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3:04-CV-02279 PINNOCK V. TAMARACK BEACH HOTEL

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Attorneys for Plaintiffs

8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

'04 CV 2279 JAH (POR)

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

Plaintiffs,

v.

15 **TAMARACK BEACH HOTEL a.k.a.**
16 **TAMARACK BEACH RESORT;**
17 **PACIFIC SURF PROPERTIES d.b.a.**
18 **TAMARACK BEACH HOTEL a.k.a.**
19 **TAMARACK BEACH RESORT;**
20 **VOERTMAN FAMILY TRUST**
21 **DATED 9-27-93; KENNETH W.**
22 **VOERTMAN, TRUSTEE OF THE**
23 **VOERTMAN FAMILY TRUST**
24 **DATED 9-27-93; KENNETH W.**
VOERTMAN; MARY J. VOERTMAN,
TRUSTEE OF THE VOERTMAN
FAMILY TRUST DATED 9-27-93;
MARY J. VOERTMAN; 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]

25 **INTRODUCTION**

26 Plaintiffs MANTIC ASHANTI'S CAUSE SUING ON BEHALF OF THEODORE A.
27 PINNOCK AND ITS MEMBERS and THEODORE A. PINNOCK, An Individual, herein
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CR

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

13 **JURISDICTION AND VENUE**

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

19 **SUPPLEMENTAL JURISDICTION**

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

6 **NAMED DEFENDANTS AND NAMED PLAINTIFFS**

7 3. Defendants are, and, at all times mentioned herein, were, a business or corporation or
8 franchise organized and existing and/or doing business under the laws of the State of California.
9 Defendant TAMARACK BEACH HOTEL A.K.A. TAMARACK BEACH RESORT is located at
10 3200 Carlsbad Boulevard, Carlsbad, California 92008. Plaintiffs are informed and believe and
11 thereon allege that Defendant PACIFIC SURF PROPERTIES is the owner, operator, and/or doing
12 business as TAMARACK BEACH HOTEL A.K.A. TAMARACK BEACH RESORT. Defendant
13 PACIFIC SURF PROPERTIES is located at 1617 South Pacific Street, Oceanside, California
14 92054. Plaintiffs are informed and believe and thereon allege that Defendant VOERTMAN
15 FAMILY TRUST DATED 9-27-93 is the owner, operator, and/or lessor of the property located at
16 3200 Carlsbad Boulevard, Carlsbad, California 92008, Assessor Parcel Number 204-124-55.
17 Defendants KENNETH W. VOERTMAN, TRUSTEE OF THE VOERTMAN FAMILY TRUST
18 DATED 9-27-93 and MARY J. VOERTMAN, TRUSTEE OF THE VOERTMAN FAMILY
19 TRUST DATED 9-27-93 are located at 1617 South Pacific Street, Oceanside, California 92054.
20 The words "Plaintiffs" and "Plaintiff's Member" as used herein specifically include the organization
21 MANTIC ASHANTI'S CAUSE, its Members, its member Theodore A. Pinnock and persons
22 associated with its Members who accompanied Members to Defendants' facilities, as well as
23 THEODORE A. PINNOCK, An Individual.

24 4. Defendants Does 1 through 10, were at all times relevant herein subsidiaries, employers,
25 employees, agents, of TAMARACK BEACH HOTEL a.k.a. TAMARACK BEACH RESORT;
26 PACIFIC SURF PROPERTIES d.b.a. TAMARACK BEACH HOTEL a.k.a. TAMARACK
27 BEACH RESORT; VOERTMAN FAMILY TRUST DATED 9-27-93; KENNETH W.
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1 VOERTMAN, TRUSTEE OF THE VOERTMAN FAMILY TRUST DATED 9-27-93; KENNETH
2 W. VOERTMAN; MARY J. VOERTMAN, TRUSTEE OF THE VOERTMAN FAMILY TRUST
3 DATED 9-27-93; and MARY J. VOERTMAN. Plaintiffs are ignorant of the true names and
4 capacities of Defendants sued herein as Does 1 through 10, inclusive, and therefore sues these
5 Defendants by such fictitious names. Plaintiffs will pray leave of the court to amend this complaint
6 to allege the true names and capacities of the Does when ascertained.

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

13 CONCISE SET OF FACTS

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

19 7. On August 3, 2004, Plaintiff's member THEODORE A. PINNOCK went to Defendants'
20 TAMARACK BEACH HOTEL A.K.A. TAMARACK BEACH RESORT facilities to utilize their
21 goods and/or services. When Plaintiff's member patronized Defendants' TAMARACK BEACH
22 HOTEL a.k.a. TAMARACK BEACH RESORT facilities, he was unable to use and/or had
23 difficulty using the public accommodations' disabled parking, exterior path of travel, entrance, pool
24 entrance, pool, cashier counter, interior path of travel, lobby area restroom, guestroom, and
25 guestroom bathroom facilities at Defendants' business establishment because they failed to comply
26 with ADA Access Guidelines For Buildings and Facilities (hereafter referred to as "ADAAG")
27 and/or California's Title 24 Building Code Requirements. Defendants failed to remove access
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1 barriers within the disabled parking, exterior path of travel, entrance, pool entrance, pool, cashier
2 counter, interior path of travel, lobby area restroom, guestroom, guestroom bathroom, and public
3 pay telephone facilities of Defendants' TAMARACK BEACH HOTEL A.K.A. TAMARACK
4 BEACH RESORT establishment.

5 8. Plaintiff's member personally experienced difficulty with said access barriers at
6 Defendants' TAMARACK BEACH HOTEL A.K.A. TAMARACK BEACH RESORT facilities.
7 For example, the parking facility of Defendants' establishment is inaccessible. The parking facility
8 has a total of ninety-eight (98) parking spaces, including four (4) non-compliant disabled parking
9 spaces. Two (2) of the four (4) existing disabled parking spaces are non-compliant "regular"
10 disabled parking spaces that are only fifteen feet (15') long by eight feet (8') wide and fail to have
11 the required access aisles. The other two (2) existing disabled parking space are "van accessible"
12 disabled parking spaces that are only sixteen feet (16') long and fail to have the required disability
13 signage. It is required that all disabled parking spaces are at least eighteen feet (18') long by nine
14 feet (9') wide, have the required access aisle, and have the required disability signage.

15 9. The exterior path of travel of the Defendants' establishment is inaccessible. There fails to
16 be a safe and accessible path of travel from the public sidewalk to the primary accessible entrance,
17 as members of the disability community are forced to traverse through vehicular traffic without the
18 benefit of a marked path of travel.

19 10. The entrance door from the parking lot to the elevator at the Defendants establishment is
20 inaccessible, as the entrance door fails to have the required smooth and uninterrupted surface on the
21 bottom ten inches (10") of the door, which allows the door to be opened with a wheelchair footrest
22 without creating a hazard. The entrance door to the lobby of the Defendants establishment is
23 inaccessible, as the entrance door fails to have the required smooth and uninterrupted surface on the
24 bottom ten inches (10") of the door, which allows the door to be opened with a wheelchair footrest
25 without creating a hazard. The front entrance fails to have the required disability signage.

26 11. The pool is inaccessible, as the entrance door to the pool fails to have the required smooth
27 and uninterrupted surface on the bottom ten inches (10") of the door, which allows the door to be
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1 opened with a wheelchair footrest without creating a hazard. The pool fails to have the required
2 device to assist disabled patrons in and out of the water.

3 12. The cashier counter is inaccessible, as it is forty-three inches (43") high, when it is required
4 to be no more than thirty-four inches (34") high or have a three foot (3') section that is no higher
5 than thirty-four inches (34") high.

6 13. The lobby men's restroom located inside the Defendants' establishment is inaccessible.
7 The restroom door fails to have the required disability signage. The round locking mechanism on
8 the restroom door is inaccessible, as it requires tight grasping and/or twisting of the wrist to
9 operate. The coat hook is sixty-eight inches (68") high, when it is required to be no higher than
10 forty-eight inches (48") high. The length of the rear grab bar is only twenty-four inches (24"),
11 when it is required to be at least thirty-six inches (36") long. The length of the side grab bar is only
12 thirty-six inches (36") long and extends only five inches (5") beyond the front edge of the
13 commode, when it is required to be at least forty-two inches (42") long and extend at least twenty-
14 four inches (24") beyond the front edge of the commode. The commode seat cover dispenser is
15 forty-five inches (45") high, when it is required to be no higher than forty inches (40"). The height
16 of the commode is only fifteen inches (15"), when it is required to be between seventeen inches and
17 nineteen inches (17"- 19") high. The knee clearance depth underneath the lavatory is only five
18 inches (5"), when it is required to be at least eight inches (8"). The paper towel dispenser is
19 inaccessible, as it is mounted at forty-five inches (45") high, when it is required to be mounted no
20 higher than forty inches (40") high. The restroom fails to have the required audible and visual
21 alarm system.

22
23 14. The interior path of travel of the Defendants' establishment is inaccessible, as it fails to
24 have the required disability signage directing disabled patrons to an accessible path of travel.

25 15. The Defendants' establishment has a total of seventy-seven (77) guestrooms, none of which
26 have a roll-in shower. If a hotel has between seventy-six and one hundred (76 and 100)
27 guestrooms, the hotel shall provide at least four (4) fully accessible rooms, plus one (1) additional
28 fully accessible guestroom with a roll-in shower. If a hotel has between seventy-six and one

1 hundred (76 and 100) guestrooms, the hotel shall provide four (4) accessible guestrooms for
2 members of the disability community who are hearing impaired. The accessible guestrooms must
3 be dispersed among the various classes of sleeping accommodations, providing a range of options
4 applicable to room sizes, costs, amenities provided, and the number of beds provided. Defendants'
5 hotel fails to have the required accessible guestrooms.

6 16. Plaintiff's member and Plaintiff Theodore A. Pinnock was given Guestroom 110, a
7 designated "accessible" guestroom. However, Guestroom 110 is inaccessible. The path of travel to
8 the desk located inside Guestroom 110 is inaccessible. The closet doorknobs are inaccessible, as
9 they require tight grasping and/or twisting of the wrist to operate. The shelf inside the closet is
10 inaccessible, as it is located too high to be accessible. The lamp switches are inaccessible, as they
11 require tight grasping and/or twisting of the wrist to operate. The patio door hardware is
12 inaccessible, as it requires tight grasping and/or twisting of the wrist to operate. The grab bars
13 around the bathtub are inaccessible, as they fail to meet the minimum requirements. The bathtub
14 faucet is inaccessible, as it requires tight grasping and/or twisting of the wrist to operate. The area
15 beneath the lavatory fails to have the required knee clearance. The lavatory faucet controls are
16 inaccessible, as they require tight grasping and/or twisting of the wrist to operate. The commode
17 fails to have the required rear grab bar. The towels are inaccessible, as they are located too high to
18 be accessible.

19 17. In addition to the violations personally experienced by Plaintiff's member THEODORE A.
20 PINNOCK, additional violations of federal and state disability laws exist at the Defendants'
21 TAMARACK BEACH HOTEL A.K.A. TAMARACK BEACH RESORT establishment. For
22 example, the public pay telephone is inaccessible, as it fails to have the required volume control
23 unit and the proper signage.

24 18. The doorknob on the entrance door that is located between the lobby and the accessible
25 Guestroom 119 is inaccessible, as it requires tight grasping and/or twisting of the wrist to operate.
26 Said door also fails to have the required smooth and uninterrupted surface on the bottom ten inches
27 (10") of the door, which allows the door to be opened with a wheelchair footrest without creating a
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1 hazard.

2 19. Guestroom 119 is inaccessible. The entrance door to Guestroom 119 fails to have the
3 required smooth and uninterrupted surface on the bottom ten inches (10") of the door, which allows
4 the door to be opened with a wheelchair footrest without creating a hazard. The height of the
5 peephole on the entrance door is fifty-seven inches (57") high, when it is required to be between
6 thirty inches and forty-four inches (30"- 44") above the finished floor. The round lamp switches
7 are inaccessible, as they require tight grasping and/or twisting of the wrist to operate. The height of
8 the hangers in the closet is sixty-five inches (65"), when they are required to be no higher than
9 forty-eight inches (48"). The doorknob on the closet door is inaccessible, as it requires tight
10 grasping and/or twisting of the wrist to operate. The shelf in the closet is sixty-seven inches (67")
11 high, when it is required to be no higher than forty-eight inches (48") high. The height of the
12 bracket where the iron is mounted is fifty-six inches (56") high, when it is required to be no higher
13 than forty-eight inches (48").

14 20. The bathroom inside Guestroom 119 is inaccessible. The restroom doorknob is
15 inaccessible, as it requires tight grasping and/or twisting of the wrist to operate. The clear opening
16 width of the restroom area doorway is only thirty-one inches (31"), when it is required to be at least
17 thirty-two inches (32"). The wheelchair turn around space inside the restroom is approximately
18 thirty-three inches by fifty inches (33" x 50"), when it is required to be at least sixty inches (60") in
19 diameter. The distance from the side edge of the commode to the far wall is only twenty-five
20 inches (25"), when it is required to be at least thirty-two inches (32"). The distance from the front
21 edge of the commode to the front wall is only thirty-three inches (33"), when it is required to be at
22 least forty-eight inches (48"). The length of the rear grab bar of the commode is only twenty-four
23 inches (24"), when it is required to be at least thirty-six inches (36"). There fails to be the required
24 clear space in front of the bathtub. The bathtub fails to have the required grab bars. The bathtub
25 faucet is inaccessible, as it requires tight grasping and/or twisting of the wrist to operate. The
26 height of the towels is fifty-seven inches (57"), when they are required to be no higher than forty
27 inches (40"). The area beneath the lavatory is enclosed and fails to provide the required knee
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1 clearance. The restroom fails to have the required audible and visual alarm system.

2 21. Guestroom 101 is inaccessible. The entrance door to Guestroom 101 fails to have the
3 required smooth and uninterrupted surface on the bottom ten inches (10") of the door, which allows
4 the door to be opened with a wheelchair footrest without creating a hazard. The height of the
5 peephole on the entrance door is fifty-seven inches (57") high, when it is required to be between
6 thirty inches and forty-four inches (30"- 44") above the finished floor. The round lamp switches
7 are inaccessible, as they require tight grasping and/or twisting of the wrist to operate. The height of
8 the hangers in the closet is sixty-five inches (65"), when they are required to be no higher than
9 forty-eight inches (48"). The doorknob on the closet door is inaccessible, as it requires tight
10 grasping and/or twisting of the wrist to operate. The shelf in the closet is sixty-seven inches (67")
11 high, when it is required to be no higher than forty-eight inches (48") high. The height of the
12 bracket where the iron is mounted is fifty-six inches (56") high, when it is required to be no higher
13 than forty-eight inches (48").

14 22. The bathroom inside Guestroom 101 is inaccessible. The restroom area doorknob is
15 inaccessible, as it requires tight grasping and/or twisting of the wrist to operate. The clear opening
16 width of the restroom area doorway is only twenty-eight inches (28"), when it is required to be at
17 least thirty-two inches (32"). The restroom doorknob is inaccessible, as it requires tight grasping
18 and/or twisting of the wrist to operate. The clear opening width of the restroom doorway only
19 twenty-eight inches (28"), when it is required to be at least thirty-two inches (32"). The wheelchair
20 turn around space inside the restroom is approximately thirty-three inches by fifty inches (33" x
21 50"), when it is required to be at least sixty inches (60") in diameter. The distance from the side
22 edge of the commode to the far wall is only twenty-five inches (25"), when it is required to be at
23 least thirty-two inches (32"). The distance from the front edge of the commode to the front wall is
24 only forty-three inches (43"), when it is required to be at least forty-eight inches (48"). The
25 commode fails to have the required grab bars. The height of the commode is only sixteen inches
26 (16"), when it is required to be between seventeen inches and nineteen inches (17"- 19") in height.
27 Their fails to be the required clear space in front of the bathtub. The bathtub fails to have the
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1 required grab bars. The bathtub faucet is inaccessible, as it requires tight grasping and/or twisting
2 of the wrist to operate. The height of the towels is fifty-seven inches (57"), when they are required
3 to be no higher than forty inches (40"). The lavatory faucet handles are inaccessible, as they
4 require tight grasping and/or twisting of the wrist to operate. The area beneath the lavatory is
5 enclosed and fails to provide the required knee clearance. The restroom fails to have the required
6 audible and visual alarm system.

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

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

23 25. Based on these facts, Plaintiffs allege Plaintiff's Member and Plaintiff Theodore A. Pinnock
24 was discriminated against each time he patronized Defendants' establishments. Plaintiff's Member
25 and Plaintiff Theodore A. Pinnock was extremely upset due to Defendants' conduct. Further,
26 Plaintiff's Member and Plaintiff THEODORE A. PINNOCK experienced pain in his legs, back,
27 arms, shoulders and wrists when he attempted to enter, use, and exit Defendants' TAMARACK
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1 BEACH HOTEL A.K.A. TAMARACK BEACH RESORT establishment.

2 **WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED**
3 **DEFENDANT**

4 26. TAMARACK BEACH HOTEL a.k.a. TAMARACK BEACH RESORT; PACIFIC SURF
5 PROPERTIES d.b.a. TAMARACK BEACH HOTEL a.k.a. TAMARACK BEACH RESORT;
6 VOERTMAN FAMILY TRUST DATED 9-27-93; KENNETH W. VOERTMAN, TRUSTEE OF
7 THE VOERTMAN FAMILY TRUST DATED 9-27-93; KENNETH W. VOERTMAN; MARY J.
8 VOERTMAN, TRUSTEE OF THE VOERTMAN FAMILY TRUST DATED 9-27-93; MARY J.
9 VOERTMAN; and Does 1 through 10 will be referred to collectively hereinafter as "Defendants."

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

11 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

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

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

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

23 29. Plaintiff's member Theodore A. Pinnock has physical impairments as alleged in ¶ 6 above
24 because his conditions affect one or more of the following body systems: neurological,
25 musculoskeletal, special sense organs, and/or cardiovascular. Further, Plaintiff's member Theodore
26 A. Pinnock's said physical impairments substantially limits one or more of the following major life
27 activities: walking. In addition, Plaintiff's member Theodore A. Pinnock cannot perform one or
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1 more of the said major life activities in the manner, speed, and duration when compared to the
2 average person. Moreover, Plaintiff's member Theodore A. Pinnock has a history of or has been
3 classified as having a physical impairment as required by 42 U.S.C. § 12102(2)(A).
4

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

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

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

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

28 33. Thus, Plaintiff's Member Theodore A. Pinnock was subjected to discrimination in violation
of 42 U.S.C. § 12183(a), 42 U.S.C. §12182(a) and 42 U.S.C. §12188 because said Member

1 Theodore A. Pinnock was denied equal access to Defendants' existing facilities.

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

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

22 CLAIM IV AGAINST ALL DEFENDANTS: **Failure To Modify Practices, Policies And**
23 **Procedures**

24 35. Based on the facts plead at ¶¶ 6-25 above and elsewhere in this complaint, Defendants
25 failed and refused to provide a reasonable alternative by modifying its practices, policies and
26 procedures in that they failed to have a scheme, plan, or design to assist Plaintiff's Member and/or
27 others similarly situated in entering and utilizing Defendants' services, as required by 42 U.S.C. §
28 12188(a). Thus, said Member was subjected to discrimination in violation of 42 United States
Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was denied equal access to

1 Defendants' existing facilities.

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

13 37. WHEREFORE, Plaintiffs pray for judgment and relief as hereinafter set forth.

14
15 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER**
16 **CALIFORNIA ACCESSIBILITY LAWS**

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

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

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

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

6 40. Based on the facts plead at ¶¶ 6-25 above and elsewhere herein this complaint, Defendants
7 failed and refused to provide a reasonable alternative by modifying its practices, policies, and
8 procedures in that they failed to have a scheme, plan, or design to assist Plaintiff's Member and/or
9 others similarly situated in entering and utilizing Defendants' services as required by Civil
10 Code § 54.1. Thus, said Member was subjected to discrimination in violation of Civil Code § 54.1.

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

12 41. Based on the facts plead at ¶¶ 6-25 above and elsewhere herein this complaint and because
13 Defendants violated the Civil Code § 51 by failing to comply with 42 United States Code §
14 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and continue to discriminate
15 against Plaintiff's Member and persons similarly situated in violation of Civil Code §§ 51, 52, and
16 54.1.

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

1 43. Wherefore, Plaintiffs pray for damages and relief as hereinafter stated.

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

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

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

28 46. Plaintiffs pray for an award of treble damages against Defendants, and each of them,

1 pursuant to California Civil Code sections 52(a) and 54.3(a), in an amount sufficient to make a
2 more profound example of Defendants and encourage owners, lessors, and operators of other public
3 facilities from willful disregard of the rights of persons with disabilities. Plaintiffs do not know the
4 financial worth of Defendants, or the amount of damages sufficient to accomplish the public
5 purposes of section 52(a) of the California Civil Code and section 54.3 of the California Civil
6 Code.

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

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

10 48. Based on the facts plead at ¶¶ 6-25 above and elsewhere in this complaint, Defendants owed
11 Plaintiff Theodore A. Pinnock a statutory duty to make their facility accessible and owed Plaintiff
12 Theodore A. Pinnock a duty to keep Plaintiff Theodore A. Pinnock reasonably safe from known
13 dangers and risks of harm. This said duty arises by virtue of legal duties proscribed by various
14 federal and state statutes including, but not limited to, ADA, ADAAG, Civil Code 51, 52, 54, 54.1
15 and Title 24 of the California Administrative Code and applicable 1982 Uniform Building Code
16 standards as amended.

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

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

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

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

12 DEMAND FOR JUDGMENT FOR RELIEF:

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

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

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

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

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

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§ 55;

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

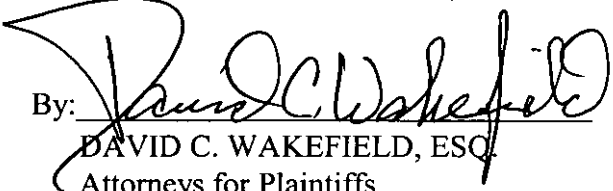
G. A Jury Trial and;

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

Respectfully submitted:

Dated: 11/10/04

PINNOCK & WAKEFIELD, A.P.C.

By: 
DAVID C. WAKEFIELD, ESQ.
Attorneys for Plaintiffs

CIVIL COVER SHEET

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

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

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

DEFENDANTS TAMARACK BEACH HOTEL a.k.a. TAMARACK BEACH RESORT;
PACIFIC SURF PROPERTIES d.b.a. TAMARACK BEACH HOTEL a.k.a.
TAMARACK BEACH RESORT; VOERTMAN FAMILY TRUST DATED 9-27-93;
KENNETH W. VOERTMAN, TRUSTEE OF THE VOERTMAN FAMILY TRUST DATED
9-27-93; KENNETH W. VOERTMAN; MARY J. VOERTMAN, TRUSTEE OF THE
VOERTMAN FAMILY TRUST DATED 9-27-93; MARY J. VOERTMAN; And DOES 1
THROUGH 10, Inclusive
SOUTHERN DISTRICT OF CALIFORNIA

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

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
David C. Wakefield, Esq. SBN: 185736
Michelle L. Wakefield, Esq. SBN: 200424
Pinnock & Wakefield, A.P.C.; 3033 Fifth Avenue, Suite 410
San Diego, CA 92103
Telephone: (619) 858-3671; Facsimile: (619) 858-3646

ATTORNEYS (IF KNOWN)
'04 CV 2279 **JAH (POR)**

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

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

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

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

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

42 U.S.C. Sections 12101-12102, 12181-12183, and 12201, Et. Seq.

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> Marine <input type="checkbox"/> Miller Act <input type="checkbox"/> Negotiable Instrument <input type="checkbox"/> 150 Recovery of overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> Other Contract <input 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	<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 Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (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/CC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <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

11/10/04

SIGNATURE OF ATTORNEY OF RECORD

David C. Wakefield

CR