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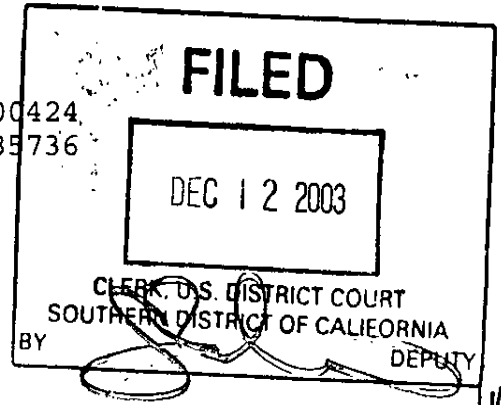
3:03-CV-02501 PINNOCK V. ARETE PARTNERS

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CMP.

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7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA

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

12 Plaintiffs,

13 v.

14 ARETE PARTNERS, L.P., d.b.a.
15 SOMMERSET SUITES HOTEL; ARETE
16 PARTNERS, L.P.; MERCY
17 INVESTMENTS, LLC, General
Partner of ARETE PARTNERS,
18 L.P.;

19 And

20 DOES 1 THROUGH 10, Inclusive

21 Defendants.

Case No.: '03 CV 2501 JAH JMA

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]

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24 INTRODUCTION

25 Plaintiffs MANTIC ASHANTI'S CAUSE SUING ON BEHALF OF THEODORE
26 A. PINNOCK AND ITS MEMBERS and THEODORE A. PINNOCK, An Individual,
27 herein complain, by filing this Civil Complaint in accordance with
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1 rule 8 of the Federal Rules of Civil Procedure in the Judicial
2 District of the United States District Court of the Southern
3 District of California, that Defendants have in the past, and
4 presently are, engaging in discriminatory practices against
5 individuals with disabilities, specifically including minorities
6 with disabilities. Plaintiffs allege this civil action and others
7 substantial similar thereto are necessary to compel access
8 compliance because empirical research on the effectiveness of
9 Title III of the Americans with Disabilities Act indicates this
10 Title has failed to achieve full and equal access simply by the
11 executive branch of the Federal Government funding and promoting
12 voluntary compliance efforts. Further, empirical research shows
13 when individuals with disabilities give actual notice of potential
14 access problems to places of public accommodation without a
15 federal civil rights action, the public accommodations do not
16 remove the access barriers. Therefore, Plaintiffs make the
17 following allegations in this federal civil rights action:

18 JURISDICTION AND VENUE

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

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SUPPLEMENTAL JURISDICTION

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

NAMED DEFENDANTS AND NAMED PLAINTIFFS

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3. Defendants are, and, at all times mentioned herein, were, a business or corporation or franchise organized and existing and/or doing business under the laws of the State of California. The SOMMERSET SUITES HOTEL, which is the subject of this Civil Complaint, is located at 606 Washington Street, San Diego, California, 92103. Plaintiffs are informed and believe and

1 thereon allege that Defendants ARETE PARTNERS, L.P., and MERCY
2 INVESTMENTS, LLC, General Partner of ARETE PARTNERS, L.P., are the
3 owners, operators, and/or lessors of the hotel called the
4 SOMMERSET SUITES HOTEL and the property located at 606 Washington
5 Street, San Diego, California, 92103, Assessor Parcel Number 444-
6 533-22-00. Defendants ARETE PARTNERS, L.P., d.b.a. SOMMERSET
7 SUITES HOTEL and ARETE PARTNERS, L.P., are located at 1033 Anacapa
8 Street, Santa Barbara, California, 93101. Defendant MERCY
9 INVESTMENTS, LLC, General Partner of ARETE PARTNERS, L.P., is
10 located at 280 Park Avenue, 37th Floor West, New York, New York,
11 10017. The words "Plaintiffs" and "Plaintiff's Member" as used
12 herein specifically include the organization MANTIC ASHANTI'S
13 CAUSE, its Members, its member Theodore A. Pinnock and persons
14 associated with its Members who accompanied Members to Defendants'
15 facilities, as well as THEODORE A. PINNOCK, An Individual.

16 4. Defendants Does 1 through 10, were at all times relevant
17 herein subsidiaries, employers, employees, agents, of ARETE
18 PARTNERS, L.P., d.b.a. SOMMERSET SUITES HOTEL; ARETE PARTNERS,
19 L.P.; and/or MERCY INVESTMENTS, LLC, General Partner of ARETE
20 PARTNERS, L.P. Plaintiffs are ignorant of the true names and
21 capacities of Defendants sued herein as Does 1 through 10,
22 inclusive, and therefore sues these Defendants by such fictitious
23 names. Plaintiffs will pray leave of the court to amend this
24 complaint to allege the true names and capacities of the Does when
25 ascertained.

26 5. Plaintiffs are informed and believe, and thereon allege, that
27 Defendants and each of them herein were, at all times relevant to
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1 the action, the owner, lessor, lessèe, franchiser, franchisee,
2 general partner, limited partner, agent, employee, representing
3 partner, or joint venturer of the remaining Defendants and were
4 acting within the course and scope of that relationship.
5 Plaintiffs are further informed and believe, and thereon allege,
6 that each of the Defendants herein gave consent to, ratified,
7 and/or authorized the acts alleged herein to each of the remaining
8 Defendants.

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10 CONCISE SET OF FACTS

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

18 7. On September 18, 2003, Plaintiff's Member THEODORE A. PINNOCK
19 went to Defendants' ARETE PARTNERS, L.P., d.b.a. SOMMERSET SUITES
20 HOTEL facilities to utilize their goods and/or services. When
21 Plaintiff's Member and Plaintiff THEODORE A, PINNOCK patronized
22 Defendants' ARETE PARTNERS, L.P., d.b.a. SOMMERSET SUITES HOTEL
23 facilities, he was unable to use and/or had difficulty using the
24 public accommodations' disabled parking, exterior path of travel,
25 customer service counter, guestroom, guestroom entrance, guestroom
26 interior path of travel, guestroom operable control, guestroom
27 storage, guestroom sink, guestroom dispenser, guestroom balcony
28 door, guestroom desk, guestroom bathroom, and pool facilities at

1 Defendants' business establishment because they failed to comply
2 with ADA Access Guidelines For Buildings and Facilities (hereafter
3 referred to as "ADAAG") and/or California's Title 24 Building Code
4 Requirements. Defendants failed to remove access barriers within
5 the public accommodations' disabled parking, exterior path of
6 travel, hotel entrance, elevator, guestroom, guestroom entrance,
7 guestroom desk, guestroom operable controls, guestroom storage,
8 guestroom sink, guestroom balcony door, guestroom dispenser,
9 guestroom bathroom, pool/spa, elevator, guest laundry room
10 entrance, guest laundry room washing machine, guest breakfast room
11 entrance, public seating, and self-service soda machine facilities
12 of Defendants' ARETE PARTNERS, L.P., d.b.a. SOMMERSET SUITES HOTEL
13 establishment.

14 8. Plaintiff's member personally experienced difficulty with
15 said access barriers at Defendants' ARETE PARTNERS, L.P., d.b.a.
16 SOMMERSET SUITES HOTEL facility. For example, the entryway
17 leading into the parking lot area fails to have the required
18 disability signage informing patrons they may be fined or their
19 vehicle may be towed if they unlawfully park in a disabled parking
20 space. There are three (3) designated disabled parking spaces at
21 in the parking lot. Two (2) of the three (3) disabled parking
22 spaces are only fifteen feet (15') long and the third designated
23 disabled parking space is only sixteen and one-half feet (16 ½')
24 long. All three (3) of the designated disabled parking spaces
25 should be eighteen feet (18') long. Further, two (2) of the three
26 (3) disabled parking spaces fail to have the required disability
27 signage. The third designated disabled parking space fails to be
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1 properly identified as a "Van Accessible" disabled parking space.

2 9. The exterior path of travel leading from the designated
3 disabled parking spaces to the entrance of the hotel fails to be
4 accessible, as the path of travel fails to be properly marked.

5 10. The hotel entrance fails to have the required disability
6 signage. The front desk/registration counter is too high to be
7 accessible, as the counter is forty-five inches (45") high.

8 11. Plaintiffs' Member and Plaintiff THEODORE A. PINNOCK was
9 given Guestroom 113, a designated accessible guestroom, as his
10 guestroom. The hotel has eighty (80) guestrooms, four (4) of
11 which are designated as accessible guestrooms. None of the four
12 (4) designated accessible guestrooms have a roll-in shower
13 facility. If a hotel has between seventy-six and one hundred (76
14 and 100) guestrooms, the hotel shall provide four (4) accessible
15 guestrooms and one (1) additional accessible room with a roll-in
16 shower. If a hotel has between seventy-six and one hundred (76
17 and 100) guestrooms, the hotel shall provide four (4) accessible
18 guestrooms for members of the disability community who are hearing
19 impaired. The accessible guestrooms must be dispersed among the
20 various classes of sleeping accommodations, providing a range of
21 options applicable to room sizes, costs, amenities provided, and
22 the number of beds provided. Defendants' hotel fails to have one
23 (1) accessible guestroom with a roll-in shower facility. Further,
24 based upon Plaintiffs' Member and Plaintiff THEODORE A. PINNOCK's
25 personal experience in Guestroom 113, a designated accessible
26 guestroom, Plaintiffs allege that the existing four (4) designated
27 accessible guestrooms fail to be accessible for the reasons stated
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1 below.

2 12. The entrance door to Guestroom 113 fails to be accessible, as
3 the entrance door fails to have the required smooth and
4 uninterrupted surface on the bottom ten inches (10") of the door
5 that allow the door to be opened with a wheelchair footrest
6 without creating a hazard. Further, there is an impermissible one
7 inch (1") threshold at the entrance to Guestroom 113. The
8 pressure required to operate the guestroom entrance door is
9 excessive, as the door requires ten pounds (10 lbs.) of pressure
10 to operate. The strike edge clearance at the entrance door is a
11 mere two inches (2") when it should be a minimum of eighteen
12 inches (18"). Also, the locking mechanism on the entrance door to
13 Guestroom 113 fails to be accessible, as the mechanism requires
14 tight grasping and/or twisting of the wrist to operate.

15 13. The lamp switches in Guestroom 113 fail to be accessible, as
16 the switches require tight grasping and/or twisting of the wrist
17 to operate. Further, the operable controls of the air conditioner
18 fail to be accessible, as the controls require tight grasping
19 and/or twisting of the wrist to operate.

20 14. In the kitchen area of Guestroom 113, the operable controls
21 of the stove, microwave, and the dishwasher fail to be accessible,
22 as the controls require tight grasping and/or twisting of the
23 wrist to operate. Further, the operable controls of the microwave
24 are mounted too high to be accessible, as the operable controls
25 are mounted fifty inches (50") above the finished floor. The
26 paper towel dispenser is also mounted too high to be accessible,
27 as the dispenser is fifty-one inches (51") high. The ice trays in
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1 the freezer fail to be accessible, as the trays are located fifty-
2 seven inches (57") above the finished floor.

3 15. The entrance door to the bedroom in Guestroom 113 fails to be
4 accessible, as the doorknob requires tight grasping and/or
5 twisting of the wrist to operate. Also, the bedroom entrance door
6 fails to be accessible, as the clear width of the bedroom entrance
7 door is a mere twenty-seven inches (27") wide. The interior path
8 of travel from the bedroom entrance door to the guestroom bathroom
9 fails to be accessible, as it narrows to only twenty-eight inches
10 (28") in width due to fact the bed blocks the interior path of
11 travel. Similarly, the interior path of travel leading from the
12 bedroom entrance door to the window fails to be accessible, as the
13 bed also blocks this path of travel, narrowing it to a mere ten
14 inches (10") in width. The shelf in the closet within the bedroom
15 of Guestroom 113 fails to be accessible, as the shelf is mounted
16 seventy-two inches (72") above the finished floor. The coat
17 hangers within this closet are also inaccessible, as the coat
18 hangers are sixty-nine inches (69") high. Similarly, the iron is
19 mounted on a bracket that is too high to be accessible, as the
20 bracket is mounted sixty-nine inches (69") high. The operable
21 controls of the video game are located on top of the television at
22 a height of fifty-six inches (56"), which makes the controls too
23 high to be accessible.

24
25 16. There is an impermissible one inch (1") threshold at the
26 balcony entrance door within Guestroom 113. Further, the balcony
27 doorway fails to be accessible, as the clear width of the doorway
28 is a mere thirty inches (30") in width. The balcony entrance door

1 requires too much pressure to operate, as the door requires seven
2 pounds (7 lbs.) of pressure to operate.

3 17. Within Guestroom 113, there is a sink outside of the
4 guestroom bathroom that fails to have any of the required knee
5 clearances, due to the fact the area under the sink is completely
6 enclosed. Also, the desk located within Guestroom 113 fails to
7 have the required knee clearance depth, as the existing knee
8 clearance depth is only twelve inches (12") when it should be
9 nineteen inches (19"). The guestroom fails to have the required
10 audible and visual alarm system.

11 18. The guestroom bathroom within Guestroom 113 fails to be
12 accessible. The guestroom bathroom doorway fails to be
13 accessible, as the doorway is a mere twenty-five inches (25") in
14 width. Also, the doorknob on the guestroom bathroom entrance door
15 fails to be accessible, as the doorknob requires tight grasping
16 and/or twisting of the wrist to operate. The strike edge
17 clearance on the inside of the guestroom bathroom is a mere eight
18 inches (8"), when it should be a minimum of eighteen inches (18").
19 The clear floor space within the guestroom bathroom is
20 insufficient, as the available space of a wheelchair to maneuver
21 is only thirty-eight inches by fifty inches (38" x 50"), when it
22 should be sixty inches (60") in diameter.

23 19. In the guestroom bathroom of Guestroom 113, the distance from
24 the side edge of the commode to the far wall is only ten inches
25 (10"), when it should be a minimum of thirty-two inches (32").
26 Also, the distance from the front edge of the commode to the front
27 wall is only thirty-eight inches (38"), when it should be a
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1 minimum of forty-eight inches (48"). The commode fails to have
2 any of the required grab bars. Also, the commode is only fifteen
3 inches (15") in height, when it should be seventeen inches to
4 nineteen inches (17" to 19") in height.

5 20. Also, within the guestroom bathroom of Guestroom 113, the
6 clear width of the bathtub entrance door is a mere twenty-five
7 inches (25") in width. The bathtub fails to have the required
8 handheld shower sprayer with a sixty inch (60") hose. The
9 operable controls of the bathtub fail to be accessible, as the
10 operable controls require tight grasping and/or twisting of the
11 wrist to operate.

12 21. Within the guestroom bathroom of Guestroom 113, the towel
13 storage rack fails to be accessible, as the storage rack is
14 mounted sixty inches (60") high. The lavatory sink fails to have
15 any of the required knee clearances, as the area beneath the
16 lavatory sink is completely enclosed. The guestroom bathroom also
17 fails to have the required audible and visual alarm system.

18 22. The entrance door leading to the pool area fails to be
19 accessible, as the entrance door locking mechanism is sixty-two
20 inches (62") high and is unreachable. In order to access the
21 pool, a guest must traverse three (3) steps that are each five
22 inches (5") in height, making the pool inaccessible. The pool
23 also fails to have the required assistive lifting device to assist
24 disabled guests into and out of the pool. In order to access the
25 spa, a guest must traverse five (5) steps that are each five
26 inches (5") in height, making the spa inaccessible. Further, the
27 spa also fails to have the required assistive lifting device to
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1 assist disabled guests into and out of the spa.

2 23. In addition to the violations personally experienced by
3 Plaintiffs' Member and Plaintiff THEODORE A. PINNOCK, additional
4 violations of federal and state disability laws exist at
5 Defendants' ARETE PARTNERS, L.P., d.b.a. SOMMERSET SUITES HOTEL
6 establishment. For example, the path of travel leading to the
7 coin depository on the soda machine on the first floor of the
8 hotel is a mere twenty-five inches (25") in width, due to a pole
9 that partially blocks the path of travel. Also, the call buttons
10 on the elevator within the hotel fail to have the required Braille
11 symbols.

12 24. Defendants' hotel has a breakfast/lounge room for its guests.
13 The front entrance door leading into this breakfast/lounge room
14 fails to have the required smooth and uninterrupted surface on the
15 bottom ten inches (10") of the door that allows the door to be
16 opened with a wheelchair footrest without creating a hazard.
17 There are forty (40) seats located within the breakfast/lounge
18 room, none of which are accessible to members of the disability
19 community. All of the seating within the lounge room have a knee
20 clearance depth of only eight inches (8"), when the seats should
21 have knee clearance depths of nineteen inches (19"). Outside of
22 the breakfast/lounge room, and by the pool, there are thirty-two
23 (32) seats, none of which are accessible. All of the seats by the
24 pool have knee clearance depths of only eight inches (8").

25 25. At the hotel's guest laundry facilities, the entrance door to
26 the laundry room fails to have the required smooth and
27 uninterrupted surface on the bottom ten inches (10") of the door
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1 that allows a door to be opened with a wheelchair footrest without
2 creating a hazard. The doorknob on the laundry room entrance door
3 fails to be accessible, as the doorknob requires tight grasping
4 and/or twisting of the wrist to operate. The four (4) washing
5 machines in the guest laundry room are inaccessible, as none of
6 the washing machines are a front loading washing machine. The
7 dollar depository on the soda machine within the laundry room
8 fails to be accessible, as the depository drop is mounted fifty-
9 five and one-half inches (55 ½") high. Inside the laundry room,
10 the balcony entrance door fails to be accessible, as the clear
11 width of the door is only thirty-one inches (31").

12 26. At Guestroom 117, another designated accessible guestroom,
13 the entrance door fails to have the required smooth and
14 uninterrupted surface on the bottom ten inches (10") of the door
15 that allow the door to be opened with a wheelchair footrest
16 without creating a hazard. Further, there is an impermissible one
17 inch (1") threshold at the entrance to Guestroom 117.

18 27. Pursuant to federal and state law, Defendants are required to
19 remove barriers to their existing facilities. Further, Defendants
20 had actual knowledge of their barrier removal duties under the
21 Americans with Disabilities Act and the Civil Code before January
22 26, 1992. Also, Defendants should have known that individuals
23 with disabilities are not required to give notice to a
24 governmental agency before filing suit alleging Defendants failed
25 to remove architectural barriers.

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

15 29. Based on these facts, Plaintiffs allege Plaintiff's Member
16 and Plaintiff Theodore A. Pinnock was discriminated against each
17 time he patronized Defendants' establishment. Plaintiff's Member
18 and Plaintiff Theodore A. Pinnock was extremely upset due to
19 Defendants' conduct. Further, Plaintiff's Member and Plaintiff
20 THEODORE A. PINNOCK experienced pain in his legs, back, arms,
21 shoulders and wrists when he attempted to enter, use, and exit
22 Defendants' establishment.

23 **WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED DEFENDANT**

24
25 30. ARETE PARTNERS, L.P., d.b.a. SOMMERSET SUITES HOTEL; ARETE
26 PARTNERS, L.P.; MERCY INVESTMENTS, LLC, General Partner of ARETE
27 PARTNERS, L.P.; and Does 1 through 10 will be referred to
28 collectively hereinafter as "Defendants."

1 31. Plaintiffs aver that the Defendants are liable for the
2 following claims as alleged below:
3

4 DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS

5 FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS- Claims Under The
6 Americans With Disabilities Act Of 1990
7

8 CLAIM I AGAINST ALL DEFENDANTS: Denial Of Full And Equal
9 Access

10 32. Based on the facts plead at ¶¶ 6-29 above and elsewhere in
11 this complaint, Plaintiff's Member was denied full and equal
12 access to Defendants' goods, services, facilities, privileges,
13 advantages, or accommodations. Plaintiffs allege Defendants are a
14 public accommodation owned, leased and/or operated by Defendants.
15 Defendants' existing facilities and/or services failed to provide
16 full and equal access to Defendants' facility as required by 42
17 U.S.C. § 12182(a). Thus, Plaintiff's Member was subjected to
18 discrimination in violation of 42 United States Code
19 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's
20 Member was denied equal access to Defendants' existing facilities.
21

22 33. Plaintiff's member Theodore A. Pinnock has physical
23 impairments as alleged in ¶ 6 above because his conditions affect
24 one or more of the following body systems: neurological,
25 musculoskeletal, special sense organs, and/or cardiovascular.
26 Further, Plaintiff's member Theodore A. Pinnock's said physical
27 impairments substantially limits one or more of the following
28 major life activities: walking. In addition, Plaintiff's member

1 Theodore A. Pinnock cannot perform one or more of the said major
2 life activities in the manner, speed, and duration when compared
3 to the average person. Moreover, Plaintiff's member Theodore A.
4 Pinnock has a history of or has been classified as having a
5 physical impairment as required by 42 U.S.C. § 12102(2)(A).
6

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

10 34. Based on the facts plead at ¶¶ 6-29 above and elsewhere in
11 this complaint, Plaintiff's Member Theodore A. Pinnock was denied
12 full and equal access to Defendants' goods, services, facilities,
13 privileges, advantages, or accommodations within a public
14 accommodation owned, leased, and/or operated by Defendants.
15 Defendants altered their facility in a manner that affects or
16 could affect the usability of the facility or a part of the
17 facility after January 26, 1992. In performing the alteration,
18 Defendants failed to make the alteration in such a manner that, to
19 the maximum extent feasible, the altered portions of the facility
20 are readily accessible to and usable by individuals with
21 disabilities, including individuals who use wheelchairs, in
22 violation of 42 U.S.C. §12183(a)(2).

23 35. Additionally, the Defendants undertook an alteration that
24 affects or could affect the usability of or access to an area of
25 the facility containing a primary function after January 26, 1992.
26 Defendants further failed to make the alterations in such a manner
27 that, to the maximum extent feasible, the path of travel to the
28 altered area and the bathrooms, telephones, and drinking fountains

1 serving the altered area, are readily accessible to and usable by
2 individuals with disabilities in violation 42 U.S.C. §12183(a)(2).

3 36. Pursuant to 42 U.S.C. §12183(a), this failure to make the
4 alterations in a manner that, to the maximum extent feasible, are
5 readily accessible to and usable by individuals with disabilities
6 constitutes discrimination for purposes of 42 U.S.C. §12183(a).

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

9 37. Thus, Plaintiff's Member Theodore A. Pinnock was subjected to
10 discrimination in violation of 42 U.S.C. § 12183(a), 42 U.S.C.
11 §12182(a) and 42 U.S.C. §12188 because said Member Theodore A.
12 Pinnock was denied equal access to Defendants' existing
13 facilities.
14

15 CLAIM III AGAINST ALL DEFENDANTS: Failure To Remove
16 Architectural Barriers

17 38. Based on the facts plead at ¶¶ 6-29 above and elsewhere in
18 this complaint, Plaintiff's Member was denied full and equal
19 access to Defendants' goods, services, facilities, privileges,
20 advantages, or accommodations within a public accommodation owned,
21 leased, and/or operated by Defendants. Defendants failed to
22 remove barriers as required by 42 U.S.C. § 12182(a). Plaintiffs
23 are informed, believe, and thus allege that architectural barriers
24 which are structural in nature exist within the following physical
25 elements of Defendants' facilities: Space Allowance and Reach
26 Ranges, Accessible Route, Protruding Objects, Ground and Floor
27 Surfaces, Parking and Passenger Loading Zones, Curb Ramps, Ramps,
28 Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows,

1 Doors, Entrances, Drinking Fountains and Water Coolers, Water
2 Closets, Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks,
3 Storage, Handrails, Grab Bars, and Controls and Operating
4 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.
5 Title III requires places of public accommodation to remove
6 architectural barriers that are structural in nature to existing
7 facilities. [See, 42 United States Code 12182(b)(2)(A)(iv).]
8 Failure to remove such barriers and disparate treatment against a
9 person who has a known association with a person with a disability
10 are forms of discrimination. [See 42 United States Code
11 12182(b)(2)(A)(iv).] Thus, Plaintiff's 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

16 CLAIM IV AGAINST ALL DEFENDANTS: Failure To Modify Practices,
17 Policies And Procedures

18 39. Based on the facts plead at ¶¶ 6-29 above and elsewhere in
19 this complaint, Defendants failed and refused to provide a
20 reasonable alternative by modifying its practices, policies and
21 procedures in that they failed to have a scheme, plan, or design
22 to assist Plaintiff's Member and/or others similarly situated in
23 entering and utilizing Defendants' services, as required by 42
24 U.S.C. § 12188(a). Thus, said Member was subjected to
25 discrimination in violation of 42 United States Code
26 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was
27 denied equal access to Defendants' existing facilities.

28 40. Based on the facts plead at ¶¶ 6-29 above, Claims I, II, and

1 III of Plaintiffs' First Cause Of Action above, and the facts
2 elsewhere herein this complaint, Plaintiffs will suffer
3 irreparable harm unless Defendants are ordered to remove
4 architectural, non-architectural, and communication barriers at
5 Defendants' public accommodation. Plaintiffs allege that
6 Defendants' discriminatory conduct is capable of repetition, and
7 this discriminatory repetition adversely impacts Plaintiffs and a
8 substantial segment of the disability community. Plaintiffs
9 allege there is a national public interest in requiring
10 accessibility in places of public accommodation. Plaintiffs have
11 no adequate remedy at law to redress the discriminatory conduct of
12 Defendants. Plaintiff's Member desires to return to Defendants'
13 places of business in the immediate future. Accordingly, the
14 Plaintiffs allege that a structural or mandatory injunction is
15 necessary to enjoin compliance with federal civil rights laws
16 enacted for the benefit of individuals with disabilities.

17 41. WHEREFORE, Plaintiffs pray for judgment and relief as
18 hereinafter set forth.
19

20 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER**
21 **CALIFORNIA ACCESSIBILITY LAWS**

22 CLAIM I: Denial Of Full And Equal Access

23 42. Based on the facts plead at ¶¶ 6-29 above and elsewhere in
24 this complaint, Plaintiff's Member was denied full and equal
25 access to Defendants' goods, services, facilities, privileges,
26 advantages, or accommodations within a public accommodation owned,
27 leased, and/or operated by Defendants as required by Civil Code
28 Sections 54 and 54.1. Defendants' facility violated California's

1 Title 24 Accessible Building Code by failing to provide access to
2 Defendants' facilities due to violations pertaining to the Space
3 Allowance and Reach Ranges, Accessible Route, Protruding Objects,
4 Ground and Floor Surfaces, Parking and Passenger Loading Zones,
5 Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair
6 Lifts), Windows, Doors, Entrances, Drinking Fountains and Water
7 Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and
8 Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and
9 Operating Mechanisms, Alarms, Detectable Warnings, Signage, and
10 Telephones.

11 43. These violations denied Plaintiff's Member full and equal
12 access to Defendants' facility. Thus, said Member was subjected
13 to discrimination pursuant to Civil Code §§ 51, 52, and 54.1
14 because Plaintiff's Member was denied full, equal and safe access
15 to Defendants' facility, causing severe emotional distress.

16 CLAIM II: Failure To Modify Practices, Policies And Procedures

17 44. Based on the facts plead at ¶¶ 6-29 above and elsewhere
18 herein this complaint, Defendants failed and refused to provide a
19 reasonable alternative by modifying its practices, policies, and
20 procedures in that they failed to have a scheme, plan, or design
21 to assist Plaintiff's Member and/or others similarly situated in
22 entering and utilizing Defendants' services as required by Civil
23 Code § 54.1. Thus, said Member was subjected to discrimination in
24 violation of Civil Code § 54.1.

25 CLAIM III: Violation Of The Unruh Act

26 45. Based on the facts plead at ¶¶ 6-29 above and elsewhere
27 herein this complaint and because Defendants violated the Civil
28

1 Code § 51 by failing to comply with 42 United States Code §
2 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and
3 continue to discriminate against Plaintiff's Member and persons
4 similarly situated in violation of Civil Code §§ 51, 52, and 54.1.
5 46. Based on the facts plead at ¶¶ 6-29 above, Claims I, II, and
6 III of Plaintiffs' Second Cause Of Action above, and the facts
7 elsewhere herein this complaint, Plaintiffs will suffer
8 irreparable harm unless Defendants are ordered to remove
9 architectural, non-architectural, and communication barriers at
10 Defendants' public accommodation. Plaintiffs allege that
11 Defendants' discriminatory conduct is capable of repetition, and
12 this discriminatory repetition adversely impacts Plaintiffs and a
13 substantial segment of the disability community. Plaintiffs
14 allege there is a state and national public interest in requiring
15 accessibility in places of public accommodation. Plaintiffs have
16 no adequate remedy at law to redress the discriminatory conduct of
17 Defendants. Plaintiff's Member desires to return to Defendants'
18 places of business in the immediate future. Accordingly, the
19 Plaintiffs allege that a structural or mandatory injunction is
20 necessary to enjoin compliance with state civil rights laws
21 enacted for the benefit of individuals with disabilities.

22
23 47. Wherefore, Plaintiffs pray for damages and relief as
24 hereinafter stated.

25 **Treble Damages Pursuant To Claims I, II, III Under The California**
26 **Accessibility Laws**

27 48. Defendants, each of them respectively, at times prior to and
28 including, the month of September, 2003, and continuing to the

1 present time, knew that persons with physical disabilities were
2 denied their rights of equal access to all portions of this public
3 facility. Despite such knowledge, Defendants, and each of them,
4 failed and refused to take steps to comply with the applicable
5 access statutes; and despite knowledge of the resulting problems
6 and denial of civil rights thereby suffered by Plaintiff's Member
7 THEODORE A. PINNOCK and other similarly situated persons with
8 disabilities. Defendants, and each of them, have failed and
9 refused to take action to grant full and equal access to persons
10 with physical disabilities in the respects complained of
11 hereinabove. Defendants, and each of them, have carried out a
12 course of conduct of refusing to respond to, or correct complaints
13 about, denial of disabled access and have refused to comply with
14 their legal obligations to make Defendants' ARETE PARTNERS, L.P.,
15 d.b.a. SOMMERSET SUITES HOTEL facility accessible pursuant to the
16 Americans With Disability Act Access Guidelines (ADAAG) and Title
17 24 of the California Code of Regulations (also known as the
18 California Building Code). Such actions and continuing course of
19 conduct by Defendants, and each of them, evidence despicable
20 conduct in conscious disregard of the rights and/or safety of
21 Plaintiff's Member and of other similarly situated persons,
22 justifying an award of treble damages pursuant to sections 52(a)
23 and 54.3(a) of the California Civil Code.

24
25 49. Defendants', and each of their, actions have also been
26 oppressive to persons with physical disabilities and of other
27 members of the public, and have evidenced actual or implied
28 malicious intent toward those members of the public, such as

1 Plaintiff's Member and other persons with physical disabilities
2 who have been denied the proper access to which they are entitled
3 by law. Further, Defendants', and each of their, refusals on a
4 day-to-day basis to correct these problems evidence despicable
5 conduct in conscious disregard for the rights of Plaintiff's
6 Member THEODORE A. PINNOCK and other members of the public with
7 physical disabilities.

8 50. Plaintiffs pray for an award of treble damages against
9 Defendants, and each of them, pursuant to California Civil Code
10 sections 52(a) and 54.3(a), in an amount sufficient to make a more
11 profound example of Defendants and encourage owners, lessors, and
12 operators of other public facilities from willful disregard of the
13 rights of persons with disabilities. Plaintiffs do not know the
14 financial worth of Defendants, or the amount of damages sufficient
15 to accomplish the public purposes of section 52(a) of the
16 California Civil Code and section 54.3 of the California Civil
17 Code.

18 51. Wherefore, Plaintiffs pray for damages and relief as
19 hereinafter stated.

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

22 52. Based on the facts plead at ¶¶ 6-29 above and elsewhere in
23 this complaint, Defendants owed Plaintiff Theodore A. Pinnock a
24 statutory duty to make their facility accessible and owed
25 Plaintiff Theodore A. Pinnock a duty to keep Plaintiff Theodore A.
26 Pinnock reasonably safe from known dangers and risks of harm.
27 This said duty arises by virtue of legal duties proscribed by
28

1 various federal and state statutes including, but not limited to,
2 ADA, ADAAG, Civil Code 51, 52, 54, 54.1, 54.3, and Title 24 of the
3 California Administrative Code and applicable 1982 Uniform
4 Building Code standards as amended.

5 53. Title III of the ADA mandates removal of architectural
6 barriers and prohibits disability discrimination. As well,
7 Defendants' facility, and other goods, services, and/or facilities
8 provided to the public by Defendants are not accessible to and
9 usable by persons with disabilities as required by Health and
10 Safety Code § 19955 which requires private entities to make their
11 facility accessible before and after remodeling, and to remove
12 architectural barriers.

13 54. Therefore, Defendants engaged in discriminatory conduct in
14 that they failed to comply with known duties under the ADA, ADAAG,
15 Civil Code 51, 52, 54, 54.1, 54.3, ADAAG, and Title 24, and knew
16 or should have known that their acts of nonfeasance would cause
17 Plaintiff THEODORE A. PINNOCK emotional, bodily and personal
18 injury. Plaintiff THEODORE A. PINNOCK alleges that there was
19 bodily injury in this matter because when Plaintiff THEODORE A.
20 PINNOCK attempted to enter, use, and exit Defendants'
21 establishment, Plaintiff THEODORE A. PINNOCK experienced pain in
22 his legs, back, arms, shoulders, and wrists. Plaintiffs further
23 allege that such conduct was done in reckless disregard of the
24 probability of said conduct causing Plaintiff THEODORE A. PINNOCK
25 to suffer bodily or personal injury, anger, embarrassment,
26 depression, anxiety, mortification, humiliation, distress, and
27 fear of physical injury. Plaintiff THEODORE A. PINNOCK, An
28

1 Individual, alleges that such conduct caused THEODORE A. PINNOCK,
2 An Individual, to suffer the injuries of mental and emotional
3 distress, including, but not limited to, anger, embarrassment,
4 depression, anxiety, mortification, humiliation, distress, and
5 fear of physical injury. Plaintiff THEODORE A. PINNOCK, An
6 Individual, additionally alleges that such conduct caused THEODORE
7 A. PINNOCK, An Individual, to suffer damages as a result of these
8 injuries.

9 55. Wherefore, Plaintiffs pray for damages and relief as
10 hereinafter stated.

11
12 DEMAND FOR JUDGMENT FOR RELIEF:

13 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3,
14 3281, and 3333;

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

18 C. In the alternative to the damages pursuant to Cal. Civil
19 Code § 52 in Paragraph B above, for \$1,000 in damages pursuant to
20 Cal. Civil Code § 54.3 for each and every offense of Civil Code §
21 54.1, Title 24 of the California Building Code, ADA, and ADA
22 Accessibility Guidelines;

23 D. For injunctive relief pursuant to 42 U.S.C. § 12188(a) and
24 Cal. Civil Code § 55. Plaintiffs request this Court enjoin
25 Defendants to remove all architectural barriers in, at, or on
26 their facilities related to the following: Space Allowance and
27
28

1 Reach Ranges, Accessible Route, Protruding Objects, Ground and
2 Floor Surfaces, Parking and Passenger Loading Zones, Curb Ramps,
3 Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts),
4 Windows, Doors, Entrances, Drinking Fountains and Water Coolers,
5 Water Closets, Toilet Stalls, Urinals, Lavatories and Mirrors,
6 Sinks, Storage, Handrails, Grab Bars, and Controls and Operating
7 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.

8
9 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C.
10 § 12205, and Cal. Civil Code § 55;

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

13 G. A Jury Trial and;

14 H. For such other further relief as the court deems proper.
15

16 Respectfully submitted:
17

18
19 PINNOCK & WAKEFIELD

20 Dated: December 11, 2003

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

FILED

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 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.)

DEC 12 2003
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
ARETE PARTNERS, L.P.; ARETE PARTNERS, L.P.; MARY INVESTMENTS, LLC, General Partner of ARETE PARTNERS, L.P.; and DOES 1 THROUGH 10, Inclusive.

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

DEFENDANTS
ARETE PARTNERS, L.P.; ARETE PARTNERS, L.P.; MARY INVESTMENTS, LLC, General Partner of ARETE PARTNERS, L.P.; and DOES 1 THROUGH 10, Inclusive.

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

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT San Diego
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: 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)

'03 CV 2501 JAH JMA

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

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

- 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)

- PTDEF**
- Citizen of This State 1 1 Incorporated or Principal Place of Business in This State 4 4
 - Citizen of Another State 2 2 Incorporated and Principal Place of Business in Another State 5 5
 - Citizen or Subject of a Foreign Country 3 3 Foreign Nation 6 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.

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"/> Marine <input type="checkbox"/> Miller Act <input type="checkbox"/> Negotiable Instrument <input type="checkbox"/> 150 Recovery of overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> Other Contract <input checked="" type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury-Medical Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure Of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 FFR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety-Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commercial/CC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <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"/> 990 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Easement <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input checked="" type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prisoner Conditions			

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 f.r.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 December 11, 2003
 Signature of Attorney of Record: Michelle L. Wakefield
 Handwritten notes: \$160.00, 12/15/03, 499496