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3:04-CV-00581 PINNOCK V. TRISTAR HOTELS LLC

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U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

DEPUTY

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

'04 CV 00581

H (JMA)

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

Plaintiffs,

v.

TRISTAR HOTELS, LLC d.b.a.  
SUPER 8 SOUTH BAY a.k.a.  
SUPER 8 MOTEL; PALACIO PALM,  
LLC d.b.a. SUPER 8 MOTEL  
a.k.a. SUPER 8 SOUTH BAY;  
TRISTAR HOTELS, LLC; PALACIO  
PALM, LLC; 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

CR

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

17 **JURISDICTION AND VENUE**

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

27 **SUPPLEMENTAL JURISDICTION**

28 2. The Judicial District of the United States District Court of

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

19  
20 **NAMED DEFENDANTS AND NAMED PLAINTIFFS**

21 3. Defendants are, and, at all times mentioned herein, were, a  
22 business or corporation or franchise organized and existing and/or  
23 doing business under the laws of the State of California. The  
24 property that is the subject of this complaint, SUPER 8 SOUTH BAY  
25 a.k.a. SUPER 8 MOTEL, is located at 1788 Palm Avenue, San Diego,  
26 California 92154. Plaintiffs are informed and believe and thereon  
27 allege that Defendants TRISTAR HOTELS, LLC and/or PALACIO PALM,  
28 LLC are the owners, operators, and/or doing business as SUPER 8

1 SOUTH BAY a.k.a. SUPER 8 MOTEL. Defendant TRISTAR HOTELS, LLC is  
2 located at 8000 Parkway Drive, La Mesa, California 91942.  
3 Defendant PALACIO PALM, LLC is located at 3377 Carmel Mountain  
4 Road, Suite 150, San Diego, California 92121. Plaintiffs are  
5 informed and believe and thereon allege that Defendant TRISTAR  
6 HOTELS, LLC is the owner, operator, and/or lessor of the property  
7 located at 1788 Palm Avenue, San Diego, California 92154, Assessor  
8 Parcel Number 627-090-02. The words "Plaintiffs" and "Plaintiff's  
9 Member" as used herein specifically include the organization  
10 MANTIC ASHANTI'S CAUSE, its Members, its member Theodore A.  
11 Pinnock and persons associated with its Members who accompanied  
12 Members to Defendants' facilities, as well as THEODORE A. PINNOCK,  
13 An Individual.

14 4. Defendants Does 1 through 10, were at all times relevant  
15 herein subsidiaries, employers, employees, agents, of TRISTAR  
16 HOTELS, LLC d.b.a. SUPER 8 SOUTH BAY a.k.a. SUPER 8 MOTEL; PALACIO  
17 PALM, LLC d.b.a. SUPER 8 MOTEL a.k.a. SUPER 8 SOUTH BAY; TRISTAR  
18 HOTELS, LLC; PALACIO PALM, LLC. Plaintiffs are ignorant of the  
19 true names and capacities of Defendants sued herein as Does 1  
20 through 10, inclusive, and therefore sues these Defendants by such  
21 fictitious names. Plaintiffs will pray leave of the court to  
22 amend this complaint to allege the true names and capacities of  
23 the Does when ascertained.

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

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

7  
8 CONCISE SET OF FACTS

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

16 7. On or about January 5, 2004, Plaintiff's member THEODORE A.  
17 PINNOCK went to Defendants' TRISTAR HOTELS, LLC d.b.a. SUPER 8  
18 SOUTH BAY a.k.a. SUPER 8 MOTEL and/or PALACIO PALM, LLC d.b.a.  
19 SUPER 8 MOTEL a.k.a. SUPER 8 SOUTH BAY facilities to utilize their  
20 goods and/or services. When Plaintiff's member patronized  
21 Defendants' TRISTAR HOTELS, LLC d.b.a. SUPER 8 SOUTH BAY a.k.a.  
22 SUPER 8 MOTEL and/or PALACIO PALM, LLC d.b.a. SUPER 8 MOTEL a.k.a.  
23 SUPER 8 SOUTH BAY facilities, he was unable to use and/or had  
24 difficulty using the public accommodations' disabled parking,  
25 exterior path of travel, entrance, front/registration desk, public  
26 seating in the breakfast room, pool, guestroom, guestroom lamp,  
27 and guestroom bathroom facilities at Defendants' business  
28 establishment because they failed to comply with ADA Access

1 Guidelines For Buildings and Facilities (hereafter referred to as  
2 "ADAAG") and/or California's Title 24 Building Code Requirements.  
3 Defendants failed to remove access barriers within the disabled  
4 parking, exterior path of travel, entrance, front/registration  
5 desk, public seating in the breakfast room, pool, guest laundry  
6 room, men's restroom located in the lobby, guestroom, guestroom  
7 entrance, guestroom lamp, guestroom closet, guestroom path of  
8 travel, guestroom bathroom facilities of Defendants' TRISTAR  
9 HOTELS, LLC d.b.a. SUPER 8 SOUTH BAY a.k.a. SUPER 8 MOTEL and/or  
10 PALACIO PALM, LLC d.b.a. SUPER 8 MOTEL a.k.a. SUPER 8 SOUTH BAY  
11 establishment.

12 8. Plaintiff's member personally experienced difficulty with  
13 said access barriers at Defendants' TRISTAR HOTELS, LLC d.b.a.  
14 SUPER 8 SOUTH BAY a.k.a. SUPER 8 MOTEL and/or PALACIO PALM, LLC  
15 d.b.a. SUPER 8 MOTEL a.k.a. SUPER 8 SOUTH BAY facilities. For  
16 example, the parking facility of Defendants' establishment is  
17 inaccessible. The parking facility has a total of sixty-three  
18 (63) parking spaces including three (3) disabled parking spaces.  
19 The parking facilities fail to have the required Van Accessible  
20 disabled parking spaces. All three (3) of the disabled parking  
21 spaces are only fourteen-foot (14') long regular disabled parking  
22 spaces, one (1) of which fails to have the required signage. It  
23 is required that there is at least one (1) compliant "van  
24 accessible" disabled parking space, that is at least eighteen feet  
25 (18') long, with an eight foot (8') wide access aisle and the  
26 proper signage. It is also required that there are at least two  
27 (2) "regular" disabled parking spaces that are eighteen feet (18')

1 long and have the proper signage.

2 9. The exterior path of travel from the public sidewalk and the  
3 parking lot to the motel entrance fails to be accessible as  
4 members of the disability community are forced to maneuver through  
5 vehicular traffic with out the benefit of a marked path of travel.

6 10. The entrance to the Defendants establishment is inaccessible,  
7 as the entrance fails to have the required disability signage.

8 11. The front/registration counter is inaccessible, as it is an  
9 impermissible forty-one inches (41") high. The maximum height  
10 requirement is thirty-four inches (34").

11 12. The Defendants' establishment has sixty-one (61) guestrooms,  
12 two (2) of which are designated as accessible rooms. If a hotel  
13 has between fifty-one and seventy-five (51 and 75) guestrooms, the  
14 hotel shall provide three (3) accessible guestrooms, plus one (1)  
15 additional accessible guestroom with a roll-in shower. If a hotel  
16 has between fifty-one and seventy-five (51 and 75) guestrooms, the  
17 hotel shall provide three (3) accessible guestrooms for members of  
18 the disability community who are hearing impaired. The accessible  
19 guestrooms must be dispersed among the various classes of sleeping  
20 accommodations, providing a range of options applicable to room  
21 sizes, costs, amenities provided, and the number of beds provided.  
22 Defendants' hotel fails to have the required accessible  
23 guestrooms.

24 13. Plaintiff's member THEODORE A. PINNOCK was given Guestroom  
25 106. The lamp-switches located in Guestroom 106 are inaccessible,  
26 as they require tight grasping and/or twisting of the wrist to  
27 operate. The bathtub located inside the bathroom of Guestroom 106  
28



1 is inaccessible, as the bathtub fails to have the required grab  
2 bars.

3 14. In addition to the above specified violations of federal and  
4 state disability laws personally experienced by Plaintiff's Member  
5 THEODORE A. PINNOCK, additional violations of federal and state  
6 disability laws exist at Defendants' TRISTAR HOTELS, LLC d.b.a.  
7 SUPER 8 SOUTH BAY a.k.a. SUPER 8 MOTEL and/or PALACIO PALM, LLC  
8 d.b.a. SUPER 8 MOTEL a.k.a. SUPER 8 SOUTH BAY. For example, the  
9 public seating in the breakfast room located inside the  
10 Defendants' establishment is inaccessible. There are a total of  
11 twelve (12) seats, all with a knee clearance depth of a mere two  
12 inches (2"). The requirement is that five percent (5%) of all  
13 seats, but no less than one (1) seat, must have a knee clearance  
14 depth of at least nineteen inches (19").

15 15. The guest laundry room is inaccessible. The entrance door  
16 does not have the required smooth and uninterrupted surface on the  
17 bottom ten-inches (10") of the door that allows the door to be  
18 opened with a wheelchair footrest without creating a hazard. The  
19 doorknob on the laundry room door fails to be accessible, as it  
20 requires grasping or twisting by the wrist to operate. The  
21 washing machine in the laundry room is inaccessible, as it is not  
22 the required type that you load from the front.

23 16. The restroom located in the lobby of the Defendants'  
24 establishment is inaccessible. The restroom area door fails to  
25 have the required smooth and uninterrupted surface on the bottom  
26 ten-inches (10") of the door that allows the door to be opened  
27 with a wheelchair footrest without creating a hazard. The  
28

1 restroom foyer doorknob fails be accessible, as it requires tight  
2 grasping and/or twisting of the wrist to operate. The restroom  
3 door fails to have the required disability signage. The clear  
4 opening width of the restroom doorway is only twenty-eight inches  
5 (28"), when it should be at least thirty-two inches (32"). The  
6 restroom doorknob fails to be accessible, as it requires grasping  
7 or twisting by the wrist to operate. The strike-edge clearance of  
8 the restroom door is a mere four inches (4"), when the minimum  
9 requirement is eighteen inches (18"). The locking mechanism on  
10 the restroom is inaccessible, as it requires tight grasping and/or  
11 twisting of the wrist to operate. The restroom fails to have the  
12 required wheelchair turnaround space of inches (60") in diameter,  
13 as it is only 52"X54". The commode fails to have any of the  
14 required grab bars. The commode is inaccessible, as it is only  
15 fifteen inches (15") high. The lavatory is inaccessible, as the  
16 height of the knee clearance under the lavatory is only twenty-  
17 five inches (25"). The round faucet handles on the lavatory fail  
18 to be accessible, as they required tight grasping and/or twisting  
19 of the wrist to operate. The paper towel dispenser fails to be  
20 accessible, as it is mounted at fifty-two inches (52") above the  
21 floor surface. The restroom also fails to have the required  
22 audible visual alarm system.

23  
24 17. Guestroom 128 is also inaccessible. The entrance door of  
25 Guestroom 128 fail to have the required smooth and uninterrupted  
26 surface on the bottom ten-inches (10") of the door that allows the  
27 door to be opened with a wheelchair footrest without creating a  
28 hazard. The pressure that is required to open the front entrance

1 door to Guestroom 128 is excessive, as it is ten pounds (10 lbs.).  
2 This exceeds the maximum requirement of five pounds (5 lbs.) of  
3 pressure. The round locking mechanism on the entrance door of the  
4 guestroom fails to be accessible, as it requires tight grasping  
5 and/or twisting of the wrist to operate. The round control  
6 switches for the air conditioner and the lamp-switches are not  
7 accessible, as they require tight grasping and/or twisting of the  
8 wrist to operate. The distance between the two beds is only  
9 thirty-one inches (31"), and fails to meet the minimum width  
10 requirement of thirty-six inches (36"). The path of travel from  
11 the front entrance door of the room to the window is a mere  
12 seventeen inches (17"), and is inaccessible. The pressure that is  
13 required to open the window is ten pounds (10 lbs.), and exceeds  
14 the maximum requirement of five pounds (5 lbs.) of pressure. The  
15 round control switches on the microwave are inaccessible, as they  
16 require grasping or twisting by the wrist to operate. The shelf  
17 inside the closet is inaccessible, as it is mounted at an  
18 impermissible seventy-one inches (71") in height. The height of  
19 the clothes bar is an impermissible seventy inches (70"). The  
20 guestroom fails to have the required audible and visual alarm  
21 system.  
22

23 18. The bathroom located inside Guestroom 128 is inaccessible.  
24 The clear opening width of the bathroom doorway is only thirty and  
25 one half inches (30 1/2"), when it should be at least thirty-two  
26 inches (32"). The bathroom doorknob fails to be accessible, as it  
27 requires tight grasping and/or twisting of the wrist to operate.  
28 The locking mechanism on the bathroom is inaccessible, as it

1 requires grasping or twisting by the wrist to operate. The  
2 bathroom fails to have the required wheelchair turnaround space,  
3 as it is only 30"X60". The minimum requirement for wheelchair  
4 turnaround space is sixty inches (60") in diameter. The commode is  
5 inaccessible, as it is only fifteen inches (15") high. The  
6 distance from the front edge of the commode to the front wall is  
7 only thirty inches (30"). The minimum requirement is forty-eight  
8 inches (48"). The bathtub does not have the required seat. The  
9 bathtub fails to have the required grab bars. The lavatory is  
10 inaccessible, as the height of the knee clearance under the  
11 lavatory is only twenty-five inches (25"). The round faucet  
12 handles on the lavatory fail to be accessible, as they required  
13 tight grasping and/or twisting of the wrist to operate. The  
14 towels are inaccessible as they are located on a storage rack that  
15 is sixty-two inches (62") above the floor surface. The hair dryer  
16 is inaccessible, as it is mounted sixty-two inches (62") above the  
17 floor surface. The bathroom also fails to have the required  
18 audible visual alarm system.

19  
20 19. The pool is inaccessible, as the entrance gate requires tight  
21 grasping and/or twisting of the wrist to operate. The pool also  
22 fails to have the required device for assisting disabled patrons  
23 in and out of the water.

24 20. Pursuant to federal and state law, Defendants are required to  
25 remove barriers to their existing facilities. Further, Defendants  
26 had actual knowledge of their barrier removal duties under the  
27 Americans with Disabilities Act and the Civil Code before January  
28 26, 1992. Also, Defendants should have known that individuals

1 with disabilities are not required to give notice to a  
2 governmental agency before filing suit alleging Defendants failed  
3 to remove architectural barriers.

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

20 22. Based on these facts, Plaintiffs allege Plaintiff's Member  
21 and Plaintiff Theodore A. Pinnock was discriminated against each  
22 time he patronized Defendants' establishments. Plaintiff's Member  
23 and Plaintiff Theodore A. Pinnock was extremely upset due to  
24 Defendants' conduct. Further, Plaintiff's Member and Plaintiff  
25 THEODORE A. PINNOCK experienced pain in his legs, back, arms,  
26 shoulders and wrists when he attempted to enter, use, and exit  
27 Defendants' TRISTAR HOTELS, LLC d.b.a. SUPER 8 SOUTH BAY a.k.a.  
28

1 SUPER 8 MOTEL and/or PALACIO PALM, LLC d.b.a. SUPER 8 MOTEL a.k.a.  
2 SUPER 8 SOUTH BAY establishment.

3 WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED DEFENDANT  
4

5 23. TRISTAR HOTELS, LLC d.b.a. SUPER 8 SOUTH BAY a.k.a. SUPER 8  
6 MOTEL; PALACIO PALM, LLC d.b.a. SUPER 8 MOTEL a.k.a. SUPER 8 SOUTH  
7 BAY; TRISTAR HOTELS, LLC; PALACIO PALM, LLC; and Does 1 through 10  
8 will be referred to collectively hereinafter as "Defendants."

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

11 DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS

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

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

16 25. Based on the facts plead at ¶¶ 6-22 above and elsewhere in  
17 this complaint, Plaintiff's Member was denied full and equal  
18 access to Defendants' goods, services, facilities, privileges,  
19 advantages, or accommodations. Plaintiffs allege Defendants are a  
20 public accommodation owned, leased and/or operated by Defendants.  
21 Defendants' existing facilities and/or services failed to provide  
22 full and equal access to Defendants' facility as required by 42  
23 U.S.C. § 12182(a). Thus, Plaintiff's Member was subjected to  
24 discrimination in violation of 42 United States Code  
25 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's  
26 Member was denied equal access to Defendants' existing facilities.

27 26. Plaintiff's member Theodore A. Pinnock has physical  
28 impairments as alleged in ¶ 6 above because his conditions affect

1 one or more of the following body systems: neurological,  
2 musculoskeletal, special sense organs, and/or cardiovascular.

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

11  
12 **CLAIM II AGAINST ALL DEFENDANTS: Failure To Make Alterations In**  
13 **Such A Manner That The Altered Portions Of The Facility Are**  
**Readily Accessible And Usable By Individuals With Disabilities**

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

27 28. Additionally, the Defendants undertook an alteration that  
28 affects or could affect the usability of or access to an area of

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

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

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

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

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

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



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

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

22 32. Based on the facts plead at ¶¶ 6-22 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 U.S.C. § 12188(a). Thus, said Member was subjected to

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

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

21 34. WHEREFORE, Plaintiffs pray for judgment and relief as  
22 hereinafter set forth.

23  
24 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER**  
25 **CALIFORNIA ACCESSIBILITY LAWS**

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

27 35. Based on the facts plead at ¶¶ 6-22 above and elsewhere in  
28 this complaint, Plaintiff's Member was denied full and equal

1 access to Defendants' goods, services, facilities, privileges,  
2 advantages, or accommodations within a public accommodation owned,  
3 leased, and/or operated by Defendants as required by Civil Code  
4 Sections 54 and 54.1. Defendants' facility violated California's  
5 Title 24 Accessible Building Code by failing to provide access to  
6 Defendants' facilities due to violations pertaining to the Space  
7 Allowance and Reach Ranges, Accessible Route, Protruding Objects,  
8 Ground and Floor Surfaces, Parking and Passenger Loading Zones,  
9 Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair  
10 Lifts), Windows, Doors, Entrances, Drinking Fountains and Water  
11 Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and  
12 Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and  
13 Operating Mechanisms, Alarms, Detectable Warnings, Signage, and  
14 Telephones.

15  
16 36. These violations denied Plaintiff's Member full and equal  
17 access to Defendants' facility. Thus, said Member was subjected  
18 to discrimination pursuant to Civil Code §§ 51, 52, and 54.1  
19 because Plaintiff's Member was denied full, equal and safe access  
20 to Defendants' facility, causing severe emotional distress.

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

22 37. Based on the facts plead at ¶¶ 6-22 above and elsewhere  
23 herein 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 Civil  
28 Code § 54.1. Thus, said Member was subjected to discrimination in

1 violation of Civil Code § 54.1.

2 CLAIM III: Violation Of The Unruh Act

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

9 39. Based on the facts plead at ¶¶ 6-17 above, Claims I, II, and  
10 III of Plaintiffs' Second Cause Of Action above, and the facts  
11 elsewhere herein this complaint, Plaintiffs will suffer  
12 irreparable harm unless Defendants are ordered to remove  
13 architectural, non-architectural, and communication barriers at  
14 Defendants' public accommodation. Plaintiffs allege that  
15 Defendants' discriminatory conduct is capable of repetition, and  
16 this discriminatory repetition adversely impacts Plaintiffs and a  
17 substantial segment of the disability community. Plaintiffs  
18 allege there is a state and national public interest in requiring  
19 accessibility in places of public accommodation. Plaintiffs have  
20 no adequate remedy at law to redress the discriminatory conduct of  
21 Defendants. Plaintiff's Member desires to return to Defendants'  
22 places of business in the immediate future. Accordingly, the  
23 Plaintiffs allege that a structural or mandatory injunction is  
24 necessary to enjoin compliance with state civil rights laws  
25 enacted for the benefit of individuals with disabilities.  
26 40. Wherefore, Plaintiffs pray for damages and relief as  
27 hereinafter stated.  
28

1 Treble Damages Pursuant To Claims I, II, III Under The California  
2 Accessibility Laws

3 41. Defendants, each of them respectively, at times prior to and  
4 including, the month of January, 2004, and continuing to the  
5 present time, knew that persons with physical disabilities were  
6 denied their rights of equal access to all portions of this public  
7 facility. Despite such knowledge, Defendants, and each of them,  
8 failed and refused to take steps to comply with the applicable  
9 access statutes; and despite knowledge of the resulting problems  
10 and denial of civil rights thereby suffered by Plaintiff's Member  
11 THEODORE A. PINNOCK and other similarly situated persons with  
12 disabilities. Defendants, and each of them, have failed and  
13 refused to take action to grant full and equal access to persons  
14 with physical disabilities in the respects complained of  
15 hereinabove. Defendants, and each of them, have carried out a  
16 course of conduct of refusing to respond to, or correct complaints  
17 about, denial of disabled access and have refused to comply with  
18 their legal obligations to make Defendants' TRISTAR HOTELS, LLC  
19 d.b.a. SUPER 8 SOUTH BAY a.k.a. SUPER 8 MOTEL and/or PALACIO PALM,  
20 LLC d.b.a. SUPER 8 MOTEL a.k.a. SUPER 8 SOUTH BAY facilities  
21 accessible pursuant to the Americans With Disability Act Access  
22 Guidelines (ADAAG) and Title 24 of the California Code of  
23 Regulations (also known as the California Building Code). Such  
24 actions and continuing course of conduct by Defendants, and each  
25 of them, evidence despicable conduct in conscious disregard of the  
26 rights and/or safety of Plaintiff's Member and of other similarly  
27 situated persons, justifying an award of treble damages pursuant  
28 to sections 52(a) and 54.3(a) of the California Civil Code.

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

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

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

24  
25 PLAINTIFF THEODORE A. PINNOCK'S THIRD CAUSE OF ACTION AGAINST ALL  
26 DEFENDANTS- Negligence as to Plaintiff THEODORE A. PINNOCK only

27 45. Based on the facts plead at ¶¶ 6-22 above and elsewhere in  
28 this complaint, Defendants owed Plaintiff Theodore A. Pinnock a

1 statutory duty to make their facility accessible and owed  
2 Plaintiff Theodore A. Pinnock a duty to keep Plaintiff Theodore A.  
3 Pinnock reasonably safe from known dangers and risks of harm.  
4 This said duty arises by virtue of legal duties proscribed by  
5 various federal and state statutes including, but not limited to,  
6 ADA, ADAAG, Civil Code 51, 52, 54, 54.1 and Title 24 of the  
7 California Administrative Code and applicable 1982 Uniform  
8 Building Code standards as amended.

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

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

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

13 48. Wherefore, Plaintiffs pray for damages and relief as  
14 hereinafter stated.

15 DEMAND FOR JUDGMENT FOR RELIEF:

16 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3,  
17 3281, and 3333;

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

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

26 D. For injunctive relief pursuant to 42 U.S.C. § 12188(a) and  
27 Cal. Civil Code § 55. Plaintiffs request this Court enjoin  
28 Defendants to remove all architectural barriers in, at, or on



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

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 Respectfully submitted:

16 PINNOCK & WAKEFIELD

17  
18 Dated: March 18, 2004

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

CIVIL COVER SHEET

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

I (a) PLAINTIFFS

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

DEFENDANTS

TRISTAR HOTELS, LLC d.b.a. SUPER-8 SOUTH BAY a.k.a. SUPER 8 MOTEL; PALACIO PALM, LLC d.b.a. SUPER 8 MOTEL a.k.a. SUPER 8 SOUTH BAY; TRISTAR HOTELS, LLC; PALACIO PALM, LLC; And DATES 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 DEPUTY

(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 00581 H (JMA)

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

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

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

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

Table with columns: CONTRACT, REAL PROPERTY, PERSONAL INJURY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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 MARCH 12, 2004

SIGNATURE OF ATTORNEY OF RECORD

#102017 MS 150

Michelle L. Wakefield