

GEP 10/13/04 13:01

3:04-CV-02047 PINNOCK V. HILTON GARDEN INN

\*1\*

\*CMP.\*

**PINNOCK & WAKEFIELD**

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

Bar #: 185736  
Bar #: 200424

04 OCT 13 AM 9:47

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

BY: *[Signature]* DEPUTY

Attorneys for Plaintiffs

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

**'04 CV 2 047**

**BEN (WMC)**

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

Plaintiffs,

v.

**HILTON GARDEN INN CARLSBAD  
BEACH; WAVE CREST RESORTS,  
LLC d.b.a. HILTON GARDEN INN  
CARLSBAD BEACH; CAPTSTAR  
CALIFORNIA BEVERAGE  
CORPORATION d.b.a. HILTON  
GARDEN INN CARLSBAD BEACH;  
WAVE CREST RESORTS, LLC; And  
DOES 1 THROUGH 10, Inclusive  
Defendants.**

Case No.:

**CIVIL COMPLAINT:**

**DISCRIMINATORY PRACTICES IN  
PUBLIC ACCOMMODATIONS**

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

**NEGLIGENCE**

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

**DEMAND FOR JURY TRIAL**

[F.R.Civ.P. rule 38(b); Civ.L.R. 38.1]

**INTRODUCTION**

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

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

8 **JURISDICTION AND VENUE**

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

14 **SUPPLEMENTAL JURISDICTION**

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

**NAMED DEFENDANTS AND NAMED PLAINTIFFS**

1  
2 3. Defendants are, and, at all times mentioned herein, were, a business or corporation or  
3 franchise organized and existing and/or doing business under the laws of the State of California.  
4 Defendant HILTON GARDEN INN CARLSBAD BEACH is located at 6450 Carlsbad Boulevard,  
5 Carlsbad, California 92008. Plaintiffs are informed and believe and thereon allege that Defendants  
6 WAVE CREST RESORTS, LLC and/or CAPTSTAR CALIFORNIA BEVERAGE  
7 CORPORATION are the owners, operators, and/or doing business as HILTON GARDEN INN  
8 CARLSBAD BEACH. Defendant WAVE CREST RESORTS, LLC is located at 829 Second  
9 Street, Suite A, Encinitas, California 92024. Defendant CAPTSTAR CALIFORNIA BEVERAGE  
10 CORPORATION is located at 1010 Wisconsin Avenue, Suite 650, Washington, DC 20007.  
11 Plaintiffs are informed and believe and thereon allege that Defendants WAVE CREST RESORTS,  
12 LLC is the owner, operator, and/or lessor of the property located at 6450 Carlsbad Boulevard,  
13 Carlsbad, California 92008, Assessor Parcel number 210-100-19. The words Plaintiffs” and  
14 "Plaintiff's Member" as used herein specifically include the organization MANTIC ASHANTI'S  
15 CAUSE, its Members, its member Theodore A. Pinnock and persons associated with its Members  
16 who accompanied Members to Defendants’ facilities, as well as THEODORE A. PINNOCK, An  
17 Individual.

18 4. Defendants Does 1 through 10, were at all times relevant herein subsidiaries, employers,  
19 employees, agents, of HILTON GARDEN INN CARLSBAD BEACH; WAVE CREST  
20 RESORTS, LLC d.b.a. HILTON GARDEN INN CARLSBAD BEACH; CAPTSTAR  
21 CALIFORNIA BEVERAGE CORPORATION d.b.a. HILTON GARDEN INN CARLSBAD  
22 BEACH; and WAVE CREST RESORTS, LLC. Plaintiffs are ignorant of the true names and  
23 capacities of Defendants sued herein as Does 1 through 10, inclusive, and therefore sues these  
24 Defendants by such fictitious names. Plaintiffs will pray leave of the court to amend this complaint  
25 to allege the true names and capacities of the Does when ascertained.

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

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

5 **CONCISE SET OF FACTS**

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

11 7. On August 16, 2004, Plaintiff's Member and Plaintiff THEODORE A. PINNOCK went to  
12 Defendants' HILTON GARDEN INN CARLSBAD BEACH facilities to utilize their goods and/or  
13 services. When Plaintiff's Member and Plaintiff THEODORE A. PINNOCK patronized  
14 Defendants' HILTON GARDEN INN CARLSBAD BEACH facilities, he was unable to use and/or  
15 had difficulty using the public accommodations' disabled parking, entrance, cashier counter, pool  
16 area entrance, pool, spa, restaurant exterior dining entrance, restaurant public seating, lobby  
17 restroom, guestroom, guestroom entrance, guestroom interior path of travel, guestroom operable  
18 controls, and guestroom bathroom facilities at Defendants' business establishments because they  
19 failed to comply with ADA Access Guidelines For Buildings and Facilities (hereafter referred to as  
20 "ADAAG") and/or California's Title 24 Building Code Requirements. Defendants failed to remove  
21 access barriers within the public accommodations' disabled parking, entrance, cashier counter, pool  
22 area entrance, pool, spa, restaurant exterior dining entrance, restaurant public seating, exercise  
23 room entrance, lobby restroom, exercise restroom, guestroom, guestroom entrance, guestroom  
24 interior path of travel, guestroom operable controls, and guestroom bathroom facilities of  
25 Defendants' HILTON GARDEN INN CARLSBAD BEACH establishment.

26 8. Plaintiff's member personally experienced difficulty with said access barriers at  
27 Defendants' HILTON GARDEN INN CARLSBAD BEACH facility. For example, the parking  
28

1 facility is comprised of two hundred and twenty nine (229) parking spaces, seven (7) of which are  
2 designated as disabled parking spaces. One (1) of the seven (7) disabled parking spaces is a non-  
3 compliant "regular" disabled parking space that is only seventeen feet (17') long. Three (3) of the  
4 remaining ~~six~~<sup>Six</sup> (6) disabled parking spaces are non-complaint "van accessible" disabled parking  
5 spaces that are only sixteen feet to seventeen feet (16'-17') long and two (2) of which have an  
6 impermissible slope of up to four percent (4%). It is required that all disabled parking spaces are at  
7 least eighteen feet (18') long and have a slope that is no greater than two percent (2%).

8 9. The front entrance door fails to have the required disability signage. There is a loose  
9 doormat at the front entrance that fails to meet the requirement that all doormats are anchored  
10 securely or recessed onto the door landing.

11 10. The cashier counter is inaccessible, as it is forty-four inches (44") high, when it is required  
12 to be no higher than thirty-four inches (34").

13 11. The pool is inaccessible. The entrance door to the pool fails to have the required smooth  
14 uninterrupted surface on the bottom ten inches (10") of all doors that allows for a door to be opened  
15 with a wheelchair footrest without creating a hazard. The pool also does not have the required  
16 device to assist disabled patrons in and out of the pool.

17 12. The spa does not have the required device to assist disabled patrons in and out of the water.

18 13. The restaurant exterior dining is inaccessible. The strike clearance of the exterior dining  
19 area door is only twelve to fifteen inches (12"-15"), when it is required to be at least eighteen  
20 inches (18"). The pressure that is required to open the exterior dining area door is eleven pounds  
21 (11 lbs.), when it is required to be no more than five pounds (5 lbs.).

22 14. The public seating located inside the restaurant at the Defendants' establishment is  
23 inaccessible. There are a total of forty-four (44) seats located inside the restaurant, all of which  
24 have a knee clearance depth of a mere three inches (3"). It is required that five percent (5%) of all  
25 seats have a knee clearance depth of at least nineteen inches (19"). There are a total of fifty (50)  
26 seat located in the outside area of the restaurant, all of which have a knee clearance depth of a mere  
27 three inches (3"). It is required that five percent (5%) of all seats have a knee clearance depth of at  
28

1 least nineteen inches (19”).

2 15. The lobby area Men’s restroom is inaccessible. The pressure that is required to open the  
3 restroom area door is eleven pounds (11 lbs.), when it is required to be no more than five pounds (5  
4 lbs.). The pressure that is required to open the restroom door is eleven pounds (11 lbs.), when it is  
5 required to be no more than five pounds (5 lbs.). The stall fails to have the required handles on  
6 both sides of the door. The small round radio control switch is inaccessible, as it requires tight  
7 grasping and/or twisting of the wrist to operate. The height of the bottom of the mirror is forty-  
8 three inches (43”), when it is required to be no more than forty inches (40”) from the floor surface.  
9 The height of the soap dispenser is fifty-one inches (51”), when it is required to be no higher than  
10 forty inches (40”) high.

11 16. The Defendants’ establishment has a total of one hundred and sixty one (161) guestrooms,  
12 including six (6) “accessible” guestrooms and two (2) “accessible” guestrooms with roll-in showers  
13 that are non-compliant. If a hotel has between one hundred and fifty one and two hundred (151 and  
14 200) guestrooms, the hotel shall provide at least six (6) fully accessible rooms, and two (2)  
15 additional accessible guestrooms with a roll-in shower. If a hotel has between one hundred and  
16 fifty one and two hundred (151 and 200) guestrooms, the hotel shall provide six (6) accessible  
17 guestrooms for members of the disability community who are hearing impaired. The accessible  
18 guestrooms must be dispersed among the various classes of sleeping accommodations, providing a  
19 range of options applicable to room sizes, costs, amenities provided, and the number of beds  
20 provided. Defendants’ hotel fails to have the required accessible guestrooms.

21 17. Plaintiff’s member and Plaintiff Theodore A. Pinnock requested a room with a roll-in  
22 shower, however Plaintiff’s member and Plaintiff Theodore A. Pinnock was given a designated  
23 accessible guestroom without a roll-in shower, which was also inaccessible.

24 18. In addition to the violations personally experienced by Plaintiff’s member and Plaintiff  
25 Theodore A. Pinnock, additional violations of federal and state disability laws exist at Defendants’  
26 HILTON GARDEN INN CARLSBAD BEACH establishment. For example Guestroom 142, a  
27 designated “accessible” room, located in the Defendants’ hotel is inaccessible. The entrance door  
28

1 to guestroom 142 is inaccessible, as it requires eight pounds (8 lbs.) of pressure to operate, when it  
2 is required to be no more than five pounds (5 lbs.). The round locking mechanism on the  
3 guestroom entrance door is inaccessible, as it requires tight grasping and/or twisting of the wrist to  
4 operate. The clear floor space between the beds is only twenty-nine inches (29"), when it is  
5 required to be at least thirty-six inches (36"). The game controller is located on top of the  
6 television at sixty-one inches (61") high, when it is required to be located no higher than forty-eight  
7 inches (48") high.

8 19. The bathroom located inside Guestroom 142 is inaccessible. The shower seat is not the  
9 required folding type. The mixing valve located in the shower is located forty-one inches (41")  
10 from the shower seat, when it is required to be located between seventeen inches to twenty-four  
11 inches (17"-24") from seat mounting wall.

12 20. The exercise room located at the Defendants' establishment is inaccessible, as the pressure  
13 that is required to open the front entrance door to the exercise room is eleven pounds (11 lbs.),  
14 when it is required to be no more than five pounds (5 lbs.).

15 21. The men's restroom located in the exercise room is inaccessible, as the pressure that is  
16 required to open the restroom door is eleven pounds (11 lbs.), when it is required to be no more  
17 than five pounds (5 lbs.).

18 22. The women's restroom located in the exercise room is inaccessible, as the pressure that is  
19 required to open the restroom area door is eleven pounds (11 lbs.), when it is required to be no  
20 more than five pounds (5 lbs.). The pressure that is required to open the restroom door is eleven  
21 pounds (11 lbs.), when it is required to be no more than five pounds (5 lbs.).

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

27 24. Plaintiffs believe and herein allege Defendants' facilities have access violations not  
28



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

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

16 **WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED**  
17 **DEFENDANT**

18 26. HILTON GARDEN INN CARLSBAD BEACH; WAVE CREST RESORTS, LLC d.b.a.  
19 HILTON GARDEN INN CARLSBAD BEACH; CAPTSTAR CALIFORNIA BEVERAGE  
20 CORPORATION d.b.a. HILTON GARDEN INN CARLSBAD BEACH; WAVE CREST  
21 RESORTS, LLC; and Does 1 through 10 will be referred to collectively hereinafter as  
22 "Defendants."  
23

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

25 ///  
26 ///  
27 ///  
28 ///

1 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

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

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

5 28. Based on the facts plead at ¶¶ 6-25 above and elsewhere in this complaint, Plaintiff's  
6 Member was denied full and equal access to Defendants' goods, services, facilities, privileges,  
7 advantages, or accommodations. Plaintiffs allege Defendants are a public accommodation owned,  
8 leased and/or operated by Defendants. Defendants' existing facilities and/or services failed to  
9 provide full and equal access to Defendants' facility as required by 42 U.S.C. § 12182(a). Thus,  
10 Plaintiff's Member was subjected to discrimination in violation of 42 United States Code  
11 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's Member was denied equal access to  
12 Defendants' existing facilities.

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

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

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

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

5 31. Additionally, the Defendants undertook an alteration that affects or could affect the usability  
6 of or access to an area of the facility containing a primary function after January 26, 1992.

7 Defendants further failed to make the alterations in such a manner that, to the maximum extent  
8 feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains  
9 serving the altered area, are readily accessible to and usable by individuals with disabilities in  
10 violation 42 U.S.C. §12183(a)(2).

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

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

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

21 34. Based on the facts plead at ¶¶ 6-25 above and elsewhere in this complaint, Plaintiff's  
22 Member was denied full and equal access to Defendants' goods, services, facilities, privileges,  
23 advantages, or accommodations within a public accommodation owned, leased, and/or operated by  
24 Defendants. Defendants failed to remove barriers as required by 42 U.S.C. § 12182(a). Plaintiffs  
25 are informed, believe, and thus allege that architectural barriers which are structural in nature exist  
26 within the following physical elements of Defendants' facilities: Space Allowance and Reach  
27 Ranges, Accessible Route, Protruding Objects, Ground and Floor Surfaces, Parking and Passenger  
28 Loading Zones, Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts),

1 Windows, Doors, Entrances, Drinking Fountains and Water Coolers, Water Closets, Toilet Stalls,  
2 Urinals, Lavatories and Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and Operating  
3 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones. Title III requires places of  
4 public accommodation to remove architectural barriers that are structural in nature to existing  
5 facilities. [See, 42 United States Code 12182(b)(2)(A)(iv).] Failure to remove such barriers and  
6 disparate treatment against a person who has a known association with a person with a disability  
7 are forms of discrimination. [See 42 United States Code 12182(b)(2)(A)(iv).] Thus, Plaintiff's  
8 Member was subjected to discrimination in violation of 42 United States Code 12182(b)(2)(A)(iv)  
9 and 42 U.S.C. § 12188 because said Member was denied equal access to Defendants' existing  
10 facilities.

11  
12 **CLAIM IV AGAINST ALL DEFENDANTS: Failure To Modify Practices, Policies And**  
13 **Procedures**

14 35. Based on the facts plead at ¶¶ 6-25 above and elsewhere in this complaint, Defendants  
15 failed and refused to provide a reasonable alternative by modifying its practices, policies and  
16 procedures in that they failed to have a scheme, plan, or design to assist Plaintiff's Member and/or  
17 others similarly situated in entering and utilizing Defendants' services, as required by 42 U.S.C. §  
18 12188(a). Thus, said Member was subjected to discrimination in violation of 42 United States  
19 Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was denied equal access to  
20 Defendants' existing facilities.

21 36. Based on the facts plead at ¶¶ 6-25 above, Claims I, II, and III of Plaintiffs' First Cause Of  
22 Action above, and the facts elsewhere herein this complaint, Plaintiffs will suffer irreparable harm  
23 unless Defendants are ordered to remove architectural, non-architectural, and communication  
24 barriers at Defendants' public accommodation. Plaintiffs allege that Defendants' discriminatory  
25 conduct is capable of repetition, and this discriminatory repetition adversely impacts Plaintiffs and  
26 a substantial segment of the disability community. Plaintiffs allege there is a national public  
27 interest in requiring accessibility in places of public accommodation. Plaintiffs have no adequate  
28 remedy at law to redress the discriminatory conduct of Defendants. Plaintiff's Member desires to

1 return to Defendants' places of business in the immediate future. Accordingly, the Plaintiffs allege  
2 that a structural or mandatory injunction is necessary to enjoin compliance with federal civil rights  
3 laws enacted for the benefit of individuals with disabilities.

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

5  
6 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER**  
7 **CALIFORNIA ACCESSIBILITY LAWS**

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

9 38. Based on the facts plead at ¶¶ 6-25 above and elsewhere in this complaint, Plaintiff's  
10 Member was denied full and equal access to Defendants' goods, services, facilities, privileges,  
11 advantages, or accommodations within a public accommodation owned, leased, and/or operated by  
12 Defendants as required by Civil Code Sections 54 and 54.1. Defendants' facility violated  
13 California's Title 24 Accessible Building Code by failing to provide access to Defendants' facilities  
14 due to violations pertaining to the 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.

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

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

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

1 Code § 54.1. Thus, said Member was subjected to discrimination in violation of Civil Code § 54.1.

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

3 41. Based on the facts plead at ¶¶ 6-25 above and elsewhere herein this complaint and because  
4 Defendants violated the Civil Code § 51 by failing to comply with 42 United States Code §  
5 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and continue to discriminate  
6 against Plaintiff's Member and persons similarly situated in violation of Civil Code §§ 51, 52, and  
7 54.1.

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

19 43. Wherefore, Plaintiffs pray for damages and relief as hereinafter stated.  
20

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

22 44. Defendants, each of them respectively, at times prior to and including, the month of August,  
23 2004, and continuing to the present time, knew that persons with physical disabilities were denied  
24 their rights of equal access to all portions of this public facility. Despite such knowledge,  
25 Defendants, and each of them, failed and refused to take steps to comply with the applicable access  
26 statutes; and despite knowledge of the resulting problems and denial of civil rights thereby suffered  
27 by Plaintiff's Member THEODORE A. PINNOCK and other similarly situated persons with  
28

1 disabilities. Defendants, and each of them, have failed and refused to take action to grant full and  
2 equal access to persons with physical disabilities in the respects complained of hereinabove.  
3 Defendants, and each of them, have carried out a course of conduct of refusing to respond to, or  
4 correct complaints about, denial of disabled access and have refused to comply with their legal  
5 obligations to make Defendants' HILTON GARDEN INN CARLSBAD BEACH facility accessible  
6 pursuant to the Americans With Disability Act Access Guidelines (ADAAG) and Title 24 of the  
7 California Code of Regulations (also known as the California Building Code). Such actions and  
8 continuing course of conduct by Defendants, and each of them, evidence despicable conduct in  
9 conscious disregard of the rights and/or safety of Plaintiff's Member and of other similarly situated  
10 persons, justifying an award of treble damages pursuant to sections 52(a) and 54.3(a) of the  
11 California Civil Code.

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

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

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

27 ///  
28

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

3 48. Based on the facts plead at ¶¶ 6-25 above and elsewhere in this complaint, Defendants owed  
4 Plaintiff Theodore A. Pinnock a statutory duty to make their facility accessible and owed Plaintiff  
5 Theodore A. Pinnock a duty to keep Plaintiff Theodore A. Pinnock reasonably safe from known  
6 dangers and risks of harm. This said duty arises by virtue of legal duties proscribed by various  
7 federal and state statutes including, but not limited to, ADA, ADAAG, Civil Code 51, 52, 54, 54.1,  
8 54.3, and Title 24 of the California Administrative Code and applicable 1982 Uniform Building  
9 Code standards as amended.

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

15 50. Therefore, Defendants engaged in discriminatory conduct in that they failed to comply with  
16 known duties under the ADA, ADAAG, Civil Code 51, 52, 54, 54.1, 54.3, ADAAG, and Title 24,  
17 and knew or should have known that their acts of nonfeasance would cause Plaintiff THEODORE  
18 A. PINNOCK emotional, bodily and personal injury. Plaintiff THEODORE A. PINNOCK alleges  
19 that there was bodily injury in this matter because when Plaintiff THEODORE A. PINNOCK  
20 attempted to enter, use, and exit Defendants' establishment, Plaintiff THEODORE A. PINNOCK  
21 experienced pain in his legs, back, arms, shoulders, and wrists. Plaintiffs further allege that such  
22 conduct was done in reckless disregard of the probability of said conduct causing Plaintiff  
23 THEODORE A. PINNOCK to suffer bodily or personal injury, anger, embarrassment, depression,  
24 anxiety, mortification, humiliation, distress, and fear of physical injury. Plaintiff THEODORE A.  
25 PINNOCK, An Individual, alleges that such conduct caused THEODORE A. PINNOCK, An  
26 Individual, to suffer the injuries of mental and emotional distress, including, but not limited to,  
27 anger, embarrassment, depression, anxiety, mortification, humiliation, distress, and fear of physical  
28



1 injury. Plaintiff THEODORE A. PINNOCK, An Individual, additionally alleges that such conduct  
2 caused THEODORE A. PINNOCK, An Individual, to suffer damages as a result of these injuries.

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

5 DEMAND FOR JUDGMENT FOR RELIEF:

6 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3, 3281, and 3333;  
7

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

11 C. In the alternative to the damages pursuant to Cal. Civil Code § 52 in Paragraph B above,  
12 for \$1,000 in damages pursuant to Cal. Civil Code § 54.3 for each and every offense of Civil Code  
13 § 54.1, Title 24 of the California Building Code, ADA, and ADA Accessibility Guidelines;

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

23 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C. § 12205, and Cal. Civil Code  
24 § 55;  
25

26 F. For treble damages pursuant to Cal. Civil Code §§ 52(a), and 54.3(a);  
27  
28

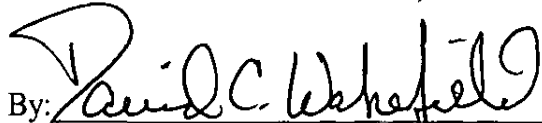
1 G. A Jury Trial and;

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

3 Respectfully submitted:

4  
5  
6 Dated: 10/12/04

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

By: 

DAVID C. WAKEFIELD, ESQ.

Attorneys for Plaintiffs

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

(Rev. 07/89)

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 affixing 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 HILTON GARDEN INN CARLSBAD BEACH; WAVE CREST RESORTS, LLC d.b.a. HILTON GARDEN INN CARLSBAD BEACH; CAPTSTAR CALIFORNIA BEVERAGE CORPORATION d.b.a. HILTON GARDEN INN CARLSBAD BEACH; WAVE CREST RESORTS, LLC; And DOES 1; THROUGH 10, Inclusive  
SOUTHERN DISTRICT OF CALIFORNIA

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

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

(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 2047 BEN (WMC)**

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

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

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

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

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

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

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> Marine <input type="checkbox"/> Miller Act <input type="checkbox"/> Negotiable Instrument <input type="checkbox"/> 150 Recovery of overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <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 <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury-Medical Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 388 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <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"/> 810 Agriculture <input type="checkbox"/> 820 Other Food & Drug <input type="checkbox"/> 825 Drug Related Seizure Of Property 21 USC 881 <input type="checkbox"/> 830 Liquor Laws <input type="checkbox"/> 840 RR & Truck <input type="checkbox"/> 850 Airline Regs <input type="checkbox"/> 860 Occupational Safety/Health <input type="checkbox"/> 890 Other <b>LABOR</b> <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 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DMC/DMMV (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 28 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"/> 480 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
<b>REAL PROPERTY</b> <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	<b>CIVIL RIGHTS</b> <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	<b>PRISONER PETITIONS</b> <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 f.r.c.p. 23

DEMAND \$

To Be Determined At Trial

Check YES only if demanded in complaint:

JURY DEMAND:  YES  NO

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

Docket Number

DATE 10/12/04

SIGNATURE OF ATTORNEY OF RECORD

*David C. Wakefield*

*OR #107708 \$150.00*