



SWD 10/26/04 11:13
3:04-CV-02138 PINNOCK V. HOLIDAY INN
1
CMP.

PINNOCK & WAKEFIELD

A Professional Corporation
Michelle L. Wakefield, Esq.
David C. Wakefield, Esq.
3033 Fifth Avenue, Suite 410
San Diego, CA 92103-5973
Telephone: (619) 858-3671
Facsimile: (619) 858-3646

Bar #: 200424
Bar #: 185736

04 OCT 26 AM 8:46

BY: *SD*

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,**

Plaintiffs,

v.

**HOLIDAY INN a.k.a. HOLIDAY INN
CARLSBAD BY THE SEA;
CARLSBAD PROPERTIES, INC. d.b.a.
HOLIDAY INN a.k.a. HOLIDAY INN
CARLSBAD BY THE SEA; CPT/SC
TITLE HOLDING CORPORATION;
And DOES 1 THROUGH 10, Inclusive**
Defendants.

Case No: **'04 CV 2138 BTM (POR)**

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

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

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

INTRODUCTION

Plaintiffs MANTIC ASHANTI'S CAUSE SUING ON BEHALF OF THEODORE A. PINNOCK AND ITS MEMBERS and THEODORE A. PINNOCK, An Individual, herein complain, by filing this Civil Complaint in accordance with rule 8 of the Federal Rules of Civil Procedure in the Judicial District of the United States District Court of the Southern District of California, that Defendants have in the past, and presently are, engaging in discriminatory practices against individuals with disabilities, specifically including minorities with disabilities. Plaintiffs allege this civil action and others substantial similar thereto are necessary to compel access compliance because empirical research on the effectiveness of Title III of the Americans with

1 Disabilities Act indicates this Title has failed to achieve full and equal access simply by the
2 executive branch of the Federal Government funding and promoting voluntary compliance efforts.
3 Further, empirical research shows when individuals with disabilities give actual notice of potential
4 access problems to places of public accommodation without a federal civil rights action, the public
5 accommodations do not remove the access barriers. Therefore, Plaintiffs make the following
6 allegations in this federal civil rights action:

7 **JURISDICTION AND VENUE**

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

13 **SUPPLEMENTAL JURISDICTION**

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

27 ///
28

NAMED DEFENDANTS AND NAMED PLAINTIFFS

1
2
3 3. Defendants are, and, at all times mentioned herein, were, a business or corporation or
4 franchise organized and existing and/or doing business under the laws of the State of California.
5 Defendant HOLIDAY INN a.k.a. HOLIDAY INN CARLSBAD BY THE SEA is located at 850
6 Palomar Airport Road, Carlsbad, California 92008, which Plaintiffs are informed and believe and
7 thereon allege is also known as 840-60 Paseo Del Norte, Carlsbad, California 92008. Plaintiffs are
8 informed and believe and thereon allege that Defendant CARLSBAD PROPERTIES, INC. is the
9 owner, operator, and/or doing business as HOLIDAY INN a.k.a. HOLIDAY INN CARLSBAD BY
10 THE SEA. Defendant CARLSBAD PROPERTIES, INC. is located at 533 South Fremont Avenue,
11 7th Floor, Los Angeles, California 90071. Plaintiffs are informed and believe and thereon allege
12 that Defendant CPT/SC TITLE HOLDING CORPORATION is the owner, operator, and/or lessor
13 of the property located at 840-60 Paseo Del Norte, Carlsbad, California 92008, Assessor Parcel
14 number 211-021-32, which Plaintiffs are informed and believe and thereon allege is also known as
15 850 Palomar Airport Road, Carlsbad, California 92008. Defendant CPT/SC TITLE HOLDING
16 CORPORATION is located at 533 South Fremont Avenue, 7th Floor, Los Angeles, California
17 90071. The words "Plaintiffs" and "Plaintiff's Member" as used herein specifically include the
18 organization MANTIC ASHANTI'S CAUSE, its Members, its member Theodore A. Pinnock and
19 persons associated with its Members who accompanied Members to Defendants' facilities, as well
20 as THEODORE A. PINNOCK, An Individual.

21 4. Defendants Does 1 through 10, were at all times relevant herein subsidiaries, employers,
22 employees, agents, of HOLIDAY INN a.k.a. HOLIDAY INN CARLSBAD BY THE SEA;
23 CARLSBAD PROPERTIES, INC. d.b.a. HOLIDAY INN a.k.a. HOLIDAY INN CARLSBAD BY
24 THE SEA; and CPT/SC TITLE HOLDING CORPORATION. Plaintiffs are ignorant of the true
25 names and capacities of Defendants sued herein as Does 1 through 10, inclusive, and therefore sues
26 these Defendants by such fictitious names. Plaintiffs will pray leave of the court to amend this
27 complaint to allege the true names and capacities of the Does when ascertained.

28 5. Plaintiffs are informed and believe, and thereon allege, that Defendants and each of them

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

6 **CONCISE SET OF FACTS**

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

12 7. On August 6, 2004, Plaintiff's Member and Plaintiff THEODORE A. PINNOCK went to
13 Defendants' HOLIDAY INN a.k.a. HOLIDAY INN CARLSBAD BY THE SEA facilities to utilize
14 their goods and/or services. When Plaintiff's Member and Plaintiff THEODORE A. PINNOCK
15 patronized Defendants' HOLIDAY INN a.k.a. HOLIDAY INN CARLSBAD BY THE SEA
16 facilities, he was unable to use and/or had difficulty using the public accommodations' disabled
17 parking, exterior path of travel, entrance, cashier counter, pool, guestroom, guestroom entrance,
18 guestroom closet, and guestroom bathroom facilities at Defendants' business establishments
19 because they failed to comply with ADA Access Guidelines For Buildings and Facilities (hereafter
20 referred to as "ADAAG") and/or California's Title 24 Building Code Requirements. Defendants
21 failed to remove access barriers within the public accommodations' disabled parking, exterior path
22 of travel, entrance, cashier counter, pool, lobby restroom, guestroom, guestroom entrance,
23 guestroom closet, guestroom reach ranges, and guestroom bathroom facilities of Defendants'
24 HOLIDAY INN a.k.a. HOLIDAY INN CARLSBAD BY THE SEA establishment.

25 8. Plaintiff's member personally experienced difficulty with said access barriers at
26 Defendants' HOLIDAY INN a.k.a. HOLIDAY INN CARLSBAD BY THE SEA facility. For
27 example, the parking facility has four hundred and fifty (450) parking spaces, sixteen (16) of
28

1 which are disabled parking spaces. Three (3) of the sixteen (16) disabled parking spaces are non-
2 compliant "regular" disabled parking spaces that are only fifteen feet to seventeen feet (15' - 17')
3 long. Three (3) of the remaining thirteen (13) disabled parking spaces are non-complaint "regular"
4 disabled parking spaces that are only fifteen feet to sixteen feet (15'-16') long, fail to have the
5 required access aisles, and fail to have the required disability signage. One (1) of the remaining ten
6 (10) disabled parking spaces is a non-complaint "regular" disabled parking space that is only fifteen
7 feet (15') long and fails to have the required disability signage. One (1) of the remaining nine (9)
8 disabled parking spaces is a non-complaint "regular" disabled parking space that is only seventeen
9 feet (17') long, has an impermissible slope of up to five percent (5%), and the ramp is blocked off
10 by a vehicle parking in this space due to the location of the ramp. One (1) of the remaining eight
11 (8) disabled parking space is a non-compliant "van accessible" disabled parking spaces that is only
12 seventeen feet (17') long. It is required that all disabled parking spaces are at least eighteen feet
13 (18') long. All "regular" disabled parking spaces are required to have a five-foot (5') wide access
14 aisle on the right hand side of the disabled parking space without the encroachment of a ramp in to
15 the access aisle. All disabled parking spaces are required to have a slope no greater than two
16 percent (2%). Disabled parking spaces are required to dispersed evenly throughout the facility and
17 should be located nearest the accessible guestrooms, and entrances. There are five (5) entryways
18 into the parking lot, one (1) of which fails to have the required signage warning motorists that
19 anyone illegally parking in a disabled parking space will be towed/fined or both.
20

21 9. The exterior path of travel is inaccessible. The path of travel from the public sidewalk and
22 from four (4) of the sixteen (16) disabled parking spaces to the primary accessible entrance fails to
23 be accessible as it forces members of the disability community to traverse through vehicular traffic
24 without the benefit of a marked path of travel.

25 10. The front entrance to the Defendants' establishment is inaccessible, as it fails to have the
26 required disability signage.

27 11. The cashier counter at the Budget Rental Car is inaccessible, as it is forty inches (43") high,
28 when it is required to be no higher than thirty-four inches (34").

1 12. The pool is inaccessible, as it fails to have the required device to assist disabled patrons in
2 and out of the water.

3 13. The Defendants' establishment has a total of one hundred and fifty (150) guestrooms, none
4 of which are designated as "accessible" guestrooms and are inaccessible. If a hotel has between
5 one hundred and one and one hundred and fifty (101 and 150) guestrooms, the hotel shall provide
6 at least five (5) fully accessible rooms, plus an additional two (2) fully accessible guestrooms with a
7 roll-in shower. If a hotel has between one hundred and one and one hundred and fifty (101 and
8 150) guestrooms, the hotel shall provide five (5) accessible guestrooms for members of the
9 disability community who are hearing impaired. The accessible guestrooms must be dispersed
10 among the various classes of sleeping accommodations, providing a range of options applicable to
11 room sizes, costs, amenities provided, and the number of beds provided. Defendants' hotel fails to
12 have the required accessible guestrooms.

13 14. Plaintiff's member and Plaintiff Theodore A. Pinnock requested an "accessible" Guestroom
14 and was told that all Guestrooms at the Defendants' establishment were "accessible". Plaintiff's
15 member and Plaintiff Theodore A. Pinnock was given Guestroom 132, an "accessible" guestroom,
16 which was not accessible. The entrance to Guestroom 132 is inaccessible, as it is too narrow. The
17 shelf located inside the closet of Guestroom 132 is inaccessible, as it is too high. The bathroom of
18 Guestroom 123 is also inaccessible, as the lavatory fails to have the minimum required knee
19 clearance. The towels are located too high and are inaccessible. The mirror is mounted too high
20 and is inaccessible.

21 15. In addition to the violations personally experienced by Plaintiff's member and Plaintiff
22 Theodore A. Pinnock, additional violations of federal and state disability laws exist at Defendants'
23 HOLIDAY INN a.k.a. HOLIDAY INN CARLSBAD BY THE SEA establishment. For example,
24 the lobby men's restroom is inaccessible. The restroom fails to have the required disability
25 signage. The round locking mechanism on the restroom door is inaccessible, as it requires tight
26 grasping and/or twisting of the wrist to operate. The height of the coat hook is sixty-eight inches
27 (68"), when it is required to be no higher than forty-eight inches (48") from the floor surface. The
28

1 distance from the side edge of the commode to the far wall is twenty-three inches (23"), when it is
2 required to be at least thirty-two inches (32"). The hot water and drainpipes underneath the
3 lavatory fail to have the required covering. The height of the paper towel dispenser is forty-five
4 inches (45"), when it is required to be no higher than forty inches (40"). The restroom fails to have
5 the required audible and visual alarm system.

6 16. Guestroom 137, an "accessible" guestroom, located in the Defendants' hotel is inaccessible.
7 The strike clearance of the Guestroom entrance door is a mere five inches (5"), when it is required
8 to be at least eighteen inches (18"). The height of the shelf in the closet is seventy inches (70")
9 high, when it is required to be no more than forty-eight inches (48") high. The iron is inaccessible,
10 as it is mounted at fifty-eight inches (58") high, when it is required to be mounted no higher than
11 forty-eight inches (48") high.

12 17. The bathroom located inside Guestroom 137 is inaccessible. The width of the lavatory knee
13 clearance is only twenty-five inches (25"), when it is required to be at least thirty inches (30"). The
14 height of the bottom of the mirror is forty-three inches (43"), when it is required to be no higher
15 than forty inches (40") high. The height of the towels is fifty-seven inches (57"), when they are
16 required to be no higher than forty inches (40"). The height of the hair dryer is fifty-five inches
17 (55"), when it is required to be no higher than forty-eight inches (48") high. The bathroom fails to
18 have the required audible and visual alarm system.

19 18. The public pay telephone is inaccessible, as it fails to have the required disability signage.

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

25 20. Plaintiffs believe and herein allege Defendants' facilities have access violations not
26 directly experienced by Plaintiff's Member which preclude or limit access by others with
27 disabilities, including, but not limited to, Space Allowance and Reach Ranges, Accessible Route,
28

1 Protruding Objects, Ground and Floor Surfaces, Parking and Passenger Loading Zones, Curb
2 Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows, Doors, Entrances,
3 Drinking Fountains and Water Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and
4 Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and Operating Mechanisms, Alarms,
5 Detectable Warnings, Signage, and Telephones. Accordingly, Plaintiffs allege Defendants are
6 required to remove all architectural barriers, known or unknown. Also, Plaintiffs allege Defendants
7 are required to utilize the ADA checklist for Readily Achievable Barrier Removal approved by the
8 United States Department of Justice and created by Adaptive Environments.

9 21. Based on these facts, Plaintiffs allege Plaintiff's Member and Plaintiff Theodore A. Pinnock
10 was discriminated against each time he patronized Defendants' establishment. Plaintiff's Member
11 and Plaintiff Theodore A. Pinnock was extremely upset due to Defendants' conduct. Further,
12 Plaintiff's Member and Plaintiff THEODORE A. PINNOCK experienced pain in his legs, back,
13 arms, shoulders and wrists when he attempted to enter, use, and exit Defendants' establishment.

14 **WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED**
15 **DEFENDANT**

16 22. HOLIDAY INN a.k.a. HOLIDAY INN CARLSBAD BY THE SEA; CARLSBAD
17 PROPERTIES, INC. d.b.a. HOLIDAY INN a.k.a. HOLIDAY INN CARLSBAD BY THE SEA;
18 CPT/SC TITLE HOLDING CORPORATION; and Does 1 through 10 will be referred to
19 collectively hereinafter as "Defendants."

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

21 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

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

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

25 24. Based on the facts plead at ¶¶ 6-21 above and elsewhere in this complaint, Plaintiff's
26 Member was denied full and equal access to Defendants' goods, services, facilities, privileges,
27 advantages, or accommodations. Plaintiffs allege Defendants are a public accommodation owned,
28

1 leased and/or operated by Defendants. Defendants' existing facilities and/or services failed to
2 provide full and equal access to Defendants' facility as required by 42 U.S.C. § 12182(a). Thus,
3 Plaintiff's Member was subjected to discrimination in violation of 42 United States Code
4 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's Member was denied equal access to
5 Defendants' existing facilities.

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

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

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

26 27. Additionally, the Defendants undertook an alteration that affects or could affect the usability
27 of or access to an area of the facility containing a primary function after January 26, 1992.
28 Defendants further failed to make the alterations in such a manner that, to the maximum extent

1 feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains
2 serving the altered area, are readily accessible to and usable by individuals with disabilities in
3 violation 42 U.S.C. §12183(a)(2).

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

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

12
13 CLAIM III AGAINST ALL DEFENDANTS: **Failure To Remove Architectural Barriers**

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

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

4
5 CLAIM IV AGAINST ALL DEFENDANTS: **Failure To Modify Practices, Policies And**
6 **Procedures**

7 31. Based on the facts plead at ¶¶ 6-21 above and elsewhere in this complaint, Defendants
8 failed and refused to provide a reasonable alternative by modifying its practices, policies and
9 procedures in that they failed to have a scheme, plan, or design to assist Plaintiff's Member and/or
10 others similarly situated in entering and utilizing Defendants' services, as required by 42 U.S.C. §
11 12188(a). Thus, said Member was subjected to discrimination in violation of 42 United States
12 Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was denied equal access to
13 Defendants' existing facilities.

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

25 33. WHEREFORE, Plaintiffs pray for judgment and relief as hereinafter set forth.

26 SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - **CLAIMS UNDER**
27 **CALIFORNIA ACCESSIBILITY LAWS**

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

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

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

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

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

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

23 37. Based on the facts plead at ¶¶ 6-21 above and elsewhere herein this complaint and because
24 Defendants violated the Civil Code § 51 by failing to comply with 42 United States Code §
25 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and continue to discriminate
26 against Plaintiff's Member and persons similarly situated in violation of Civil Code §§ 51, 52, and
27 54.1.
28

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

12 39. Wherefore, Plaintiffs pray for damages and relief as hereinafter stated.

13
14 **Treble Damages Pursuant To Claims I, II, III Under The California Accessibility Laws**

15 40. Defendants, each of them respectively, at times prior to and including, the month of August,
16 2004, and continuing to the present time, knew that persons with physical disabilities were denied
17 their rights of equal access to all portions of this public facility. Despite such knowledge,
18 Defendants, and each of them, failed and refused to take steps to comply with the applicable access
19 statutes; and despite knowledge of the resulting problems and denial of civil rights thereby suffered
20 by Plaintiff's Member THEODORE A. PINNOCK and other similarly situated persons with
21 disabilities. Defendants, and each of them, have failed and refused to take action to grant full and
22 equal access to persons with physical disabilities in the respects complained of hereinabove.
23 Defendants, and each of them, have carried out a course of conduct of refusing to respond to, or
24 correct complaints about, denial of disabled access and have refused to comply with their legal
25 obligations to make Defendants' HOLIDAY INN a.k.a. HOLIDAY INN CARLSBAD BY THE
26 SEA facility accessible pursuant to the Americans With Disability Act Access Guidelines
27 (ADAAG) and Title 24 of the California Code of Regulations (also known as the California
28 Building Code). Such actions and continuing course of conduct by Defendants, and each of them,

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

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

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

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

19
20 PLAINTIFF THEODORE A. PINNOCK'S THIRD CAUSE OF ACTION AGAINST ALL
21 DEFENDANTS- **Negligence as to Plaintiff THEODORE A. PINNOCK only**

22 44. Based on the facts plead at ¶¶ 6-21 above and elsewhere in this complaint, Defendants owed
23 Plaintiff Theodore A. Pinnock a statutory duty to make their facility accessible and owed Plaintiff
24 Theodore A. Pinnock a duty to keep Plaintiff Theodore A. Pinnock reasonably safe from known
25 dangers and risks of harm. This said duty arises by virtue of legal duties proscribed by various
26 federal and state statutes including, but not limited to, ADA, ADAAG, Civil Code 51, 52, 54, 54.1,
27 54.3, and Title 24 of the California Administrative Code and applicable 1982 Uniform Building
28 Code standards as amended.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

46. Therefore, Defendants engaged in discriminatory conduct in that they failed to comply with known duties under the ADA, ADAAG, Civil Code 51, 52, 54, 54.1, 54.3, ADAAG, and Title 24, and knew or should have known that their acts of nonfeasance would cause Plaintiff THEODORE A. PINNOCK emotional, bodily and personal injury. Plaintiff THEODORE A. PINNOCK alleges that there was bodily injury in this matter because when Plaintiff THEODORE A. PINNOCK attempted to enter, use, and exit Defendants' establishment, Plaintiff THEODORE A. PINNOCK experienced pain in his legs, back, arms, shoulders, and wrists. Plaintiffs further allege that such conduct was done in reckless disregard of the probability of said conduct causing Plaintiff THEODORE A. PINNOCK to suffer bodily or personal injury, anger, embarrassment, depression, anxiety, mortification, humiliation, distress, and fear of physical injury. Plaintiff THEODORE A. PINNOCK, An Individual, alleges that such conduct caused THEODORE A. PINNOCK, An Individual, to suffer the injuries of mental and emotional distress, including, but not limited to, anger, embarrassment, depression, anxiety, mortification, humiliation, distress, and fear of physical injury. Plaintiff THEODORE A. PINNOCK, An Individual, additionally alleges that such conduct caused THEODORE A. PINNOCK, An Individual, to suffer damages as a result of these injuries.

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

DEMAND FOR JUDGMENT FOR RELIEF:

- A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3, 3281, and 3333;
- B. For \$4,000 in damages pursuant to Cal. Civil Code § 52 for each and every offense of Civil Code § 51, Title 24 of the California Building Code, ADA, and ADA Accessibility

1 Guidelines;

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

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

14
15 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C. § 12205, and Cal. Civil Code
16 § 55;

17
18 F. For treble damages pursuant to Cal. Civil Code §§ 52(a), and 54.3(a);

19 G. A Jury Trial and;

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

21
22 Respectfully submitted:

23 **PINNOCK & WAKEFIELD, A.P.C.**

24 Dated: 10/21/04

25 By: 
26 MICHELLE L. WAKEFIELD, ESQ.
27 Attorneys for Plaintiffs
28

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 HOLIDAY INN a.k.a. HOLIDAY INN CARLSBAD BY
THE SEA; CARLSBAD PROPERTIES, INC. d.b.a. HOLIDAY
INN a.k.a. HOLIDAY INN CARLSBAD BY THE SEA; CPT/SC
TITLE HOLDING CORPORATION, AND DOES 1 THROUGH 10,
Inclusive

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

U.S. DISTRICT COURT
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)
Michelle L. Wakefield, Esq. SBN: 200424
David C. Wakefield, Esq. SBN: 185736
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)

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 Diversity Cases Only) FOR PLAINTIFF AND ONE BOX FOR DEFENDANT

- | | | |
|--|---|---|
| | PT DEF | PT DEF |
| Citizen of This State | <input type="checkbox"/> 1 <input type="checkbox"/> 1 Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 <input type="checkbox"/> 2 Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Chizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

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

04 CV 2138 BTM (POR)

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	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury-Medical Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure Of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 680 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DWDC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 FSI (405(q)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & 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 October 20, 2004

SIGNATURE OF ATTORNEY OF RECORD

108109 \$150.00 *[Signature]*

Michelle L. Wakefield