Action above, and the facts
16 elsewhere herein this complaint, Plaintiffs will suffer
17 irreparable harm unless Defendants are ordered to remove
18 architectural, non-architectural, and communication barriers at
19 Defendants' public accommodation. Plaintiffs allege that
20 Defendants' discriminatory conduct is capable of repetition, and
21 this discriminatory repetition adversely impacts Plaintiffs and a
22 substantial segment of the disability community. Plaintiffs
23 allege there is a state and national public interest in requiring
24 accessibility in places of public accommodation. Plaintiffs have
25 no adequate remedy at law to redress the discriminatory conduct of
26 Defendants. Plaintiff's Member desires to return to Defendants'
27 places of business in the immediate future. Accordingly, the
28

1 Plaintiffs allege that a structural or mandatory injunction is
2 necessary to enjoin compliance with state civil rights laws
3 enacted for the benefit of individuals with disabilities.

4 49. Wherefore, Plaintiffs pray for damages and relief as
5 hereinafter stated.
6

7 Treble Damages Pursuant To Claims I, II, III Under The California
8 Accessibility Laws

9 50. Defendants, each of them respectively, at times prior to and
10 including, the month of June, 2003, and continuing to the
11 present time, knew that persons with physical disabilities were
12 denied their rights of equal access to all portions of this public
13 facility. Despite such knowledge, Defendants, and each of them,
14 failed and refused to take steps to comply with the applicable
15 access statutes; and despite knowledge of the resulting problems
16 and denial of civil rights thereby suffered by Plaintiff's Member
17 THEODORE A. PINNOCK and other similarly situated persons with
18 disabilities. Defendants, and each of them, have failed and
19 refused to take action to grant full and equal access to persons
20 with physical disabilities in the respects complained of
21 hereinabove. Defendants, and each of them, have carried out a
22 course of conduct of refusing to respond to, or correct complaints
23 about, denial of disabled access and have refused to comply with
24 their legal obligations to make Defendants' LA QUINTA INN
25 facilities accessible pursuant to the Americans With Disability
26 Act Access Guidelines (ADAAG) and Title 24 of the California Code
27 of Regulations (also known as the California Building Code). Such
28 actions and continuing course of conduct by Defendants, and each

1 of them, evidence despicable conduct in conscious disregard of the
2 rights and/or safety of Plaintiff's Member and of other similarly
3 situated persons, justifying an award of treble damages pursuant
4 to sections 52(a) and 54.3(a) of the California Civil Code.

5 51. Defendants', and each of their, actions have also been
6 oppressive to persons with physical disabilities and of other
7 members of the public, and have evidenced actual or implied
8 malicious intent toward those members of the public, such as
9 Plaintiff's Member and other persons with physical disabilities
10 who have been denied the proper access to which they are entitled
11 by law. Further, Defendants', and each of their, refusals on a
12 day-to-day basis to correct these problems evidence despicable
13 conduct in conscious disregard for the rights of Plaintiff's
14 Member THEODORE A. PINNOCK and other members of the public with
15 physical disabilities.

16 52. Plaintiffs pray for an award of treble damages against
17 Defendants, and each of them, pursuant to California Civil Code
18 sections 52(a) and 54.3(a), in an amount sufficient to make a more
19 profound example of Defendants and encourage owners, lessors, and
20 operators of other public facilities from willful disregard of the
21 rights of persons with disabilities. Plaintiffs do not know the
22 financial worth of Defendants, or the amount of damages sufficient
23 to accomplish the public purposes of section 52(a) of the
24 California Civil Code and section 54.3 of the California Civil
25 Code.

26 53. Wherefore, Plaintiffs pray for damages and relief as
27 hereinafter stated.
28

1 PLAINTIFF THEODORE A. PINNOCK'S THIRD CAUSE OF ACTION AGAINST ALL
2 DEFENDANTS- Negligence as to Plaintiff THEODORE A. PINNOCK only

3 54. Based on the facts plead at ¶¶ 6-31 above and elsewhere in
4 this complaint, Defendants owed Plaintiff Theodore A. Pinnock a
5 statutory duty to make their facility accessible and owed
6 Plaintiff Theodore A. Pinnock a duty to keep Plaintiff Theodore A.
7 Pinnock reasonably safe from known dangers and risks of harm.
8 This said duty arises by virtue of legal duties proscribed by
9 various federal and state statutes including, but not limited to,
10 ADA, ADAAG, Civil Code 51, 52, 54, 54.1 and Title 24 of the
11 California Administrative Code and applicable 1982 Uniform
12 Building Code standards as amended.

13 55. Title III of the ADA mandates removal of architectural
14 barriers and prohibits disability discrimination. As well,
15 Defendants' facility, and other goods, services, and/or facilities
16 provided to the public by Defendants are not accessible to and
17 usable by persons with disabilities as required by Health and
18 Safety Code § 19955 which requires private entities to make their
19 facility accessible before and after remodeling, and to remove
20 architectural barriers.

21 56. Therefore, Defendants engaged in discriminatory conduct in
22 that they failed to comply with known duties under the ADA, ADAAG,
23 Civil Code 51, 52, 54, 54.1, ADAAG, and Title 24, and knew or
24 should have known that their acts of nonfeasance would cause
25 Plaintiff Theodore A. Pinnock emotional, bodily and personal
26 injury. Plaintiff THEODORE A. PINNOCK alleges that there was
27 bodily injury in this matter because when Plaintiff THEODORE A.
28

1 PINNOCK attempted to enter, use, and exit Defendants'
2 establishment, Plaintiff THEODORE A. PINNOCK experienced pain in
3 his legs, back, arms, shoulders, and wrists. Plaintiffs further
4 allege that such conduct was done in reckless disregard of the
5 probability of said conduct causing Plaintiff Theodore A. Pinnock
6 to suffer bodily or personal injury, anger, embarrassment,
7 depression, anxiety, mortification, humiliation, distress, and
8 fear of physical injury. Plaintiff THEODORE A. PINNOCK, An
9 Individual, alleges that such conduct caused THEODORE A. PINNOCK,
10 An Individual, to suffer the injuries of mental and emotional
11 distress, including, but not limited to, anger, embarrassment,
12 depression, anxiety, mortification, humiliation, distress, and
13 fear of physical injury. Plaintiff THEODORE A. PINNOCK, An
14 Individual, additionally alleges that such conduct caused THEODORE
15 A. PINNOCK, An Individual, to suffer damages as a result of these
16 injuries.

17 57. Wherefore, Plaintiffs pray for damages and relief as
18 hereinafter stated.

19 DEMAND FOR JUDGMENT FOR RELIEF:

- 20 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3,
21 3281, and 3333;
22 B. For \$4,000 in damages pursuant to Cal. Civil Code § 52 for
23 each and every offense of Civil Code § 51, Title 24 of the
24 California Building Code, ADA, and ADA Accessibility Guidelines;
25 C. In the alternative to the damages pursuant to Cal. Civil
26 Code § 52 in Paragraph B above, for \$1,000 in damages pursuant to
27 Cal. Civil Code § 54.3 for each and every offense of Civil Code §
28

1 54.1, Title 24 of the California Building Code, ADA, and ADA
2 Accessibility Guidelines;

3 D. For injunctive relief pursuant to 42 U.S.C. § 12188(a) and
4 Cal. Civil Code § 55. Plaintiffs request this Court enjoin
5 Defendants to remove all architectural barriers in, at, or on
6 their facilities related to the following: Space Allowance and
7 Reach Ranges, Accessible Route, Protruding Objects, Ground and
8 Floor Surfaces, Parking and Passenger Loading Zones, Curb Ramps,
9 Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts),
10 Windows, Doors, Entrances, Drinking Fountains and Water Coolers,
11 Water Closets, Toilet Stalls, Urinals, Lavatories and Mirrors,
12 Sinks, Storage, Handrails, Grab Bars, and Controls and Operating
13 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.

14 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C.
15 § 12205, and Cal. Civil Code § 55;

16 F. For treble damages pursuant to Cal. Civil Code §§ 52(a), and
17 54.3(a);


18 G. A Jury Trial and;

19 H. For such other further relief as the court deems proper.

20 Respectfully submitted:

21 Dated: April 12, 2004

PINNOCK & WAKEFIELD

22 By: 
23 MICHELLE L. WAKEFIELD, ESQ.
24 DAVID C. WAKEFIELD, ESQ.
25 Attorneys for Plaintiffs
26
27
28

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

MANTIC ASHANTI'S CAUSE, SUING ON BEHALF OF THEODORE A. PINNOCK AND ITS MEMBERS; And THEODORE A. PINNOCK, An Individual

DEFENDANTS

LA QUINTA INN; LA QUINTA INVESTMENTS, INC., d.b.a. LQ INVESTMENTS II, d.b.a. LA QUINTA INN; LA QUINTA INNS, INC., d.b.a. LQ INVESTMENTS II; LA QUINTA QUINTA INN; MEDITRUST CORPORATION; LA QUINTA PROPERTIES, INC.; And DOES 1 THROUGH 10 Inclusive

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF

San Diego

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY)

San Diego

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE PROPERTY INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Michelle L. Wakefield, Esq. SBN: 200424
David C. Wakefield, Esq. SBN: 185736
Pinnock & Wakefield; 3033 Fifth Avenue, Suite 410
San Diego, CA 92103
Telephone: (619) 858-3671; Facsimile: (619) 858-3646

ATTORNEYS (IF KNOWN)

04 CV 0768 L (PO) DEPUTY

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff
3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business in This State
Incorporated and Principal Place of Business in Another State
Foreign Nation

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

42 U.S.C. Sections 12101-12102, 12181-12183, and 12201, Et. Seq.

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Property, etc.

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- 1 Original Proceeding
2 Removal from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER fr.c.p. 23

DEMAND \$

To Be Determined At Trial

Check YES only if demanded in complaint:

JURY DEMAND: YES NO

VIII. RELATED CASE(S) IF ANY (See Instructions):

JUDGE

Docket Number

DATE April 14, 2004

SIGNATURE OF ATTORNEY OF RECORD

#102823 150-MS

Signature of Michelle L. Wakefield