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3:04-CV-583 PINNOCK V. LIN

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SOUTHERN DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

'04 CV 00583 WQH (LSP)

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

Plaintiffs,

v.

YUNG FU LIN d.b.a. ROYAL
VISTA INN; MEI YUEH LIN
d.b.a. ROYAL VISTA INN; YUNG
FU LIN; MEI YUEH LIN; And
DOES 1 THROUGH 10, Inclusive

Defendants.

Case No.:

CIVIL COMPLAINT:

DISCRIMINATORY PRACTICES IN
PUBLIC ACCOMMODATIONS

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

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
District of California, that Defendants have in the past, and

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

15 **JURISDICTION AND VENUE**

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

24 **SUPPLEMENTAL JURISDICTION**

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

17
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 YUNG FU LIN d.b.a. ROYAL VISTA INN and MEI YUEH LIN
23 d.b.a. ROYAL VISTA INN are located at 632 E Street, Chula Vista,
24 California 91910. Plaintiffs are informed and believe and thereon
25 allege that Defendants YUNG FU LIN and MEI YUEH LIN is the owners,
26 operators, and/or doing business as ROYAL VISTA INN. Plaintiffs
27 are informed and believe and thereon allege that Defendants YUNG
28 FU LIN and MEI YUEH LIN are also the owners, operators, and/or

1 lessors of the property located at 632 E Street, Chula Vista,
2 California 91910, Assessor Parcel Number 567-032-10. Defendants
3 YUNG FU LIN and MEI YUEH LIN are located at 583 Padrone Road,
4 Chula Vista, California 91910. The words "Plaintiffs" and
5 "Plaintiff's Member" as used herein specifically include the
6 organization MANTIC ASHANTI'S CAUSE, its Members, its member
7 Theodore A. Pinnock and persons associated with its Members who
8 accompanied Members to Defendants' facilities, as well as THEODORE
9 A. PINNOCK, An Individual.

10 4. Defendants Does 1 through 10, were at all times relevant
11 herein subsidiaries, employers, employees, agents, of YUNG FU LIN
12 d.b.a. ROYAL VISTA INN; MEI YUEH LIN d.b.a. ROYAL VISTA INN; YUNG
13 FU LIN; MEI YUEH LIN. Plaintiffs are ignorant of the true names
14 and capacities of Defendants sued herein as Does 1 through 10,
15 inclusive, and therefore sues these Defendants by such fictitious
16 names. Plaintiffs will pray leave of the court to amend this
17 complaint to allege the true names and capacities of the Does when
18 ascertained.

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

25 Plaintiffs are further informed and believe, and thereon allege,
26 that each of the Defendants herein gave consent to, ratified,
27 and/or authorized the acts alleged herein to each of the remaining
28

1 Defendants.

2 CONCISE SET OF FACTS

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

10 7. On or about December 22, 2003, Plaintiff's member THEODORE A.
11 PINNOCK went to Defendants' YUNG FU LIN d.b.a. ROYAL VISTA INN and
12 MEI YUEH LIN d.b.a. ROYAL VISTA INN facilities to utilize their
13 goods and/or services. When Plaintiff's member patronized
14 Defendants' YUNG FU LIN d.b.a. ROYAL VISTA INN and MEI YUEH LIN
15 d.b.a. ROYAL VISTA INN facilities, he was unable to use and/or had
16 difficulty using the public accommodations' disabled parking,
17 exterior path of travel, access ramp, entrance, pool, spa, lobby
18 desk, guestroom, guestroom entrance, guestroom closet, and
19 guestroom bathroom facilities at Defendants' business
20 establishment because they failed to comply with ADA Access
21 Guidelines For Buildings and Facilities (hereafter referred to as
22 "ADAAG") and/or California's Title 24 Building Code Requirements.
23 Defendants failed to remove access barriers within the disabled
24 parking, exterior path of travel, access ramp, entrance, pool,
25 spa, lobby desk, men's restroom located in the lobby, guestroom,
26 guestroom entrance, guestroom closet, and guestroom bathroom
27 facilities of Defendants' YUNG FU LIN d.b.a. ROYAL VISTA INN and
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1 MEI YUEH LIN d.b.a. ROYAL VISTA INN establishment.

2 8. Plaintiff's member personally experienced difficulty with
3 said access barriers at Defendants' YUNG FU LIN d.b.a. ROYAL VISTA
4 INN and MEI YUEH LIN d.b.a. ROYAL VISTA INN facilities. For
5 example, the parking facility of Defendants' establishment is
6 inaccessible. The entryway into the parking lot fails to have the
7 required signage warning motorists that anyone illegally parking
8 in a disabled parking space would be towed/fined or both. The
9 parking facility has a total of ninety (90) parking spaces
10 including four (4) disabled parking spaces, none of which are
11 compliant. The parking facility fails to have the required "Van
12 Accessible" disabled parking space. All four (4) of the disabled
13 spaces are regular parking spaces and are only fifteen to sixteen
14 feet (15'-16') long. It is required that there is at least one
15 (1) compliant "van accessible" disabled parking space, that is at
16 least eighteen feet (18') long, with an eight foot (8') wide
17 access aisle and the proper signage. There also should be at
18 least three (3) compliant "regular" parking spaces, that are at
19 least eighteen feet (18') long and have the proper signage.

20 9. The exterior path of travel of the Defendants' establishment
21 is inaccessible. There fails to be a safe and accessible path of
22 travel from the public sidewalk and from two (2) of the four (4)
23 disabled parking spaces to the restaurant entrance, as members of
24 the disability community are forced to traverse through vehicular
25 traffic and behind parked vehicles other than their own without
26 the benefit of a marked path of travel.

27 10. The access ramp at the front parking lot is inaccessible, as
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1 it has a side slope of up to sixteen percent (16%). A side slope
2 of an access ramp should be no more than ten percent (10%). The
3 ramp at the front entrance door is also inaccessible, as it has a
4 slope of up to ten percent (10%). The slope of a ramp cannot
5 exceed 8.33%.

6 11. The front and rear entrances to the Defendants establishment
7 are inaccessible. The front entrance and the rear entrance both
8 fail to have the required smooth and uninterrupted surface on the
9 bottom ten inches (10") of the door that allows a door to be
10 opened with a wheelchair footrest without creating a hazard. The
11 rear entrance fails to have the required five-foot by five-foot
12 (5'X5') level landing. The front and rear entrances doors of the
13 office fail to have the required disability signage.

14 12. The front desk in the lobby is inaccessible, as it is forty-
15 two inches high (42"). The maximum height requirement is thirty-
16 four inches (34").

17 13. The Defendants' establishment has seventy-five (75)
18 guestrooms. Defendants' hotel fails to have any accessible
19 guestrooms. If a hotel has between fifty-one and seventy-five (51
20 and 75) guestrooms, the hotel shall provide three (3) accessible
21 guestrooms, plus one (1) additional accessible guestroom with a
22 roll-in shower. If a hotel has between fifty-one and seventy-five
23 (51 and 75) guestrooms, the hotel shall provide three (3)
24 accessible guestrooms for members of the disability community who
25 are hearing impaired. The accessible guestrooms must be dispersed
26 among the various classes of sleeping accommodations, providing a
27 range of options applicable to room sizes, costs, amenities
28

1 provided, and the number of beds provided. Defendants' hotel fails
2 to have the required accessible guestrooms.

3 14. The guestroom given to Plaintiff's member Theodore A.
4 Pinnock, guestroom 405, is completely inaccessible. The doorknob
5 on the entrance door is inaccessible, as it requires tight
6 grasping and/or twisting by the wrist to operate. The closet rail
7 is too high to be accessible. The bathroom is inaccessible, as the
8 entrance to the bathroom is less than thirty-two inches (32") in
9 width. The bathroom fails to have the required grab bars around
10 the commode and also fails to have the required grab bars in the
11 shower.

12 15. Pursuant to federal and state law, Defendants are required to
13 remove barriers to their existing facilities. Further, Defendants
14 had actual knowledge of their barrier removal duties under the
15 Americans with Disabilities Act and the Civil Code before January
16 26, 1992. Also, Defendants should have known that individuals
17 with disabilities are not required to give notice to a
18 governmental agency before filing suit alleging Defendants failed
19 to remove architectural barriers.

20 16. The pool and the spa are both inaccessible, as neither of
21 them have the required device to help disabled patrons in and out
22 of the water.

23 17. In addition to the violations personally experienced by
24 Plaintiff's Member and Plaintiff THEODORE A. PINNOCK, additional
25 violations of federal and state disability laws exist at
26 Defendants' YUNG FU LIN d.b.a. ROYAL VISTA INN and MEI YUEH LIN
27 d.b.a. ROYAL VISTA INN. For example, the steps that lead patrons
28

1 from the rear entrance door to the rear parking lot fail to have
2 the required contrasting color strips.

3 18. The Men's restroom located in the lobby of the Defendants'
4 establishment is inaccessible. The restroom door fails to have
5 the required disability signage. The clear opening width of one
6 (1) of the double doors from the lobby to the restroom is only
7 twenty-eight inches (28"), when it should be at least thirty-two
8 inches (32") wide. The restroom doorknob is fails to be
9 accessible, as it requires tight grasping and/or twisting by the
10 wrist to operate. The height of the urinal lip is twenty-three
11 inches (23"), and is inaccessible, as it exceeds the maximum
12 height requirement of seventeen inches (17"). The flush mechanism
13 on the urinal is located a fifty-one inches (51") high, and is
14 inaccessible, as it exceeds the maximum height requirement of
15 forty-four inches (44"). The stall door is inaccessible as it
16 fails to meet the requirement that it opens outward. The stall
17 fails to have the required handles on both sides of the door. The
18 stall fails to have the required self-closing mechanism. The
19 locking mechanism on the stall door fails to be accessible, as it
20 requires tight grasping and/or twisting by the wrist to operate.
21 The commode seat cover dispenser is located at an impermissible
22 height of fifty inches (50"). The commode is inaccessible, as it
23 is only fifteen inches (15") high. The distance from the lavatory
24 to the adjacent wall is only fourteen inches (14"), when it is
25 required to be at least eighteen inches (18"). The knee clearance
26 under the lavatory is only twenty-five inches (25"), and is
27 inaccessible. The hot water and drainage pipes under the lavatory
28

1 sink fail to have the required insulation. The mirror is
2 inaccessible as the height of the bottom edge is forty-five inches
3 (45"), when it is required to be no more than forty inches (40").
4 The paper towel dispenser also fails to be accessible as it is
5 mounted at fifty-six inches (56") above the floor surface. The
6 restroom fails to have the required audible visual alarm system.

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

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

1 THEODORE A. PINNOCK experienced pain in his legs, back, arms,
2 shoulders and wrists when he attempted to enter, use, and exit
3 Defendants' YUNG FU LIN d.b.a. ROYAL VISTA INN and MEI YUEH LIN
4 d.b.a. ROYAL VISTA INN establishment.

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

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7 21. YUNG FU LIN d.b.a. ROYAL VISTA INN; MEI YUEH LIN d.b.a. ROYAL
8 VISTA INN; YUNG FU LIN; MEI YUEH LIN; and Does 1 through 10 will
9 be referred to collectively hereinafter as "Defendants."

10 22. Plaintiffs aver that the Defendants are liable for the
11 following claims as alleged below:

12 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

13 **FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS- Claims Under The**
14 **Americans With Disabilities Act Of 1990**

15 **CLAIM I AGAINST ALL DEFENDANTS: Denial Of Full And Equal**
16 **Access**

17 23. Based on the facts plead at ¶¶ 6-20 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. Plaintiffs allege Defendants are a
21 public accommodation owned, leased and/or operated by Defendants.
22 Defendants' existing facilities and/or services failed to provide
23 full and equal access to Defendants' facility as required by 42
24 U.S.C. § 12182(a). Thus, Plaintiff's 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 Plaintiff's
27 Member was denied equal access to Defendants' existing facilities.

28 24. Plaintiff's member Theodore A. Pinnock has physical

1 impairments as alleged in ¶ 6 above because his conditions affect
2 one or more of the following body systems: neurological,
3 musculoskeletal, special sense organs, and/or cardiovascular.

4 Further, Plaintiff's member Theodore A. Pinnock's said physical
5 impairments substantially limits one or more of the following
6 major life activities: walking. In addition, Plaintiff's member
7 Theodore A. Pinnock cannot perform one or more of the said major
8 life activities in the manner, speed, and duration when compared
9 to the average person. Moreover, Plaintiff's member Theodore A.
10 Pinnock has a history of or has been classified as having a
11 physical impairment as required by 42 U.S.C. § 12102(2)(A).

12
13 **CLAIM II AGAINST ALL DEFENDANTS: Failure To Make Alterations In**
14 **Such A Manner That The Altered Portions Of The Facility Are**
15 **Readily Accessible And Usable By Individuals With Disabilities**

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

26. Additionally, the Defendants undertook an alteration that

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

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

14 28. Thus, Plaintiff's Member Theodore A. Pinnock was subjected to
15 discrimination in violation of 42 U.S.C. § 12183(a), 42 U.S.C.
16 §12182(a) and 42 U.S.C. §12188 because said Member Theodore A.
17 Pinnock was denied equal access to Defendants' existing
18 facilities.
19

20 **CLAIM III AGAINST ALL DEFENDANTS: Failure To Remove**
21 **Architectural Barriers**

22 29. Based on the facts plead at ¶¶ 6-20 above and elsewhere in
23 this complaint, Plaintiff's Member was denied full and equal
24 access to Defendants' goods, services, facilities, privileges,
25 advantages, or accommodations within a public accommodation owned,
26 leased, and/or operated by Defendants. Defendants failed to
27 remove barriers as required by 42 U.S.C. § 12182(a). Plaintiffs
28 are informed, believe, and thus allege that architectural barriers

1 which are structural in nature exist within the following physical
2 elements of Defendants' facilities: Space Allowance and Reach
3 Ranges, Accessible Route, Protruding Objects, Ground and Floor
4 Surfaces, Parking and Passenger Loading Zones, Curb Ramps, Ramps,
5 Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows,
6 Doors, Entrances, Drinking Fountains and Water Coolers, Water
7 Closets, Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks,
8 Storage, Handrails, Grab Bars, and Controls and Operating
9 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.

10 Title III requires places of public accommodation to remove
11 architectural barriers that are structural in nature to existing
12 facilities. [See, 42 United States Code 12182(b)(2)(A)(iv).]
13 Failure to remove such barriers and disparate treatment against a
14 person who has a known association with a person with a disability
15 are forms of discrimination. [See 42 United States Code
16 12182(b)(2)(A)(iv).] Thus, Plaintiff's Member was subjected to
17 discrimination in violation of 42 United States Code
18 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was
19 denied equal access to Defendants' existing facilities.

20
21 **CLAIM IV AGAINST ALL DEFENDANTS: Failure To Modify Practices,
Policies And Procedures**

22 30. Based on the facts plead at ¶¶ 6-20 above and elsewhere in
23 this complaint, Defendants failed and refused to provide a
24 reasonable alternative by modifying its practices, policies and
25 procedures in that they failed to have a scheme, plan, or design
26 to assist Plaintiff's Member and/or others similarly situated in
27 entering and utilizing Defendants' services, as required by 42
28

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

5 31. Based on the facts plead at ¶¶ 6-20 above, Claims I, II, and
6 III of Plaintiffs' First 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 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 federal civil rights laws
21 enacted for the benefit of individuals with disabilities.

22 32. WHEREFORE, Plaintiffs pray for judgment and relief as
23 hereinafter set forth.
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25 ///

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

3 CLAIM I: Denial Of Full And Equal Access

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

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

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

26 35. Based on the facts plead at ¶¶ 6-20 above and elsewhere
27 herein this complaint, Defendants failed and refused to provide a
28 reasonable alternative by modifying its practices, policies, and

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

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

7 36. Based on the facts plead at ¶¶ 6-20 above and elsewhere
8 herein this complaint and because Defendants violated the Civil
9 Code § 51 by failing to comply with 42 United States Code §
10 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and
11 continue to discriminate against Plaintiff's Member and persons
12 similarly situated in violation of Civil Code §§ 51, 52, and 54.1.

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

1 necessary to enjoin compliance with state civil rights laws
2 enacted for the benefit of individuals with disabilities.

3 38. Wherefore, Plaintiffs pray for damages and relief as
4 hereinafter stated.

5 Treble Damages Pursuant To Claims I, II, III Under The California
6 Accessibility Laws

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

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

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

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

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

27 PLAINTIFF THEODORE A. PINNOCK'S THIRD CAUSE OF ACTION AGAINST ALL
28

1 DEFENDANTS- Negligence as to Plaintiff THEODORE A. PINNOCK only

2 43. Based on the facts plead at ¶¶ 6-20 above and elsewhere in
3 this complaint, Defendants owed Plaintiff Theodore A. Pinnock a
4 statutory duty to make their facility accessible and owed
5 Plaintiff Theodore A. Pinnock a duty to keep Plaintiff Theodore A.
6 Pinnock reasonably safe from known dangers and risks of harm.
7 This said duty arises by virtue of legal duties proscribed by
8 various federal and state statutes including, but not limited to,
9 ADA, ADAAG, Civil Code 51, 52, 54, 54.1 and Title 24 of the
10 California Administrative Code and applicable 1982 Uniform
11 Building Code standards as amended.

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

20 45. Therefore, Defendants engaged in discriminatory conduct in
21 that they failed to comply with known duties under the ADA, ADAAG,
22 Civil Code 51, 52, 54, 54.1, 54.3, ADAAG, and Title 24, and knew
23 or should have known that their acts of nonfeasance would cause
24 Plaintiff THEODORE A. PINNOCK emotional, bodily and personal
25 injury. Plaintiff THEODORE A. PINNOCK alleges that there was
26 bodily injury in this matter because when Plaintiff THEODORE A.
27 PINNOCK attempted to enter, use, and exit Defendants'
28

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

16
17 46. Wherefore, Plaintiffs pray for damages and relief as
18 hereinafter stated.

19 DEMAND FOR JUDGMENT FOR RELIEF:

- 20 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3,
21 3281, and 3333;
- 22 B. For \$4,000 in damages pursuant to Cal. Civil Code § 52 for
23 each and every offense of Civil Code § 51, Title 24 of the
24 California Building Code, ADA, and ADA Accessibility Guidelines;
- 25 C. In the alternative to the damages pursuant to Cal. Civil
26 Code § 52 in Paragraph B above, for \$1,000 in damages pursuant to
27 Cal. Civil Code § 54.3 for each and every offense of Civil Code §
28 54.1, Title 24 of the California Building Code, ADA, and ADA
Accessibility Guidelines;

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

12 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C.
13 § 12205, and Cal. Civil Code § 55;

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

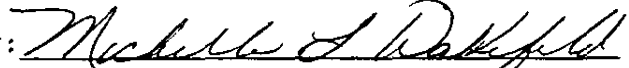
16 G. A Jury Trial and;

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

18 Respectfully submitted:

19 PINNOCK & WAKEFIELD

20
21 Dated: March 18, 2004

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

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 (EXCEPT IN U.S. PLAINTIFF CASES) San Diego

DEFENDANTS

YUNG FU LIN d.b.a. ROYAL VISTA INN; MEI YUEH LIN d.b.a. ROYAL VISTA INN; YUNG FU LIN; MEI YUEH LIN; And DOES 1 THROUGH 10, Inclusive

04 MAR 19 AM 9:47

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

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE 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)

04 CV 00583 WQH (LSP)

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)

- | | | | | |
|---|----------------------------|----------------------------|---|---|
| | PT | DEF | PT | DEF |
| 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.

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 RR & Truck <input type="checkbox"/> 650 Airline Flegs <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. <input type="checkbox"/> 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 DMCD/WWW (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 Commerce/ICC 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"/> 890 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 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 MARCH 12, 2004

SIGNATURE OF ATTORNEY OF RECORD

#102049 MS 150-

Michelle L. Wakefield