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3:03-CV-02371 PINNOCK V. SANDCASTLE INN INC

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**PINNOCK & WAKEFIELD,**  
Michelle L. Wakefield, Esq.  
David C. Wakefield, Esq.  
3033 Fifth Avenue, Suite 410  
San Diego, CA 92103-5973  
Telephone: (619) 858-3671  
Facsimile: (619) 858-3646

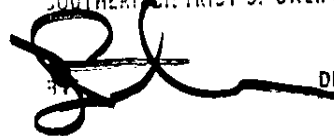
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CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

 DEPUTY

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

SANDCASTLE INN, INC; BENJAMIN  
O. CAMACHO d.b.a. SANDCASTLE  
INN; BENJAMIN O. CAMACHO;

And

DOES 1 THROUGH 10, Inclusive

Defendants.

Case No.:

'03 CV 2371

L (JFS)

CIVIL COMPLAINT:

DISCRIMINATORY PRACTICES IN  
PUBLIC ACCOMMODATIONS

[42 U.S.C. 12182(a) ET. SEQ;  
CIVIL CODE 51, 52, 54, 54.1;  
HEALTH & SAFETY CODE 19995]

NEGLIGENCE

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

DEMAND FOR JURY TRIAL

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

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 **JURISDICTION AND VENUE**

17  
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 Defendants SANDCASTLE INN, INC, and BENJAMIN O. CAMACHO d.b.a.  
23 SANDCASTLE INN are located at 785 Seacoast Drive, Imperial Beach,  
24 California, 91932. Plaintiffs are informed and believe and  
25 thereon allege that Defendant BENJAMIN O. CAMACHO is the owner,  
26 operator, and/or lessor of the property located at 785 Seacoast  
27 Drive, Imperial Beach, California, 91932. The words Plaintiffs"  
28

1 and "Plaintiff's Member" as used herein specifically include the  
2 organization MANTIC ASHANTI'S CAUSE, its Members, its member  
3 Theodore A. Pinnock and persons associated with its Members who  
4 accompanied Members to Defendants' facilities, as well as THEODORE  
5 A. PINNOCK, An Individual.

6 4. Defendants Does 1 through 10, were at all times relevant  
7 herein subsidiaries, employers, employees, agents, of SANDCASTLE  
8 INN, INC; BENJAMIN O. CAMACHO d.b.a. SANDCASTLE INN; and/or  
9 BENJAMIN O. CAMACHO. Plaintiffs are ignorant of the true names  
10 and capacities of Defendants sued herein as Does 1 through 10,  
11 inclusive, and therefore sues these Defendants by such fictitious  
12 names. Plaintiffs will pray leave of the court to amend this  
13 complaint to allege the true names and capacities of the Does when  
14 ascertained.

15 5. Plaintiffs are informed and believe, and thereon allege, that  
16 Defendants and each of them herein were, at all times relevant to  
17 the action, the owner, lessor, lessee, franchiser, franchisee,  
18 general partner, limited partner, agent, employee, representing  
19 partner, or joint venturer of the remaining Defendants and were  
20 acting within the course and scope of that relationship.

21 Plaintiffs are further informed and believe, and thereon allege,  
22 that each of the Defendants herein gave consent to, ratified,  
23 and/or authorized the acts alleged herein to each of the remaining  
24 Defendants.

25 CONCISE SET OF FACTS

26 6. Plaintiff MANTIC ASHANTI'S CAUSE is an organization that  
27 advocates on the behalf of its members with disabilities when  
28

1 their civil rights and liberties have been violated. Plaintiff's  
2 member THEODORE A. PINNOCK is a member of Plaintiff Organization  
3 and has an impairment in that he has Cerebral Palsy and due to  
4 this impairment he has learned to successfully operate a  
5 wheelchair.

6 7. On June 13, 2003, Plaintiff's Member THEODORE A. PINNOCK went  
7 to Defendants' SANDCASTLE INN, INC, and BENJAMIN O. CAMACHO d.b.a.  
8 SANDCASTLE INN facilities to utilize their goods and/or services.  
9 When Plaintiff's Member and Plaintiff THEODORE A, PINNOCK  
10 patronized Defendants' SANDCASTLE INN, INC, and BENJAMIN O.  
11 CAMACHO d.b.a. SANDCASTLE INN facilities, he was unable to use  
12 and/or had difficulty using the public accommodations' disabled  
13 parking, exterior path of travel, entrance, customer service  
14 counter, guestroom, guestroom entrance, guestroom interior path of  
15 travel, guestroom operable controls, and guestroom bathroom  
16 facilities at Defendants' business establishments because they  
17 failed to comply with ADA Access Guidelines For Buildings and  
18 Facilities (hereafter referred to as "ADAAG") and/or California's  
19 Title 24 Building Code Requirements. Defendants failed to remove  
20 access barriers within the public accommodations' disabled  
21 parking, exterior path of travel, entrance, customer service  
22 counter, guestroom, guestroom entrance, guestroom interior path of  
23 travel, guestroom operable controls, and guestroom bathroom  
24 facilities of Defendants' SANDCASTLE INN, INC, and BENJAMIN O.  
25 CAMACHO d.b.a. SANDCASTLE INN establishment.

26  
27 8. Plaintiff's member personally experienced difficulty with  
28 said access barriers at Defendants' SANDCASTLE INN, INC, and

1 BENJAMIN O. CAMACHO d.b.a. SANDCASTLE INN facility. For example,  
2 the one (1) entrance to the parking lot fails to have the required  
3 disability signage informing patrons they may be fined or their  
4 vehicles may be towed if they unlawfully park in a disabled  
5 parking space. Further, the parking lot fails to have any of the  
6 required disabled parking and "Van Accessible" disabled parking.  
7 The parking lot should have one (1) "Van Accessible" disabled  
8 parking space.

9 9. In front of the front entrance door to the lobby, there is an  
10 unsecured mat that is three-quarters inch (3/4") thick that poses  
11 a hazard. The maximum thickness of a door mat should be one-half  
12 inch (1/2") and if a door mat is one-quarter inch to one-half inch  
13 (1/4" to 1/2") thick, it must have a beveled or trimmed edge.

14 10. The front entrance door to the lobby has an impermissible  
15 threshold that is one and one-half inches (1 1/2") in depth in the  
16 form of a step. The front entrance door fails to have the  
17 required disability signage.

18 11. The customer service/clerk's counter in the main lobby is too  
19 high to be accessible, as the counter is forty-four inches (44")  
20 high.  
21

22 12. The inn has fifteen (15) guestrooms and fails to have any  
23 accessible guestrooms. Defendants' inn should have one (1)  
24 accessible guestroom for members of the disability community.

25 13. There are unsecured mats in front of every guestroom door  
26 that pose hazards. The front entrance to the guestroom in which  
27 Plaintiff THEODORE A. PINNOCK stayed has an impermissible  
28 threshold in the form of a step that is one inch (1") in depth.

1 The door knob and the locking mechanism on the guestroom entrance  
2 door fail to be accessible, as both require tight grasping and/or  
3 twisting of the wrist to operate. The locking mechanism also  
4 requires a key to operate, making the guestroom entrance door  
5 completely inaccessible.

6 14. The interior path of travel within the guestroom leading from  
7 the guestroom entrance door to the guestroom bathroom fails to be  
8 accessible, as the interior path of travel is a mere twenty-seven  
9 inches (27") in width, when it should be a minimum of thirty-six  
10 inches (36") in width. Also, the interior path of travel along  
11 one (1) side of the bed in the guestroom is a mere twenty-three  
12 inches (23") in width, when it should also be a minimum of thirty-  
13 six inches (36") in width. The tile flooring in the bedroom area  
14 of the guestroom is made of a rough and uneven surface that has  
15 changes in level of more than three-quarters of an inch (3/4").  
16 Further, the kitchen area fails to have the required clear floor  
17 space of forty-eight inches (48"), as the existing clear floor  
18 space in the kitchen is a mere twenty-six inches (26") due to the  
19 placement of a large stove  
20

21 15. The operable controls for the guestroom television set are  
22 located on top of the television and are too high to be  
23 accessible, as the controls are at a height of fifty inches (50")  
24 above the finished floor. The guestroom fails to have the  
25 required audible and visual alarm system.

26 16. The guestroom bathroom fails to have the required clear floor  
27 space, as the existing clear floor space is only thirty-five  
28 inches (35") by fifty-four inches (54"). The guestroom bathroom



1 light switch is mounted too high to be accessible, as the light  
2 switch is fifty-two inches (52") above the finished floor. The  
3 guestroom bathroom fails to have the required audible and visual  
4 alarm.

5 17. The distance from the side edge of the commode to the  
6 lavatory sink in the guestroom bathroom is a mere ten inches (10")  
7 when it should be a minimum of twenty-eight inches (28"). The  
8 side grab bar by the commode is only thirty-five inches (35") long  
9 when it should be forty-two inches (42") long and extend twenty-  
10 four inches (24") beyond the front of the commode. The rear grab  
11 bar is only twenty-five inches (25") long, when it should be a  
12 minimum of thirty-six inches (36") long.

13 18. The lavatory sink in the guestroom bathroom is too high to be  
14 accessible. Further, the lavatory sink faucet handles fail to be  
15 accessible, as the handles require tight grasping and/or twisting  
16 of the wrist to operate.

17 19. Also, the bathtub in the guestroom bathroom fails to be  
18 accessible. The bathtub fails to have the required bathtub seat  
19 to allow a disabled guest to transfer from a wheelchair onto a  
20 seat. There is only one (1) twenty-four inch (24") grab bar on  
21 the back wall of the bathtub. There should be two (2) grab bars  
22 on the back wall of the bathtub, both of which should be twenty-  
23 four inches (24") minimum in length. The top grab bar should be  
24 mounted thirty-three inches to thirty-six inches (33" to 36") in  
25 height from the floor surface and the bottom bar should be mounted  
26 nine inches (9") from the rim of the bathtub. There should also  
27 be a twenty-four inch (24") grab bar mounted at the foot of the  
28

1 bathtub that is thirty-three inches to thirty-six inches (36")  
2 from the floor surface. The shower spray unit in the bathtub  
3 fails to have the required hose that is sixty inches (60") minimum  
4 in length. Also, the soap, shampoo, and conditioner dispensers  
5 are located on a shelf that is too high to be accessible, as the  
6 shelf is forty-six inches (46") high.

7  
8 20. Pursuant to federal and state law, Defendants are required to  
9 remove barriers to their existing facilities. Further, Defendants  
10 had actual knowledge of their barrier removal duties under the  
11 Americans with Disabilities Act and the Civil Code before January  
12 26, 1992. Also, Defendants should have known that individuals  
13 with disabilities are not required to give notice to a  
14 governmental agency before filing suit alleging Defendants failed  
15 to remove architectural barriers.

16 21. Plaintiffs believe and herein allege Defendants' facilities  
17 have access violations not directly experienced by Plaintiff's  
18 Member which preclude or limit access by others with disabilities,  
19 including, but not limited to, Space Allowance and Reach Ranges,  
20 Accessible Route, Protruding Objects, Ground and Floor Surfaces,  
21 Parking and Passenger Loading Zones, Curb Ramps, Ramps, Stairs,  
22 Elevators, Platform Lifts (Wheelchair Lifts), Windows, Doors,  
23 Entrances, Drinking Fountains and Water Coolers, Water Closets,  
24 Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks, Storage,  
25 Handrails, Grab Bars, and Controls and Operating Mechanisms,  
26 Alarms, Detectable Warnings, Signage, and Telephones. Accordingly,  
27 Plaintiffs allege Defendants are required to remove all  
28 architectural barriers, known or unknown. Also, Plaintiffs allege

1 Defendants are required to utilize the ADA checklist for Readily  
2 Achievable Barrier Removal approved by the United States  
3 Department of Justice and created by Adaptive Environments.

4 22. Based on these facts, Plaintiffs allege Plaintiff's Member  
5 and Plaintiff Theodore A. Pinnock was discriminated against each  
6 time he patronized Defendants' establishment. Plaintiff's Member  
7 and Plaintiff Theodore A. Pinnock was extremely upset due to  
8 Defendants' conduct. Further, Plaintiff's Member and Plaintiff  
9 THEODORE A. PINNOCK experienced pain in his legs, back, arms,  
10 shoulders and wrists when he attempted to enter, use, and exit  
11 Defendants' establishment.

12 WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED DEFENDANT

13  
14 23. SANDCASTLE INN, INC; BENJAMIN O. CAMACHO d.b.a. SANDCASTLE  
15 INN; BENJAMIN O. CAMACHO; and Does 1 through 10 will be referred  
16 to collectively hereinafter as "Defendants."

17 24. Plaintiffs aver that the Defendants are liable for the  
18 following claims as alleged below:

19  
20 DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS

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

23  
24 CLAIM I AGAINST ALL DEFENDANTS: Denial Of Full And Equal  
25 Access

26 25. Based on the facts plead at ¶¶ 6-22 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. Plaintiffs allege Defendants are a  
2 public accommodation owned, leased and/or operated by Defendants.  
3 Defendants' existing facilities and/or services failed to provide  
4 full and equal access to Defendants' facility as required by 42  
5 U.S.C. § 12182(a). Thus, Plaintiff's 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 Plaintiff's  
8 Member was denied equal access to Defendants' existing facilities.

9 26. Plaintiff's member Theodore A. Pinnock has physical  
10 impairments as alleged in ¶ 6 above because his conditions affect  
11 one or more of the following body systems: neurological,  
12 musculoskeletal, special sense organs, and/or cardiovascular.  
13 Further, Plaintiff's member Theodore A. Pinnock's said physical  
14 impairments substantially limits one or more of the following  
15 major life activities: walking. In addition, Plaintiff's member  
16 Theodore A. Pinnock cannot perform one or more of the said major  
17 life activities in the manner, speed, and duration when compared  
18 to the average person. Moreover, Plaintiff's member Theodore A.  
19 Pinnock has a history of or has been classified as having a  
20 physical impairment as required by 42 U.S.C. § 12102(2)(A).  
21

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

25 27. Based on the facts plead at ¶¶ 6-22 above and elsewhere in  
26 this complaint, Plaintiff's Member Theodore A. Pinnock was denied  
27 full and equal access to Defendants' goods, services, facilities,  
28 privileges, advantages, or accommodations within a public

1 accommodation owned, leased, and/or operated by Defendants.  
2 Defendants altered their facility in a manner that affects or  
3 could affect the usability of the facility or a part of the  
4 facility after January 26, 1992. In performing the alteration,  
5 Defendants failed to make the alteration in such a manner that, to  
6 the maximum extent feasible, the altered portions of the facility  
7 are readily accessible to and usable by individuals with  
8 disabilities, including individuals who use wheelchairs, in  
9 violation of 42 U.S.C. §12183(a)(2).

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

18 29. Pursuant to 42 U.S.C. §12183(a), this failure to make the  
19 alterations in a manner that, to the maximum extent feasible, are  
20 readily accessible to and usable by individuals with disabilities  
21 constitutes discrimination for purposes of 42 U.S.C. §12183(a).

22 Therefore, Defendants discriminated against Plaintiff's Member  
23 Theodore A. Pinnock in violation of 42 U.S.C. § 12182(a).

24 30. Thus, Plaintiff's Member Theodore A. Pinnock was subjected to  
25 discrimination in violation of 42 U.S.C. § 12183(a), 42 U.S.C.  
26 §12182(a) and 42 U.S.C. §12188 because said Member Theodore A.  
27 Pinnock was denied equal access to Defendants' existing  
28

1 facilities.

2  
3 CLAIM III AGAINST ALL DEFENDANTS: Failure To Remove  
4 Architectural Barriers

5 31. Based on the facts plead at ¶¶ 6-22 above and elsewhere in  
6 this complaint, Plaintiff's Member was denied full and equal  
7 access to Defendants' goods, services, facilities, privileges,  
8 advantages, or accommodations within a public accommodation owned,  
9 leased, and/or operated by Defendants. Defendants failed to  
10 remove barriers as required by 42 U.S.C. § 12182(a). Plaintiffs  
11 are informed, believe, and thus allege that architectural barriers  
12 which are structural in nature exist within the following physical  
13 elements of Defendants' facilities: Space Allowance and Reach  
14 Ranges, Accessible Route, Protruding Objects, Ground and Floor  
15 Surfaces, Parking and Passenger Loading Zones, Curb Ramps, Ramps,  
16 Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows,  
17 Doors, Entrances, Drinking Fountains and Water Coolers, Water  
18 Closets, Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks,  
19 Storage, Handrails, Grab Bars, and Controls and Operating  
20 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.  
21 Title III requires places of public accommodation to remove  
22 architectural barriers that are structural in nature to existing  
23 facilities. [See, 42 United States Code 12182(b)(2)(A)(iv).]  
24 Failure to remove such barriers and disparate treatment against a  
25 person who has a known association with a person with a disability  
26 are forms of discrimination. [See 42 United States Code  
27 12182(b)(2)(A)(iv).] Thus, Plaintiff's Member was subjected to  
28 discrimination in violation of 42 United States Code

1 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was  
2 denied equal access to Defendants' existing facilities.

3  
4 CLAIM IV AGAINST ALL DEFENDANTS: Failure To Modify Practices,  
Policies And Procedures

5 32. Based on the facts plead at ¶¶ 6-22 above and elsewhere in  
6 this complaint, Defendants failed and refused to provide a  
7 reasonable alternative by modifying its practices, policies and  
8 procedures in that they failed to have a scheme, plan, or design  
9 to assist Plaintiff's Member and/or others similarly situated in  
10 entering and utilizing Defendants' services, as required by 42  
11 U.S.C. § 12188(a). Thus, said Member was subjected to  
12 discrimination in violation of 42 United States Code  
13 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was  
14 denied equal access to Defendants' existing facilities.

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

1 places of business in the immediate future. Accordingly, the  
2 Plaintiffs allege that a structural or mandatory injunction is  
3 necessary to enjoin compliance with federal civil rights laws  
4 enacted for the benefit of individuals with disabilities.

5 34. WHEREFORE, Plaintiffs pray for judgment and relief as  
6 hereinafter set forth.

7  
8 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER**  
9 **CALIFORNIA ACCESSIBILITY LAWS**

10 **CLAIM I: Denial Of Full And Equal Access**

11 35. Based on the facts plead at ¶¶ 6-22 above and elsewhere in  
12 this complaint, Plaintiff's Member was denied full and equal  
13 access to Defendants' goods, services, facilities, privileges,  
14 advantages, or accommodations within a public accommodation owned,  
15 leased, and/or operated by Defendants as required by Civil Code  
16 Sections 54 and 54.1. Defendants' facility violated California's  
17 Title 24 Accessible Building Code by failing to provide access to  
18 Defendants' facilities due to violations pertaining to the Space  
19 Allowance and Reach Ranges, Accessible Route, Protruding Objects,  
20 Ground and Floor Surfaces, Parking and Passenger Loading Zones,  
21 Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair  
22 Lifts), Windows, Doors, Entrances, Drinking Fountains and Water  
23 Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and  
24 Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and  
25 Operating Mechanisms, Alarms, Detectable Warnings, Signage, and  
26 Telephones.

27 36. These violations denied Plaintiff's Member full and equal  
28 access to Defendants' facility. Thus, said Member was subjected



1 to discrimination pursuant to Civil Code §§ 51, 52, and 54.1  
2 because Plaintiff's Member was denied full, equal and safe access  
3 to Defendants' facility, causing severe emotional distress.

4 **CLAIM II: Failure To Modify Practices, Policies And Procedures**

5 37. Based on the facts plead at ¶¶ 6-22 above and elsewhere  
6 herein this complaint, Defendants failed and refused to provide a  
7 reasonable alternative by modifying its practices, policies, and  
8 procedures in that they failed to have a scheme, plan, or design  
9 to assist Plaintiff's Member and/or others similarly situated in  
10 entering and utilizing Defendants' services as required by Civil  
11 Code § 54.1. Thus, said Member was subjected to discrimination in  
12 violation of Civil Code § 54.1.

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

14 38. Based on the facts plead at ¶¶ 6-22 above and elsewhere  
15 herein this complaint and because Defendants violated the Civil  
16 Code § 51 by failing to comply with 42 United States Code §  
17 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and  
18 continue to discriminate against Plaintiff's Member and persons  
19 similarly situated in violation of Civil Code §§ 51, 52, and 54.1.

20 39. Based on the facts plead at ¶¶ 6-22 above, Claims I, II, and  
21 III of Plaintiffs' Second Cause Of Action above, and the facts  
22 elsewhere herein this complaint, Plaintiffs will suffer  
23 irreparable harm unless Defendants are ordered to remove  
24 architectural, non-architectural, and communication barriers at  
25 Defendants' public accommodation. Plaintiffs allege that  
26 Defendants' discriminatory conduct is capable of repetition, and  
27 this discriminatory repetition adversely impacts Plaintiffs and a  
28

1 substantial segment of the disability community. Plaintiffs  
2 allege there is a state and national public interest in requiring  
3 accessibility in places of public accommodation. Plaintiffs have  
4 no adequate remedy at law to redress the discriminatory conduct of  
5 Defendants. Plaintiff's Member desires to return to Defendants'  
6 places of business in the immediate future. Accordingly, the  
7 Plaintiffs allege that a structural or mandatory injunction is  
8 necessary to enjoin compliance with state civil rights laws  
9 enacted for the benefit of individuals with disabilities.

10 40. Wherefore, Plaintiffs pray for damages and relief as  
11 hereinafter stated.

12  
13 **Treble Damages Pursuant To Claims I, II, III Under The California**  
14 **Accessibility Laws**

15 41. Defendants, each of them respectively, at times prior to and  
16 including, the month of June, 2003, and continuing to the present  
17 time, knew that persons with physical disabilities were denied  
18 their rights of equal access to all portions of this public  
19 facility. Despite such knowledge, Defendants, and each of them,  
20 failed and refused to take steps to comply with the applicable  
21 access statutes; and despite knowledge of the resulting problems  
22 and denial of civil rights thereby suffered by Plaintiff's Member  
23 THEODORE A. PINNOCK and other similarly situated persons with  
24 disabilities. Defendants, and each of them, have failed and  
25 refused to take action to grant full and equal access to persons  
26 with physical disabilities in the respects complained of  
27 hereinabove. Defendants, and each of them, have carried out a  
28 course of conduct of refusing to respond to, or correct complaints

1 about, denial of disabled access and have refused to comply with  
2 their legal obligations to make Defendants' SANDCASTLE INN, INC,  
3 and BENJAMIN O. CAMACHO d.b.a. SANDCASTLE INN facility accessible  
4 pursuant to the Americans With Disability Act Access Guidelines  
5 (ADAAG) and Title 24 of the California Code of Regulations (also  
6 known as the California Building Code). Such actions and  
7 continuing course of conduct by Defendants, and each of them,  
8 evidence despicable conduct in conscious disregard of the rights  
9 and/or safety of Plaintiff's Member and of other similarly  
10 situated persons, justifying an award of treble damages pursuant  
11 to sections 52(a) and 54.3(a) of the California Civil Code.

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

23  
24 43. Plaintiffs pray for an award of treble damages against  
25 Defendants, and each of them, pursuant to California Civil Code  
26 sections 52(a) and 54.3(a), in an amount sufficient to make a more  
27 profound example of Defendants and encourage owners, lessors, and  
28 operators of other public facilities from willful disregard of the

1 rights of persons with disabilities. Plaintiffs do not know the  
2 financial worth of Defendants, or the amount of damages sufficient  
3 to accomplish the public purposes of section 52(a) of the  
4 California Civil Code and section 54.3 of the California Civil  
5 Code.

6 44. Wherefore, Plaintiffs pray for damages and relief as  
7 hereinafter stated.

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

10 45. Based on the facts plead at ¶¶ 6-22 above and elsewhere in  
11 this complaint, Defendants owed Plaintiff Theodore A. Pinnock a  
12 statutory duty to make their facility accessible and owed  
13 Plaintiff Theodore A. Pinnock a duty to keep Plaintiff Theodore A.  
14 Pinnock reasonably safe from known dangers and risks of harm.  
15 This said duty arises by virtue of legal duties proscribed by  
16 various federal and state statutes including, but not limited to,  
17 ADA, ADAAG, Civil Code 51, 52, 54, 54.1, 54.3, and Title 24 of the  
18 California Administrative Code and applicable 1982 Uniform  
19 Building Code standards as amended.

20 46. Title III of the ADA mandates removal of architectural  
21 barriers and prohibits disability discrimination. As well,  
22 Defendants' facility, and other goods, services, and/or facilities  
23 provided to the public by Defendants are not accessible to and  
24 usable by persons with disabilities as required by Health and  
25 Safety Code § 19955 which requires private entities to make their  
26 facility accessible before and after remodeling, and to remove  
27 architectural barriers.  
28

1 47. Therefore, Defendants engaged in discriminatory conduct in  
2 that they failed to comply with known duties under the ADA, ADAAG,  
3 Civil Code 51, 52, 54, 54.1, 54.3, ADAAG, and Title 24, and knew  
4 or should have known that their acts of nonfeasance would cause  
5 Plaintiff THEODORE A. PINNOCK emotional, bodily and personal  
6 injury. Plaintiff THEODORE A. PINNOCK alleges that there was  
7 bodily injury in this matter because when Plaintiff THEODORE A.  
8 PINNOCK attempted to enter, use, and exit Defendants'  
9 establishment, Plaintiff THEODORE A. PINNOCK experienced pain in  
10 his legs, back, arms, shoulders, and wrists. Plaintiffs further  
11 allege that such conduct was done in reckless disregard of the  
12 probability of said conduct causing Plaintiff THEODORE A. PINNOCK  
13 to suffer bodily or personal injury, anger, embarrassment,  
14 depression, anxiety, mortification, humiliation, distress, and  
15 fear of physical injury. Plaintiff THEODORE A. PINNOCK, An  
16 Individual, alleges that such conduct caused THEODORE A. PINNOCK,  
17 An Individual, to suffer the injuries of mental and emotional  
18 distress, including, but not limited to, anger, embarrassment,  
19 depression, anxiety, mortification, humiliation, distress, and  
20 fear of physical injury. Plaintiff THEODORE A. PINNOCK, An  
21 Individual, additionally alleges that such conduct caused THEODORE  
22 A. PINNOCK, An Individual, to suffer damages as a result of these  
23 injuries.  
24

25 48. Wherefore, Plaintiffs pray for damages and relief as  
26 hereinafter stated.

27 ///  
28

1 DEMAND FOR JUDGMENT FOR RELIEF:

2 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3,  
3 3281, and 3333;

4 B. For \$4,000 in damages pursuant to Cal. Civil Code § 52 for  
5 each and every offense of Civil Code § 51, Title 24 of the  
6 California Building Code, ADA, and ADA Accessibility Guidelines;

7 C. In the alternative to the damages pursuant to Cal. Civil  
8 Code § 52 in Paragraph B above, for \$1,000 in damages pursuant to  
9 Cal. Civil Code § 54.3 for each and every offense of Civil Code §  
10 54.1, Title 24 of the California Building Code, ADA, and ADA  
11 Accessibility Guidelines;

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

23 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C.  
24 § 12205, and Cal. Civil Code § 55;

25 F. For treble damages pursuant to Cal. Civil Code §§ 52(a),  
26  
27  
28

1 and 54.3(a);

2 G. A Jury Trial and;

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

4

5 Respectfully submitted:

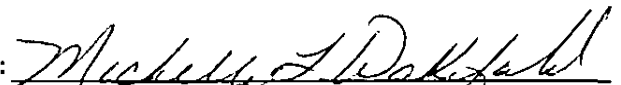
6

7

PINNOCK & WAKEFIELD

8

9 Dated: November 21, 2003

By: 

10

MICHELLE L. WAKEFIELD, ESQ.

11

DAVID C. WAKEFIELD, ESQ.

12

Attorneys for Plaintiffs

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JS44

(Rev. 07/89)

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

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego  
 (EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS **FILED**  
 SANDCASTLE INN, INC; BENJAMIN O. CAMACHO d.b.a.  
 SANDCASTLE INN; BENJAMIN O. CAMACHO; and DOES 1  
 THROUGH 10, Inclusive  
 CLERK, U.S. DISTRICT COURT  
 SOUTHERN DISTRICT OF CALIFORNIA

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT San Diego  
 NOTE: (IN U.S. PLAINTIFF CASES ONLY) IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND 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)

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) (For Diversity Cases Only)

- |   |                            |  |                            |                            |
|---|----------------------------|--|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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.

**03 CV 2371 L (JFS)**

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

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury-Medical Malpractice	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reappointment
<input type="checkbox"/> Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure Of Property 21 USC 881	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 450 Commercial/CC Rates/etc.
<input type="checkbox"/> 150 Recovery of overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 640 RR & Truck	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 860 Occupational Safety/Health	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 660 Other	<input type="checkbox"/> 680 Other	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability		<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 881 HIA (1395B)	<input type="checkbox"/> 850 Securities/Commodities Exchange
<input type="checkbox"/> 180 Stockholders Suits	<input type="checkbox"/> 360 Other Personal Injury		<input type="checkbox"/> 720 Labor/Mgmt Relations	<input type="checkbox"/> 882 Black Lung (923)	<input type="checkbox"/> 875 Customer Challenge 12 USC
<input type="checkbox"/> Other Contract			<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 883 DWC/DIWW (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 185 Contract Product Liability			<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 884 SSID Title XVI	<input type="checkbox"/> 892 Economic Stabilization Act
			<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 885 RSI (405(g))	<input type="checkbox"/> 893 Environmental Matters
			<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 894 Energy Allocation Act
				<input type="checkbox"/> 871 IRS - Third Party 28 USC 7609	<input type="checkbox"/> 895 Freedom of Information Act
					<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice.
					<input type="checkbox"/> 950 Constitutionality of State
					<input type="checkbox"/> 980 Other Statutory Actions

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 November 21, 2003

SIGNATURE OF ATTORNEY OF RECORD

*Michelle L. Wakefield*

*PD \$150.00 11/26/03 #99083 AB*