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3:04-CV-00690 PINNOCK V. PERFORMANCE HOTELS

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

BY:  DEPUTY

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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

Case No. '04 CV 0690 W JMA

CIVIL COMPLAINT:
DISCRIMINATORY PRACTICES IN
PUBLIC ACCOMMODATIONS
[42 U.S.C. 12182(a) ET. SEQ;
CIVIL CODE 51, 52, 54, 54.1]

Plaintiffs,

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

v.

DEMAND FOR JURY TRIAL
[F.R.Civ.P. rule 38(b);
Civ.L.R. 38.1]

PERFORMANCE HOTELS, LLC
d.b.a. RAMADA OCEANSIDE
a.k.a. RAMADA LIMITED a.k.a.
RAMADA LIMITED OCEANSIDE;
SUCPERITY CORPORATION d.b.a.
RAMADA OCEANSIDE a.k.a.
RAMADA LIMITED a.k.a. RAMADA
LIMITED OCEANSIDE; SUCPERITY
CORPORATION; PERFORMANCE
HOTELS, LLC; And DOES 1
THROUGH 10, Inclusive

Defendants.

INTRODUCTION

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



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
18 **JURISDICTION AND VENUE**

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 is located at 1440
25 Mission Avenue, Oceanside, California 92054. Plaintiffs are
26 informed and believe and thereon allege that Defendants SUCPERITY
27 CORPORATION and/or PERFORMANCE HOTELS, LLC are the owners,
28 operators, and/or doing business as RAMADA OCEANSIDE a.k.a. RAMADA

1 LIMITED a.k.a. RAMADA LIMITED OCEANSIDE. Defendant PERFORMANCE
2 HOTELS, LLC is located at 202 Island Avenue, San Diego, California
3 92101. Plaintiffs are informed and believe and thereon allege
4 that Defendant SUCPERITY CORPORATION is also the owner, operator,
5 and/or lessor of the property located at 1440 Mission Avenue,
6 Oceanside, California 92054, Assessor Parcel number 148-143-21.
7 Defendant SUCPERITY CORPORATION is located at Common Wealth, 1455
8 Frazee Road, Suite 600, San Diego, California 92108. The words
9 "Plaintiffs" and "Plaintiff's Member" as used herein specifically
10 include the organization MANTIC ASHANTI'S CAUSE, its Members, its
11 member Theodore A. Pinnock and persons associated with its Members
12 who accompanied Members to Defendants' facilities, as well as
13 THEODORE A. PINNOCK, An Individual.

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

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

1 general partner, limited partner, agent, employee, representing
2 partner, or joint venturer of the remaining Defendants and were
3 acting within the course and scope of that relationship.

4 Plaintiffs are further informed and believe, and thereon allege,
5 that each of the Defendants herein gave consent to, ratified,
6 and/or authorized the acts alleged herein to each of the remaining
7 Defendants.

8
9 CONCISE SET OF FACTS

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

17 7. On March 24, 2004, Plaintiff's Member and Plaintiff THEODORE
18 A. PINNOCK went to Defendants' RAMADA OCEANSIDE a.k.a. RAMADA
19 LIMITED a.k.a. RAMADA LIMITED OCEANSIDE facilities to utilize
20 their goods and/or services. When Plaintiff's Member and
21 Plaintiff THEODORE A. PINNOCK patronized Defendants' RAMADA
22 OCEANSIDE a.k.a. RAMADA LIMITED a.k.a. RAMADA LIMITED OCEANSIDE
23 facilities, he was unable to use and/or had difficulty using the
24 public accommodations' disabled parking, ramp, registration
25 counter, elevator, guestroom, guestroom interior path of travel,
26 and guestroom bathroom facilities at Defendants' business
27 establishments because they failed to comply with ADA Access
28 Guidelines For Buildings and Facilities (hereafter referred to as

1 "ADAAG") and/or California's Title 24 Building Code Requirements.
2 Defendants failed to remove access barriers within the public
3 accommodations' disabled parking, exterior path of travel, ramp,
4 stairs, registration counter, elevator, guestroom, guestroom
5 interior path of travel, and guestroom bathroom of Defendants'
6 RAMADA OCEANSIDE a.k.a. RAMADA LIMITED a.k.a. RAMADA LIMITED
7 OCEANSIDE establishment.

8 8. Plaintiff's member personally experienced difficulty with
9 said access barriers at Defendants' RAMADA OCEANSIDE a.k.a. RAMADA
10 LIMITED a.k.a. RAMADA LIMITED OCEANSIDE facility. For example,
11 the entryway into the parking lot fails to have the required
12 signage warning motorists that anyone illegally parking in a
13 disabled parking space would be towed/fined or both. The parking
14 facility is comprised of fifty-seven (57) parking spaces, two (2)
15 of which are designated as disabled parking spaces. The parking
16 facilities fail to have the required "Van Accessible" disabled
17 parking space. There should be a total of three (3) disabled
18 parking spaces, one (1) of which must be a "Van Accessible"
19 disabled parking space. The existing disabled parking spaces are
20 not compliant, as the access aisles of one (1) space is
21 impermissibly encroached upon by a ramp, and the other disabled
22 parking space does not have the required access aisle at all.

23 9. The ramp from the public sidewalk to the main entrance is
24 inaccessible, as the ramp has a slope that exceeds the maximum
25 requirement of 1:12.

26 10. The registration counter, at a height of forty-six inches
27 (46"), exceeds the maximum height limit of thirty-six inches
28

1 (36").

2 11. The elevator located at the defendants' establishment is
3 inaccessible. The elevator fails to have the required Braille
4 markings on the exterior and the interior buttons. The emergency
5 telephone located inside the elevator is inaccessible, as the knob
6 to open the door requires tight grasping and/or twisting of the
7 wrist to operate.

8 12. The Defendants' establishment has a total of sixty-six (66)
9 rooms, with two (2) rooms designated as accessible rooms, none of
10 which has a roll-in shower. If a hotel has between fifty-one and
11 seventy-five (51 and 75) guestrooms, the hotel shall provide at
12 least three (3) fully accessible rooms, and one (1) additional
13 accessible room with a roll-in shower. If a hotel has between
14 fifty-one and seventy-five (51 and 75) guestrooms, the hotel shall
15 provide three (3) accessible guestrooms for members of the
16 disability community who are hearing impaired. The accessible
17 guestrooms must be dispersed among the various classes of sleeping
18 accommodations, providing a range of options applicable to room
19 sizes, costs, amenities provided, and the number of beds provided.
20 Defendants' hotel fails to have the required accessible
21 guestrooms.

22 13. Plaintiff's member and Plaintiff Theodore A. Pinnock was
23 given Guestroom 117, a designated accessible guestroom. The
24 interior path of travel of Guestroom 117 is inaccessible, as the
25 width is as narrow as twenty-four inches (24") in some areas. Due
26 to this lack of an accessible interior path of travel, Plaintiff
27 Theodore A. Pinnock was unable to access the bathroom of Guestroom
28

1 117. The refrigerator in Guestroom 117 is located behind the
2 bathroom door, which prevents the door from opening all the way.
3 When the bathroom door is opened as far as it is allowed to, due
4 to the refrigerator obstructing the full opening of the door, the
5 distance between the door and one of the beds in the guestroom is
6 a mere twenty-six inches (26"), furthermore making the path of
7 travel inaccessible.

8 14. The bathroom located inside Guestroom 117 is inaccessible.
9 The doorknob is inaccessible, as it requires tight grasping and/or
10 twisting of the wrist to operate. The grab bar behind the toilet
11 is about 36 inches. The grab bar in the bathtub is about 25
12 inches. There needs to be an additional side grab bar in between
13 the toilet and the bathtub. The clothes hanger in the bathroom is
14 inaccessible as it is an sixty-three inches (63") high. The towel
15 hanger in the bathroom is inaccessible, as it is fifty-eight
16 inches (58") high. The iron and the ironing table hanging in the
17 bathroom are inaccessible, as they are seventy-seven inches (77")
18 high. The bathroom sink knob is inaccessible, as it requires tight
19 grasping and/or twisting of the wrist to operate. The commode
20 fails to meet the minimum height requirements, as it is only
21 fifteen inches (15") high. The height of the toilet paper rolls
22 is twenty-four inches (24").

23
24 15. In addition to the violations personally experienced by
25 Plaintiff's Member and Plaintiff THEODORE A. PINNOCK, additional
26 violations of federal and state disability laws exist at
27 Defendants' RAMADA OCEANSIDE a.k.a. RAMADA LIMITED a.k.a. RAMADA
28 LIMITED OCEANSIDE. For example, there are two (2) sets of stairs

1 at the defendants' establishment and both sets fail to have the
2 required slip resistant uniform treads.

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

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

27 18. Based on these facts, Plaintiffs allege Plaintiff's Member
28

1 and Plaintiff Theodore A. Pinnock was discriminated against each
2 time he patronized Defendants' establishment. Plaintiff's Member
3 and Plaintiff Theodore A. Pinnock was extremely upset due to
4 Defendants' conduct. Further, Plaintiff's Member and Plaintiff
5 THEODORE A. PINNOCK experienced pain in his legs, back, arms,
6 shoulders and wrists when he attempted to enter, use, and exit
7 Defendants' establishment.

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

9 19. RAMADA OCEANSIDE a.k.a. RAMADA LIMITED a.k.a. RAMADA LIMITED
10 OCEANSIDE; SUCPERITY CORPORATION d.b.a. RAMADA OCEANSIDE a.k.a.
11 RAMADA LIMITED a.k.a. RAMADA LIMITED OCEANSIDE; SUCPERITY
12 CORPORATION; PERFORMANCE HOTELS, LLC; and Does 1 through 10 will
13 be referred to collectively hereinafter as "Defendants."

14 20. Plaintiffs aver that the Defendants are liable for the
15 following claims as alleged below:

16 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

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

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

21 21. Based on the facts plead at ¶¶ 6-18 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. Plaintiffs allege Defendants are a
25 public accommodation owned, leased and/or operated by Defendants.
26 Defendants' existing facilities and/or services failed to provide
27 full and equal access to Defendants' facility as required by 42
28

1 U.S.C. § 12182(a). Thus, Plaintiff's 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 Plaintiff's
4 Member was denied equal access to Defendants' existing facilities.

5 22. Plaintiff's member Theodore A. Pinnock has physical
6 impairments as alleged in ¶ 6 above because his conditions affect
7 one or more of the following body systems: neurological,
8 musculoskeletal, special sense organs, and/or cardiovascular.

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

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

20 23. Based on the facts plead at ¶¶ 6-18 above and elsewhere in
21 this complaint, Plaintiff's Member Theodore A. Pinnock was denied
22 full and equal access to Defendants' goods, services, facilities,
23 privileges, advantages, or accommodations within a public
24 accommodation owned, leased, and/or operated by Defendants.
25 Defendants altered their facility in a manner that affects or
26 could affect the usability of the facility or a part of the
27 facility after January 26, 1992. In performing the alteration,
28 Defendants failed to make the alteration in such a manner that, to

1 the maximum extent feasible, the altered portions of the facility
2 are readily accessible to and usable by individuals with
3 disabilities, including individuals who use wheelchairs, in
4 violation of 42 U.S.C. §12183(a)(2).

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

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

19 26. Thus, Plaintiff's Member Theodore A. Pinnock was subjected to
20 discrimination in violation of 42 U.S.C. § 12183(a), 42 U.S.C.
21 §12182(a) and 42 U.S.C. §12188 because said Member Theodore A.
22 Pinnock was denied equal access to Defendants' existing
23 facilities.
24

25 CLAIM III AGAINST ALL DEFENDANTS: Failure To Remove
26 Architectural Barriers

27 27. Based on the facts plead at ¶¶ 6-18 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. Defendants failed to
4 remove barriers as required by 42 U.S.C. § 12182(a). Plaintiffs
5 are informed, believe, and thus allege that architectural barriers
6 which are structural in nature exist within the following physical
7 elements of Defendants' facilities: Space Allowance and Reach
8 Ranges, Accessible Route, Protruding Objects, Ground and Floor
9 Surfaces, Parking and Passenger Loading Zones, Curb Ramps, Ramps,
10 Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows,
11 Doors, Entrances, Drinking Fountains and Water Coolers, Water
12 Closets, Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks,
13 Storage, Handrails, Grab Bars, and Controls and Operating
14 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.
15 Title III requires places of public accommodation to remove
16 architectural barriers that are structural in nature to existing
17 facilities. [See, 42 United States Code 12182(b)(2)(A)(iv).]
18 Failure to remove such barriers and disparate treatment against a
19 person who has a known association with a person with a disability
20 are forms of discrimination. [See 42 United States Code
21 12182(b)(2)(A)(iv).] Thus, Plaintiff's Member was subjected to
22 discrimination in violation of 42 United States Code
23 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was
24 denied equal access to Defendants' existing facilities.
25

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

28 28. Based on the facts plead at ¶¶ 6-18 above and elsewhere in

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

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

27
28 30. WHEREFORE, Plaintiffs pray for judgment and relief as

1 hereinafter set forth.

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

4 CLAIM I: Denial Of Full And Equal Access

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

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

26 ///

27 ///

28

1 CLAIM II: Failure To Modify Practices, Policies And
2 Procedures

3 33. Based on the facts plead at ¶¶ 6-18 above and elsewhere
4 herein this complaint, Defendants failed and refused to provide a
5 reasonable alternative by modifying its practices, policies, and
6 procedures in that they failed to have a scheme, plan, or design
7 to assist Plaintiff's Member and/or others similarly situated in
8 entering and utilizing Defendants' services as required by Civil
9 Code § 54.1. Thus, said Member was subjected to discrimination in
10 violation of Civil Code § 54.1.

11 CLAIM III: Violation Of The Unruh Act

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

18 35. Based on the facts plead at ¶¶ 6-18 above, Claims I, II, and
19 III of Plaintiffs' Second Cause Of Action above, and the facts
20 elsewhere herein this complaint, Plaintiffs will suffer
21 irreparable harm unless Defendants are ordered to remove
22 architectural, non-architectural, and communication barriers at
23 Defendants' public accommodation. Plaintiffs allege that
24 Defendants' discriminatory conduct is capable of repetition, and
25 this discriminatory repetition adversely impacts Plaintiffs and a
26 substantial segment of the disability community. Plaintiffs
27 allege there is a state and national public interest in requiring
28

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

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

11 Treble Damages Pursuant To Claims I, II, III Under The California
12 Accessibility Laws

13 37. Defendants, each of them respectively, at times prior to and
14 including, the month of March, 2004, and continuing to the present
15 time, knew that persons with physical disabilities were denied
16 their rights of equal access to all portions of this public
17 facility. Despite such knowledge, Defendants, and each of them,
18 failed and refused to take steps to comply with the applicable
19 access statutes; and despite knowledge of the resulting problems
20 and denial of civil rights thereby suffered by Plaintiff's Member
21 THEODORE A. PINNOCK and other similarly situated persons with
22 disabilities. Defendants, and each of them, have failed and
23 refused to take action to grant full and equal access to persons
24 with physical disabilities in the respects complained of
25 hereinabove. Defendants, and each of them, have carried out a
26 course of conduct of refusing to respond to, or correct complaints
27 about, denial of disabled access and have refused to comply with
28 their legal obligations to make Defendants' RAMADA OCEANSIDE

1 a.k.a. RAMADA LIMITED a.k.a. RAMADA LIMITED OCEANSIDE facility
2 accessible pursuant to the Americans With Disability Act Access
3 Guidelines (ADAAG) and Title 24 of the California Code of
4 Regulations (also known as the California Building Code). Such
5 actions and continuing course of conduct by Defendants, and each
6 of them, evidence despicable conduct in conscious disregard of the
7 rights and/or safety of Plaintiff's Member and of other similarly
8 situated persons, justifying an award of treble damages pursuant
9 to sections 52(a) and 54.3(a) of the California Civil Code.

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

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

1 to accomplish the public purposes of section 52(a) of the
2 California Civil Code and section 54.3 of the California Civil
3 Code.

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

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

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

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

26 43. Therefore, Defendants engaged in discriminatory conduct in
27 that they failed to comply with known duties under the ADA, ADAAG,
28

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

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

25 DEMAND FOR JUDGMENT FOR RELIEF:

26 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3,
27 3281, and 3333;
28

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

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

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

21
22 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C.
23 § 12205, and Cal. Civil Code § 55;

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

26 ///

27 ///

28

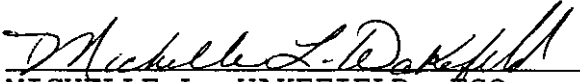
1 G. A Jury Trial and;

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

3 Respectfully submitted:

PINNOCK & WAKEFIELD

4
5 Dated: April 2, 2004

6 By: 
7 MICHELLE L. WAKEFIELD, ESQ.
8 DAVID C. WAKEFIELD, ESQ.
9 Attorneys for Plaintiffs

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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.)

FILED

I (a) PLAINTIFFS

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

DEFENDANTS

PERFORMANCE HOTELS, LLC d.b.a. RAMADA OCEANSIDE a.k.a. RAMADA LIMITED a.k.a. RAMADA OCEANSIDE SUCPERITY CORPORATION d.b.a. RAMADA OCEANSIDE a.k.a. RAMADA LIMITED a.k.a. RAMADA LIMITED OCEANSIDE; USUCPERITY CORPORATION; PERFORMANCE HOTELS, LLC; 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 (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 0690 W 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 PT DEF 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, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES. Includes checkboxes for various legal categories like 110 Insurance, 310 Airplane, 362 Personal Injury-Medical Malpractice, etc.

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

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

VII. REQUESTED IN COMPLAINT:

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

DEMAND \$ To Be Determined At Trial

Check YES only if demanded in complaint: JURY DEMAND: YES NO

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

Docket Number

DATE April 2, 2004

SIGNATURE OF ATTORNEY OF RECORD

#102463 150-MS

Michelle L. Wakefield