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3:04-CV-01813 PINNOCK V. INNS OF AMERICA  
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SOUTHERN DISTRICT OF CALIFORNIA

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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.

**INNS OF AMERICA SUITES; INNS  
OF AMERICA CANNON, LLC d.b.a.  
INNS OF AMERICA; CANNON  
ROAD, LLC; And DOES 1 THROUGH  
10, Inclusive**

Defendants.

Case No. **04 CV 1813 J** (RBB)

**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 Disabilities Act indicates this Title has failed to achieve full and equal access simply by the

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

6 **JURISDICTION AND VENUE**

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

12 **SUPPLEMENTAL JURISDICTION**

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

26 **NAMED DEFENDANTS AND NAMED PLAINTIFFS**

27 3. Defendants are, and, at all times mentioned herein, were, a business or corporation or  
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1 franchise organized and existing and/or doing business under the laws of the State of California.  
2 Defendant INNS OF AMERICA SUITES is located at 5010 Avenida Encinas, Carlsbad, California  
3 92008. Plaintiffs are informed and believe and thereon allege that Defendant INNS OF AMERICA  
4 CANNON, LLC is the owner, operator, and/or doing business as INNS OF AMERICA SUITES.  
5 Defendant INNS OF AMERICA CANNON, LLC is located at 755 Raintree Drive, Suite 200,  
6 Carlsbad, California 92009. Plaintiffs are informed and believe and thereon allege that Defendants  
7 INNS OF AMERICA CANNON, LLC and CANNON ROAD, LLC are the owners, operators,  
8 and/or lessors of the property located at 5010 Avenida Encinas, Carlsbad, California 92008,  
9 Assessor Parcel number 210-090-52. Defendant CANNON ROAD, LLC is located at 1745 Rocky  
10 Road, Fullerton, California 92831. The words "Plaintiffs" and "Plaintiff's Member" as used herein  
11 specifically include the organization MANTIC ASHANTI'S CAUSE, its Members, its member  
12 Theodore A. Pinnock and persons associated with its Members who accompanied Members to  
13 Defendants' facilities, as well as THEODORE A. PINNOCK, An Individual.

14 4. Defendants Does 1 through 10, were at all times relevant herein subsidiaries, employers,  
15 employees, agents, of INNS OF AMERICA SUITES; INNS OF AMERICA CANNON, LLC d.b.a.  
16 INNS OF AMERICA; and CANNON ROAD, LLC. Plaintiffs are ignorant of the true names and  
17 capacities of Defendants sued herein as Does 1 through 10, inclusive, and therefore sues these  
18 Defendants by such fictitious names. Plaintiffs will pray leave of the court to amend this complaint  
19 to allege the true names and capacities of the Does when ascertained.

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

26 **CONCISE SET OF FACTS**

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

5 7. On August 17, 2004, Plaintiff's Member and Plaintiff THEODORE A. PINNOCK went to  
6 Defendants' INNS OF AMERICA SUITES facilities to utilize their goods and/or services. When  
7 Plaintiff's Member and Plaintiff THEODORE A. PINNOCK patronized Defendants' INNS OF  
8 AMERICA SUITES facilities, he was unable to use and/or had difficulty using the public  
9 accommodations' disabled parking, exterior path of travel, entrance, cashier counter, pool area  
10 entrance, pool, guestroom, guestroom entrance, guestroom interior path of travel, guestroom  
11 operable controls, guestroom window, and guestroom bathroom facilities at Defendants' business  
12 establishments because they failed to comply with ADA Access Guidelines For Buildings and  
13 Facilities (hereafter referred to as "ADAAG") and/or California's Title 24 Building Code  
14 Requirements. Defendants failed to remove access barriers within the public accommodations'  
15 disabled parking, exterior path of travel, entrance, cashier counter, entrance to the exercise room,  
16 lobby restroom, pool area entrance, pool, guestroom, guestroom entrance, guestroom interior path  
17 of travel, guestroom operable controls, guestroom window, and guestroom bathroom facilities of  
18 Defendants' INNS OF AMERICA SUITES establishment.

19 8. Plaintiff's member personally experienced difficulty with said access barriers at  
20 Defendants' INNS OF AMERICA SUITES facility. For example, the parking facility is comprised  
21 of one hundred and twenty (120) parking spaces, five (5) of which are designated as disabled  
22 parking spaces. One (1) of the five (5) disabled parking spaces is a non-compliant "regular"  
23 disabled parking space, as it has an access aisle on the left hand side and has a slope of up to four  
24 percent (4%). Two (2) of the remaining four (4) disabled parking spaces are non-complaint  
25 "regular" disabled parking spaces that are only seventeen feet (17') long. The remaining two (2)  
26 disabled parking spaces are non-compliant "van accessible" disabled parking spaces that are only  
27 seventeen feet (17') long. It is required that all disabled parking spaces are at least eighteen feet  
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1 (18') long, have the proper access aisles on the right hand side of the disabled parking space, and  
2 have a slope that is no greater than two percent (2%).

3 9. The exterior path of travel is inaccessible. The path of travel from the public sidewalk to  
4 the primary accessible entrance fails to be accessible as it forces members of the disability  
5 community to traverse through vehicular traffic without the benefit of a marked path of travel. The  
6 width of the exterior path of travel from the disabled parking spaces to the entrance of the  
7 Defendants' establishment is only twenty-five inches (25") due to vehicles encroaching upon the  
8 walkway. The minimum width requirement for the exterior path of travel is forty-eight inches  
9 (48").

10 10. The front entrance to the Defendants' establishment is inaccessible. The front entrance  
11 door fails to have the required smooth and uninterrupted surface on the bottom ten inches (10") of  
12 the door that allows the door to be opened with a wheelchair footrest without creating a hazard.  
13 The pressure that is required to open the entrance door is twelve pounds (12 lbs.), which exceeds  
14 the maximum requirement. The front entrance door fails to have the required disability signage.

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

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

21 13. The Defendants' establishment has a total of ninety-eight (98) rooms. If a hotel has  
22 between seventy-six and one hundred (76 and 100) guestrooms, the hotel shall provide at least four  
23 (4) fully accessible rooms, and one (1) additional accessible room with a roll-in shower. If a hotel  
24 has between seventy-six and one hundred (76 and 100) guestrooms, the hotel shall provide four (4)  
25 accessible guestrooms for members of the disability community who are hearing impaired. The  
26 accessible guestrooms must be dispersed among the various classes of sleeping accommodations,  
27 providing a range of options applicable to room sizes, costs, amenities provided, and the number of  
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1 beds provided. Defendants' hotel fails to have the required accessible guestrooms.

2 14. Plaintiff's member and Plaintiff Theodore A. Pinnock was given a designated accessible  
3 guestroom, which was not accessible. The Guestroom entrance door is inaccessible, as the pressure  
4 required to open the door exceeds the maximum requirement. The locking mechanism on the  
5 entrance door is inaccessible, as it requires tight grasping and/or twisting of the wrist to operate.  
6 The lamp switches are inaccessible, as they require tight grasping and/or twisting by the wrist to  
7 operate. The kitchen located inside the guestroom is inaccessible, as it fails to have the required  
8 knee clearance.

9 15. The men's restroom located in the lobby of the Defendants' establishment is inaccessible.  
10 The restroom entrance door to the fails to have the required kick smooth uninterrupted surface on  
11 the bottom ten inches (10") of all doors that allows for a door to be opened with a wheelchair  
12 footrest without creating a hazard. . The pressure that is required to open the restroom entrance  
13 door is twelve pounds (12 lbs.), when it is required to be no more than five pounds (5 lbs.). The  
14 small round light switch is inaccessible, as it requires tight grasping and/or twisting by the wrist to  
15 operate. The height of the coat hook is sixty-five inches (65"), when it is required to be no higher  
16 than forty-eight inches (48"). The commode seat cover dispenser is inaccessible, as it is mounted at  
17 sixty-five inches (65") high, when it is required to be no higher than forty inches (40") high. The  
18 height of the bottom of the mirror is forty-four inches (44") high, when it is required to be no more  
19 than forty inches (40") high. The height of the soap dispenser is forty-four inches (44") high, when  
20 it is required to be no more than forty inches (40") high. The height of the paper towel dispenser is  
21 forty-four inches (44") high, when it is required to be no more than forty inches (40") high.

22 16. In addition to the violations personally experienced by Plaintiff's member and Plaintiff  
23 Theodore A. Pinnock, additional violations of federal and state disability laws exist at Defendants'  
24 INNS OF AMERICA SUITES establishment. For example, the entrance door to the exercise room  
25 fails to have the required kick smooth uninterrupted surface on the bottom ten inches (10") of all  
26 doors that allows for a door to be opened with a wheelchair footrest without creating a hazard. The  
27 pressure that is required to open the exercise room entrance door is eleven pounds (11 lbs.), when it  
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1 is required to be no more than five pounds (5 lbs.) of pressure.

2 17. Also, Guestroom 136, a designated "accessible" room, located in the Defendants' hotel is  
3 inaccessible. The entrance door to guestroom 136 is inaccessible, as it requires eight pounds (8  
4 lbs.) of pressure to operate, when it is required to be no more than five pounds (5 lbs.). The strike  
5 clearance of the entrance door is only twelve inches (12"), when it is required to be at least eighteen  
6 inches (18"). The round locking mechanism on the entrance door is not compliant, as it requires  
7 tight grasping and/or twisting of the wrist to operate. The small round lamp-switches are  
8 inaccessible, as they require tight grasping and/or twisting of the wrist to operate. The clear floor  
9 space between the two (2) beds is only twenty-eight inches (28"), when it is required to be at least  
10 thirty-six inches (36"). The pressure required to open the window is an impermissible twenty-six  
11 pounds (26 lbs.), when it is required to be no more than five pounds (5 lbs.). The remote control is  
12 located on top of the television at sixty inches (60") high, when it is required to be located no  
13 higher than forty-eight inches (48") high. The sink is inaccessible, as it fails to have any of the  
14 required knee clearance. The control switch on the toaster is inaccessible, as it requires tight  
15 grasping and/or twisting of the wrist to operate.

16 18. The bathroom located inside Guestroom 136 is inaccessible. The height of the commode is  
17 fifteen inches (15"), when it is required to be between seventeen inches and nineteen inches (17"-  
18 19") from the floor surface. The height of the hair dryer is fifty-nine inches (59"), when it is  
19 required to be no higher than forty-eight inches (48"). The bathroom fails to have the required  
20 audible and visual alarm system.

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

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

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

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

17 22. INNS OF AMERICA SUITES; INNS OF AMERICA CANNON, LLC d.b.a. INNS OF  
18 AMERICA; and CANNON ROAD, LLC; and Does 1 through 10 will be referred to collectively  
19 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 ///

27 ///

28 ///

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

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

4 34. Based on the facts plead at ¶¶ 6-21 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 as required by Civil Code Sections 54 and 54.1. Defendants' facility violated  
8 California's Title 24 Accessible Building Code by failing to provide access to Defendants' facilities  
9 due to violations pertaining to the Space Allowance and Reach Ranges, Accessible Route,  
10 Protruding Objects, Ground and Floor Surfaces, Parking and Passenger Loading Zones, Curb  
11 Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows, Doors, Entrances,  
12 Drinking Fountains and Water Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and  
13 Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and Operating Mechanisms, Alarms,  
14 Detectable Warnings, Signage, and Telephones.

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

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

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

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

26 37. Based on the facts plead at ¶¶ 6-21 above and elsewhere herein this complaint and because  
27 Defendants violated the Civil Code § 51 by failing to comply with 42 United States Code §  
28 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and continue to discriminate

1 against Plaintiff's Member and persons similarly situated in violation of Civil Code §§ 51, 52, and  
2 54.1.

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

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

15  
16 **Treble Damages Pursuant To Claims I, II, III Under The California Accessibility Laws**

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

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

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

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

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

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

1 54.3, and Title 24 of the California Administrative Code and applicable 1982 Uniform Building  
2 Code standards as amended.

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

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

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

25  
26 DEMAND FOR JUDGMENT FOR RELIEF:

- 27 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3, 3281, and 3333;  
28 B. For \$4,000 in damages pursuant to Cal. Civil Code § 52 for each and every offense of



1 Civil Code § 51, Title 24 of the California Building Code, ADA, and ADA Accessibility  
2 Guidelines;

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

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

17 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C. § 12205, and Cal. Civil Code  
18 § 55;

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

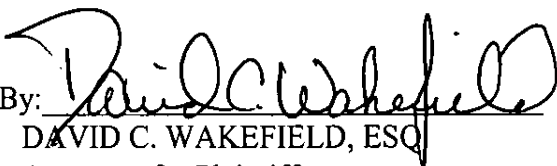
21 G. A Jury Trial and;

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

23 Respectfully submitted:

24  
25 Dated: 9/10/04

**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

DEFENDANTS
INNS OF AMERICA SUITES; INNS OF AMERICA CANNON, LLC d.b.a. INNS OF AMERICA; CANNON ROAD, LLC; And DOES 1 THROUGH 10, Inclusive

CLERK, U.S. DISTRICT COURT
SOUTH 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 PROPERTY 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 1813 J (RBB)

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

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

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

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

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

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

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

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like 110 Insurance, 210 Land Condemnation, 310 Airplane, 441 Voting, 610 Agriculture, 820 Copyrights, 400 State Reappointment, etc.

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

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

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER 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 9/10/04
CR # 106857 \$150,000.00

SIGNATURE OF ATTORNEY OF RECORD: David C. Wakefield