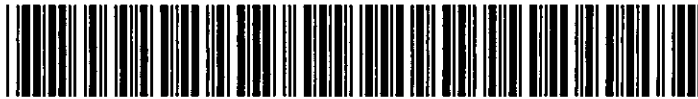
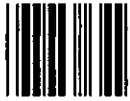


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3:04-CV-00887 MANTIC ASHANTIS V. BEST WESTERN SUITES

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U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SD

DEPUTY

5 Attorneys for Plaintiffs

7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA

'04 CV 00887 JH (POR)

9 MANTIC ASHANTI'S CAUSE SUING
10 ON BEHALF ITS MEMBERS; and
11 THEODORE A. PINNOCK, An
Individual,

12 Plaintiffs,

13 v.

14 BEST WESTERN SUITES HOTEL -
15 CORONADO ISLAND; CORONADO
16 EVERGREEN, LLC d.b.a. BEST
WESTERN SUITES HOTEL -
17 CORONADO ISLAND; 275 ORANGE,
LLC d.b.a. BEST WESTERN
18 SUITES HOTEL - CORONADO
19 ISLAND; CORONADO EVERGREEN,
LLC; 275 ORANGE, LLC; And
20 DOES 1 THROUGH 10, Inclusive

21 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, 3294; EVIDENCE CODE
669(a)]

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

22
23 INTRODUCTION

24 Plaintiffs MANTIC ASHANTI'S CAUSE SUING ON BEHALF OF ITS
25 MEMBERS and THEODORE A. PINNOCK, An Individual, herein complain,
26 by filing this Civil Complaint in accordance with rule 8 of the
27 Federal Rules of Civil Procedure in the Judicial District of the
28

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

17
18 JURISDICTION AND VENUE

19 1. The federal jurisdiction of this action is based on the
20 Americans with Disabilities Act, 42 United States Code 12101-
21 12102, 12181-12183 and 12201, et seq. Venue in the Judicial
22 District of the United States District Court of the Southern
23 District of California is in accordance with 28 U.S.C. § 1391(b)
24 because a substantial part of Plaintiffs' claims arose within the
25 Judicial District of the United States District Court of the
26 Southern District of California.

27 SUPPLEMENTAL JURISDICTION

28 2. The Judicial District of the United States District Court of

1 the Southern District of California has supplemental jurisdiction
2 over the state claims as alleged in this Complaint pursuant to 28
3 U.S.C. § 1367(a). The reason supplemental jurisdiction is proper
4 in this action is because all the causes of action or claims
5 derived from federal law and those arising under state law, as
6 herein alleged, arose from common nucleus of operative facts. The
7 common nucleus of operative facts, include, but are not limited
8 to, the incidents where Plaintiff's Member and Plaintiff THEODORE
9 A. PINNOCK was denied full and equal access to Defendants'
10 facilities, goods, and/or services in violation of both federal
11 and state laws when he attempted to enter, use, and/or exit
12 Defendants' facilities as described within paragraphs 7 through 26
13 of this Complaint. Further, due to this denial of full and equal
14 access Plaintiff's Member and Plaintiff THEODORE A. PINNOCK and
15 other minorities with disabilities were injured. Based upon the
16 said allegations the state actions, as stated herein, are so
17 related to the federal actions that they form part of the same
18 case or controversy, and the actions would ordinarily be expected
19 to be tried in one judicial proceeding.

20
21 NAMED DEFENDANTS AND NAMED PLAINTIFFS

22 3. Defendants are, and, at all times mentioned herein, were, a
23 business or corporation or franchise organized and existing and/or
24 doing business under the laws of the State of California.
25 Defendant BEST WESTERN SUITES HOTEL -CORONADO ISLAND is located at
26 275 Orange Avenue, Coronado, California, 92118. Plaintiffs are
27 informed and believe and thereon allege that Defendants CORONADO
28 EVERGREEN, LLC and/or 275 ORANGE, LLC are the owners, operators,

1 and/or doing business as BEST WESTERN SUITES HOTEL - CORONADO
2 ISLAND. Plaintiffs are informed and believe and thereon allege
3 that Defendants CORONADO EVERGREEN, LLC and/or 275 ORANGE, LLC are
4 also the owners, operators, and/or lessors of the property located
5 at 275 Orange Avenue, Coronado, California, 92118, Assessor's
6 Parcel Number 536-161-32. Defendant CORONADO EVERGREEN, LLC is
7 located at 8975 Montrose Way, San Diego, California, 92122.
8 Defendant 275 ORANGE, LLC is located at 275 Orange Avenue,
9 Coronado, California 92118.

10 4. The words "Plaintiffs" and "Plaintiff" as used herein
11 specifically include the MANTIC ASHANTI'S CAUSE, SUING ON BEHALF
12 OF ITS MEMBERS, its Members, THEODORE A. PINNOCK, and persons
13 associated with its Members who accompanied Members to Defendants'
14 facilities. The words "Plaintiff's Members" and "Plaintiff's
15 Member" as used herein specifically include MANTIC ASHANTI'S
16 CAUSE, SUING ON BEHALF OF ITS MEMBERS, its Members, THEODORE A.
17 PINNOCK, and persons associated with its Members who accompanied
18 Members to Defendants' facilities.

19 5. Defendants Does 1 through 10, were at all times relevant
20 herein subsidiaries, employers, employees, and/or agents of
21 CORONADO EVERGREEN, LLC d.b.a. BEST WESTERN SUITES HOTEL -
22 CORONADO ISLAND; 275 ORANGE, LLC d.b.a. BEST WESTERN SUITES HOTEL
23 - CORONADO ISLAND; CORONADO EVERGREEN, LLC; and 275 ORANGE, LLC.
24 Plaintiffs are ignorant of the true names and capacities of
25 Defendants sued herein as Does 1 through 10, inclusive, and
26 therefore sues these Defendants by such fictitious names.
27 Plaintiffs will pray leave of the court to amend this complaint to
28

1 allege the true names and capacities of the Does when ascertained.

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

11 CONCISE SET OF FACTS

12 7. Plaintiff's Member and Plaintiff THEODORE A. PINNOCK has a
13 physical impairment and due to this impairment he has learned to
14 successfully operate a wheelchair.

15 8. On November 20, 2003, Plaintiff's Member and Plaintiff
16 THEODORE A. PINNOCK went to Defendants' CORONADO EVERGREEN, LLC
17 d.b.a. BEST WESTERN SUITES HOTEL - CORONADO ISLAND and 275 ORANGE,
18 LLC d.b.a. BEST WESTERN SUITES HOTEL - CORONADO ISLAND facilities
19 to utilize their goods and/or services.

20 9. When Plaintiff's Member and Plaintiff THEODORE A. PINNOCK
21 patronized Defendants' CORONADO EVERGREEN, LLC d.b.a. BEST WESTERN
22 SUITES HOTEL - CORONADO ISLAND and 275 ORANGE, LLC d.b.a. BEST
23 WESTERN SUITES HOTEL - CORONADO ISLAND establishment, he had
24 difficulty using the disabled parking, exterior path of travel,
25 entrance, elevator, condiment counter located in the lobby,
26 guestroom, guestroom lamps, guestroom sink, guestroom microwave,
27 guestroom closet, and guestroom bathroom facilities at Defendants'
28

1 establishment because they failed to comply with ADA Access
2 Guidelines For Buildings and Facilities (hereafter referred to as
3 "ADAAG") and/or California's Title 24 Building Code Requirements.

4 10. Defendants failed to remove obstructions in the disabled
5 parking, exterior path of travel, entrance, public seating,
6 elevator, washing machine, condiment counter located in the lobby,
7 Men's restroom located in the lobby, guestroom, guestroom lamps,
8 guestroom sink, guestroom microwave, guestroom closet, and
9 guestroom bathroom facilities of Defendants' CORONADO EVERGREEN,
10 LLC d.b.a. BEST WESTERN SUITES HOTEL - CORONADO ISLAND and 275
11 ORANGE, LLC d.b.a. BEST WESTERN SUITES HOTEL - CORONADO ISLAND
12 establishment.

13 11. Plaintiff's Member and Plaintiff THEODORE A. PINNOCK
14 personally experienced difficulty with said access barrier. For
15 example, there is one (1) entryway into the parking lot that fails
16 to have the required signage warning motorists that anyone
17 illegally parking in a disabled parking space would be towed/fined
18 or both. The parking facility at defendants' establishment also
19 fails to be accessible. The parking facilities contain a total of
20 fifty-six (56) parking spaces, including one (1) designated "Van
21 Accessible" disabled parking space and one (1) non-"Van
22 Accessible" disabled parking space. The two (2) existing disabled
23 parking spaces fail to be accessible, as both of the parking
24 spaces are only fifteen feet (15') long. Further, the slopes of
25 each of the existing disabled parking spaces are excessive, as the
26 slopes are up to 3%. The hotel should have one (1) compliant "van
27 accessible" disabled parking space with an eight foot (8') wide
28

1 access aisle, that is at least eighteen feet (18') in length, and
2 with a slope that is not greater than two percent (2%). The Hotel
3 is also required to have two (2) compliant "regular" disabled
4 parking spaces that are also at least eighteen feet (18') in
5 length with a slope that is not greater than two percent (2%).

6 12. The exterior path of travel at the defendants' establishment
7 is inaccessible. The path of travel from the public sidewalk to
8 the primary accessible entrance does not have the required
9 "marked" access path and could cause disabled patrons to be in
10 harms way if they share a path of travel with automobiles and
11 larger vehicles.

12 13. The front entrance to the defendants' establishment is
13 inaccessible. The front entrance door fails to have the required
14 disability signage.

15 14. The elevator located inside the defendants' establishment is
16 inaccessible. The elevator buttons do not have the required
17 Arabic numeral, alphabet or other standard character immediately
18 to the left of the control buttons. The elevator buttons also do
19 not have the required Braille symbols.

20 15. The condiment counter located in the lobby is inaccessible,
21 as it is thirty-six inches (36") high, which exceeds the maximum
22 height requirement of thirty-four inches (34") or have a three-
23 foot (3') section that is thirty-four inches (34") high.

24 16. The hotel has sixty-three (63) guestrooms, three (3) of which
25 are designated as accessible guestrooms. None of the three (3)
26 designated accessible guestrooms have a roll-in shower facility.
27 If a hotel has between fifty-one and seventy-five (51 and 75)
28

1 guestrooms, the hotel shall provide three (3) accessible
2 guestrooms and one (1) additional accessible room with a roll-in
3 shower. If a hotel has between fifty-one and seventy-five (51 and
4 75) guestrooms, the hotel shall provide three (3) accessible
5 guestrooms for members of the disability community who are hearing
6 impaired. The accessible guestrooms must be dispersed among the
7 various classes of sleeping accommodations, providing a range of
8 options applicable to room sizes, costs, amenities provided, and
9 the number of beds provided. Defendants' hotel fails to have the
10 required accessible guestrooms. Plaintiffs' Member and Plaintiff
11 THEODORE A. PINNOCK was informed by the hotel's personnel that
12 there were no guestrooms with a roll-in shower. Plaintiffs'
13 Member and Plaintiff THEODORE A. PINNOCK was also informed that
14 all of the accessible guestrooms were unavailable, and was told
15 that Guestroom 108 had the same layout as the disabled guestrooms.
16 Plaintiffs' Member and Plaintiff THEODORE A. PINNOCK was given
17 Guestroom 108.

18
19 17. Guestroom 108 is inaccessible. The lamps located in
20 Guestroom 108 are inaccessible, as they required tight grasping
21 and/or twisting of the wrist to operate. The faucet knobs on the
22 sink located in the living room of Guestroom 108 are inaccessible,
23 as they required tight grasping and/or twisting of the wrist to
24 operate. The microwave is mounted too high, and is inaccessible.
25 The doorknobs on the double doors leading to the bedroom of
26 Guestroom 108 are inaccessible, as they require tight grasping
27 and/or twisting of the wrist to operate. The sink located in
28 bedroom of Guestroom 108 is inaccessible, as the hot water and

1 drainpipes fail to have the required covering. The doorknob on
2 the bathroom door of Guestroom 108 is inaccessible, as it requires
3 tight grasping and/or twisting of the wrist to operate. The
4 bathroom fails to have the minimum required wheelchair turn-around
5 space. The commode fails to have any of the required grab bars.
6 The towel rack is too high to be accessible. The bathtub fails to
7 have the required grab bars. The closet located in Guestroom is
8 inaccessible, as it is too high.

9 18. In addition to the violations personally experienced by
10 Plaintiff's Member and Plaintiff THEODORE A. PINNOCK, additional
11 violations of federal and state disability laws exist at
12 Defendants' CORONADO EVERGREEN, LLC d.b.a. BEST WESTERN SUITES
13 HOTEL - CORONADO ISLAND and 275 ORANGE, LLC d.b.a. BEST WESTERN
14 SUITES HOTEL - CORONADO ISLAND. For example, the Men's restroom
15 located in the lobby of the defendants' establishment is
16 inaccessible. The restroom entrance door does not have the
17 required disability signage. The small and round metal key that
18 is required to open the restroom door is not compliant, as it
19 requires tight grasping or twisting by the wrist to operate. The
20 doorknob on the restroom entrance door is inaccessible, as it too
21 requires tight grasping or twisting by the wrist to operate. The
22 locking mechanism on the stall door is not compliant, as it
23 requires tight grasping or twisting by the wrist to operate. The
24 commode seat cover dispenser is inaccessible, as it mounted at
25 forty-three inches (43") and is above the required maximum height
26 of forty inches (40"). The side grab bar extends a mere fourteen
27 inches (14") beyond the front edge of the commode. Side grab bars
28

1 are required to extend a minimum of twenty-four inches (24")
2 beyond the front edge of the commode. The bottom of the mirror
3 and the paper towel dispenser are inaccessible, as they both
4 exceed the maximum height requirement of forty inches (40"). The
5 bottom of the mirror is mounted at forty-eight inches (48") and
6 the paper towel dispenser is mounted at an impermissible fifty-one
7 inches (51"). The hot water and drainpipes under the lavatory
8 fail to have the required insulation and covering. The restroom
9 fails to have the required audible and visual alarm system.

10 19. The public seating located in the lobby of the defendants'
11 establishment is inaccessible, as they all have a knee clearance
12 depth of a mere two inches (2"), when it is required that five
13 percent (5%) of all seats have a knee clearance depth of at least
14 nineteen inches (19").

15 20. The washing machine located in the guest laundry room is
16 inaccessible as it not the "type" that can be loaded from the
17 front of the machine.

18 21. Guestroom 119 is designated as an "accessible room", however
19 it remains inaccessible. The entrance door of the room does not
20 have a kick plate. There should be a ten-inch (10") high abrasion
21 resistance plate affixed to the bottom portion of the door to
22 prevent a trap condition. The round locking mechanism on the door
23 of the guestroom is not compliant. The locking mechanism should
24 be the kind that does not require grasping or twisting in order to
25 operate. The round locking mechanism on the room entrance door is
26 not compliant. The pressure that is required to open the
27 guestroom front entrance door is an impermissible eight pounds (8
28

1 lbs.), when it is required to be a maximum of five pounds (5 lbs.)
2 of pressure. The lamp-switches are not compliant. They should be
3 the kind that does not require grasping or twisting by the wrist
4 to operate. There is no audible/visual alarm system. The round
5 faucet handles on the sink are also not compliant. The sink
6 should have handles that do not require grasping or twisting by
7 the wrist. The area beneath the sink is enclosed and does not
8 have a knee clearance. The required knee clearance under front
9 lip is a minimum of twenty-seven inches (27") high, thirty inches
10 (30") wide, and provides an absolute depth of nineteen inches
11 (19") underneath the sink. The path of travel from the front
12 entrance of guestroom 119 to the refrigerator and the path of
13 travel to the microwave are both inaccessible, as they are both a
14 mere fifteen inches (15") in width. The minimum width requirement
15 is thirty-six inches (36"). The distance between the two (2) beds
16 is only twenty-eight inches (28"). It is required to be thirty-
17 six inches (36") minimum. The round control switches on the
18 microwave are not compliant. The microwave should have control
19 switches that do not require grasping or twisting by the wrist.
20 The round control switches on the climate control unit also fail
21 to be accessible, as they too require grasping or twisting by the
22 wrist to operate. The iron bracket is mounted at a height of
23 seventy-one inches (71"). The requirement is that it be no more
24 than forty-eight inches (48") high for the required front reach.
25 The height of the cloth's bar inside the closet is seventy inches
26 (70"). The requirement is that it is no more than forty-eight
27 inches (48") high for the required front reach. The height of the
28

1 shelf inside the closet is seventy-one inches (71"). The
2 requirement is that it is no more than forty-eight inches (48")
3 high for the required front reach.

4 22. The bathroom inside guestroom 119 is inaccessible. There is
5 only one (1) twenty-eight inch (28") long grab bar inside the
6 bathtub. The "seat in tub design" should have a twenty-four inch
7 (24") minimum length grab bar mounted at the foot of the tub
8 between thirty-three inches and thirty-six inches (33"-36") in
9 height from the floor surface. A twelve-inch (12") minimum grab
10 bar should be mounted at the head of the tub between thirty-three
11 inches and thirty-six inches (33"-36") in height from the floor
12 surface. The back wall should have two (2) twenty-four inch (24")
13 minimum length grab bars, the top one mounted between thirty-three
14 inches and thirty-six inches (33"-36") from the floor surface and
15 the bottom one mounted at nine inches (9") from the rim of the
16 tub. There are no grab bars around the commode. There should be
17 two (2) compliant grab bars, either one on either side of the
18 commode or one on one side of the commode and one behind the
19 commode mounted at thirty-three inches (33") from the floor
20 surface. Side grab bars should be a minimum of forty-two inches
21 (42") long and extend a minimum of twenty-four inches (24") beyond
22 the front of the commode. The Rear grab bars should be a minimum
23 of thirty-six inches (36") long and be attached a maximum of six
24 inches (6") from the corner of the wall on the toilet seat. The
25 height of the commode is only fifteen inches (15") high and fails
26 to meet the requirement that it is between seventeen inches and
27 nineteen inches (17"-19") high. The height of the towel holder
28

1 is fifty-five inches (55"), which exceeds the maximum height
2 requirement of forty inches (40") high. The hair dryer is mounted
3 at sixty-five inches (65") from the floor surface; the maximum
4 requirement is forty inches (40") high. The height of the coat
5 hook is an impermissible seventy inches (70") high and fails to
6 meet the maximum height requirement of forty-eight inches (48")
7 high. The hot water and drainpipes under the lavatory fail to
8 have the required insulation and covering. The required
9 audible/visual alarm system is not installed.

10 23. Based on these facts, Plaintiffs allege Plaintiff's Member
11 and Plaintiff THEODORE A. PINNOCK was discriminated against each
12 time he patronized Defendants' establishments.

13 24. Pursuant to federal and state law, Defendants are required
14 to remove barriers to their existing facilities. Further,
15 Defendants had actual knowledge of their barrier removal duties
16 under the Americans with Disabilities Act and the Civil Code
17 before January 26, 1992. Also, Defendants should have known that
18 individuals with disabilities are not required to give notice to a
19 governmental agency before filing suit alleging Defendants failed
20 to remove architectural barriers. Plaintiffs believes and herein
21 allege Defendants' facilities have access violations not directly
22 experienced by Plaintiff's Member and Plaintiff THEODORE A.
23 PINNOCK which preclude or limit access by others with
24 disabilities, including, but not limited to, Space Allowance and
25 Reach Ranges, Accessible Route, Protruding Objects, Ground and
26 Floor Surfaces, Parking and Passenger Loading Zones, Curb Ramps,
27 Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts),
28

1 Windows, Doors, Entrances, Drinking Fountains and Water Coolers,
2 Water Closets, Toilet Stalls, Urinals, Lavatories and Mirrors,
3 Sinks, Storage, Handrails, Grab Bars, and Controls and Operating
4 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.
5 Accordingly, Plaintiffs allege Defendants are required to remove
6 all architectural barriers, known or unknown. Also, Plaintiffs
7 allege Defendants are required to utilize the ADA checklist for
8 Readily Achievable Barrier Removal approved by the United States
9 Department of Justice and created by Adaptive Environments.

10 25. Plaintiffs and Plaintiff's Member and Plaintiff THEODORE A.
11 PINNOCK desire to return to Defendants' place of business in the
12 immediate future.

13 26. Plaintiff's Member and Plaintiff THEODORE A. PINNOCK was
14 extremely upset due to Defendants' conduct. Further, Plaintiff's
15 Member and Plaintiff THEODORE A. PINNOCK experienced pain in his
16 legs, back, arms, wrists and shoulders when he attempted to enter,
17 use, and exit Defendants' establishment.

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

19 27. CORONADO EVERGREEN, LLC d.b.a. BEST WESTERN SUITES HOTEL -
20 CORONADO ISLAND; 275 ORANGE, LLC d.b.a. BEST WESTERN SUITES HOTEL
21 - CORONADO ISLAND; CORONADO EVERGREEN, LLC; 275 ORANGE, LLC; and
22 Does 1 through 10 will be referred to collectively hereinafter as
23 "Defendants."
24

25 28. Plaintiffs aver that the Defendants are liable for the
26 following claims as alleged below:

27 ///

28 ///

1 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

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

4 CLAIM I: Denial Of Full And Equal Access

5 29. Based on the facts plead at ¶¶ 7-26 above and elsewhere in
6 this complaint, Plaintiff's Member and Plaintiff THEODORE A.
7 PINNOCK was denied full and equal access to Defendants' goods,
8 services, facilities, privileges, advantages, or accommodations.
9 Plaintiffs allege Defendants are a public accommodation owned,
10 leased and/or operated by Defendants. Defendants' existing
11 facilities and/or services failed to provide full and equal access
12 to Defendants' facility as required by 42 U.S.C. § 12182(a).
13 Thus, Plaintiff's Member and Plaintiff THEODORE A. PINNOCK was
14 subjected to discrimination in violation of 42 United States Code
15 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiffs were
16 denied equal access to Defendants' existing facilities.
17

18 30. Plaintiff's Member and Plaintiff THEODORE A. PINNOCK has
19 physical impairments as alleged in ¶ 7 above because his
20 conditions affect one or more of the following body systems:
21 neurological, musculoskeletal, special sense organs, and/or
22 cardiovascular. Further, his said physical impairments
23 substantially limits one or more of the following major life
24 activities: walking. In addition, Plaintiff's Member and
25 Plaintiff THEODORE A. PINNOCK cannot perform one or more of the
26 said major life activities in the manner, speed, and duration when
27 compared to the average person. Moreover, Plaintiff's Member and
28 Plaintiff THEODORE A. PINNOCK has a history of or has been

1 classified as having a physical impairment as required by 42
2 U.S.C. § 12102(2)(A).

3 CLAIM II: Failure To Make Alterations In Such A Manner That The
4 Altered Portions Of The Facility Are Readily Accessible And Usable
5 By Individuals With Disabilities

6 31. Based on the facts plead at ¶¶ 7-26 above and elsewhere in
7 this complaint, Plaintiff's Member and Plaintiff THEODORE A.
8 PINNOCK was denied full and equal access to Defendants' goods,
9 services, facilities, privileges, advantages, or accommodations
10 within a public accommodation owned, leased, and/or operated by
11 Defendants. Defendants altered their facility in a manner that
12 affects or could affect the usability of the facility or a part of
13 the facility after January 26, 1992. In performing the alteration,
14 Defendants failed to make the alteration in such a manner that, to
15 the maximum extent feasible, the altered portions of the facility
16 are readily accessible to and usable by individuals with
17 disabilities, including individuals who use wheelchairs, in
18 violation of 42 U.S.C. §12183(a)(2).

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

27 33. Pursuant to 42 U.S.C. §12183(a), this failure to make the
28

1 alterations in a manner that, to the maximum extent feasible, are
2 readily accessible to and usable by individuals with disabilities
3 constitutes discrimination for purposes of 42 U.S.C. §12183(a).
4 Therefore, Defendants discriminated against Plaintiff's Member and
5 Plaintiff THEODORE A. PINNOCK in violation of 42 U.S.C. §
6 12182(a).

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

12 **CLAIM III: Failure To Remove Architectural Barriers**

13 35. Based on the facts plead at ¶¶ 7-26 above and elsewhere in
14 this complaint, Plaintiff's Member and Plaintiff THEODORE A.
15 PINNOCK was denied full and equal access to Defendants' goods,
16 services, facilities, privileges, advantages, or accommodations
17 within a public accommodation owned, leased, and/or operated by
18 Defendants. Defendants failed to remove barriers as required by 42
19 U.S.C. § 12182(a). Plaintiffs are informed and believe, and thus
20 allege that architectural barriers which are structural in nature
21 exist at the following physical elements of Defendants'
22 facilities: Space Allowance and Reach Ranges, Accessible Route,
23 Protruding Objects, Ground and Floor Surfaces, Parking and
24 Passenger Loading Zones, Curb Ramps, Ramps, Stairs, Elevators,
25 Platform Lifts (Wheelchair Lifts), Windows, Doors, Entrances,
26 Drinking Fountains and Water Coolers, Water Closets, Toilet
27 Stalls, Urinals, Lavatories and Mirrors, Sinks, Storage,
28

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

14 **CLAIM IV: Failure To Modify Practices, Policies And Procedures**

15 36. Based on the facts plead at ¶¶ 7-26 above and elsewhere in
16 this complaint, Defendants failed and refused to provide a
17 reasonable alternative by modifying its practices, policies and
18 procedures in that they failed to have a scheme, plan, or design
19 to assist Plaintiff's Member and Plaintiff THEODORE A. PINNOCK
20 and/or others similarly situated in entering and utilizing
21 Defendants' services, as required by 42 U.S.C. § 12188(a). Thus,
22 said Member and Plaintiff THEODORE A. PINNOCK was subjected to
23 discrimination in violation of 42 United States Code
24 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member and
25 Plaintiff THEODORE A. PINNOCK was denied equal access to
26 Defendants' existing facilities.

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 37. Based on the facts plead at ¶¶ 7-26 above and elsewhere in
5 this complaint, Plaintiff's Member and Plaintiff THEODORE A.
6 PINNOCK was denied full and equal access to Defendants' goods,
7 services, facilities, privileges, advantages, or accommodations
8 within a public accommodation owned, leased, and/or operated by
9 Defendants as required by Civil Code Sections 54 and 54.1.
10 Defendants' facility violated California's Title 24 Accessible
11 Building Code by failing to provide access to Defendants'
12 facilities due to violations pertaining to the Space Allowance and
13 Reach Ranges, Accessible Route, Protruding Objects, Ground and
14 Floor Surfaces, Parking and Passenger Loading Zones, Curb Ramps,
15 Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts),
16 Windows, Doors, Entrances, Drinking Fountains and Water Coolers,
17 Water Closets, Toilet Stalls, Urinals, Lavatories and Mirrors,
18 Sinks, Storage, Handrails, Grab Bars, and Controls and Operating
19 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.

20 38. These violations denied Plaintiff's Member and Plaintiff
21 THEODORE A. PINNOCK full and equal access to Defendants' facility.

22 Thus, said Member and Plaintiff THEODORE A. PINNOCK was subjected
23 to discrimination pursuant to Civil Code §§ 51, 52, and 54.1
24 because Plaintiffs were denied full, equal and safe access to
25 Defendants' facility, causing severe emotional distress.

26 CLAIM II: Failure To Modify Practices, Policies And Procedures

27 39. Based on the facts plead at ¶¶ 7-26 above and elsewhere
28

1 herein this complaint, Defendants failed and refused to provide a
2 reasonable alternative by modifying its practices, policies, and
3 procedures in that they failed to have a scheme, plan, or design
4 to assist Plaintiff's Member and Plaintiff THEODORE A. PINNOCK
5 and/or others similarly situated in entering and utilizing
6 Defendants' services as required by Civil Code § 54.1. Thus, said
7 Member and Plaintiff THEODORE A. PINNOCK was subjected to
8 discrimination in violation of Civil Code § 54.1.

9 CLAIM III: Violation Of The Unruh Act

10 40. Based on the facts plead at ¶¶ 7-26 above and elsewhere
11 herein this complaint and because Defendants violated the Civil
12 Code § 51 by failing to comply with 42 United States Code
13 12182(b)(2)(A)(iv), Defendants did and continue to discriminate
14 against Plaintiff's Member and Plaintiff THEODORE A. PINNOCK and
15 persons similarly situated in violation of Civil Code §§ 51, 52,
16 and 54.1.

17 Treble Damages Pursuant To Claims I, II, III Under The California
18 Accessibility Laws

19 41. Defendants, each of them, at times prior to and including
20 during the month of November, 2003, respectively, and continuing
21 to the present time, knew that persons with physical disabilities
22 were denied their rights of equal access to all portions of this
23 public facility. Despite such knowledge, Defendants, and each of
24 them, failed and refused to take steps to comply with the
25 applicable access statutes; and despite knowledge of the resulting
26 problems and denial of civil rights thereby suffered by
27 Plaintiff's Member and Plaintiff THEODORE A. PINNOCK and other
28 similarly situated persons with disabilities. Defendants, and

1 each of them, have failed and refused to take action to grant full
2 and equal access to persons with physical disabilities in the
3 respects complained of hereinabove. Defendants, and each of them,
4 have carried out a course of conduct of refusing to respond to, or
5 correct complaints about, denial of disabled access and have
6 refused to comply with their legal obligations to make the subject
7 CORONADO EVERGREEN, LLC d.b.a. BEST WESTERN SUITES HOTEL -
8 CORONADO ISLAND and 275 ORANGE, LLC d.b.a. BEST WESTERN SUITES
9 HOTEL - CORONADO ISLAND accessible pursuant to the Americans With
10 Disability Act Access Guidelines (ADAAG) and Title 24 of the
11 California Code of Regulations (also known as the California
12 Building Code). Such actions and continuing course of conduct by
13 Defendants, and each of them, evidence despicable conduct in
14 conscious disregard of the rights and/or safety of Plaintiff's
15 Member and Plaintiff THEODORE A. PINNOCK and of other similarly
16 situated persons, justifying an award of treble damages pursuant
17 to sections 52(a) and 54.3(a) of the California Civil Code.
18 42. Defendants', and each of their, actions have also been
19 oppressive to persons with physical disabilities and of other
20 members of the public, and have evidenced actual or implied
21 malicious intent toward those members of the public, such as
22 Plaintiffs and other persons with physical disabilities who have
23 been denied the proper access to which they are entitled by law.
24 Further, Defendants', and each of their, refusals on a day-to-day
25 basis to correct these problems evidence despicable conduct in
26 conscious disregard for the rights of Plaintiff's Member and
27 Plaintiff THEODORE A. PINNOCK and other members of the public with
28

1 physical disabilities.

2 43. Plaintiffs pray for an award of treble damages against
3 Defendants, and each of them, pursuant to California Civil Code
4 sections 52(a) and 54.3(a), in an amount sufficient to make a more
5 profound example of Defendants and encourage owners and operators
6 of other public facilities from willful disregard of the rights of
7 persons with disabilities. Plaintiffs do not know the financial
8 worth of Defendants, or the amount of treble damages sufficient to
9 accomplish the public purposes of section 52(a) of the California
10 Civil Code and section 54.3 of the California Civil Code.

11 44. Wherefore, Plaintiffs pray for damages and relief as
12 hereinafter stated.
13

14 PLAINTIFF THEODORE A. PINNOCK THIRD CAUSE OF ACTION AGAINST ALL
15 DEFENDANTS- Negligence as to Plaintiff THEODORE A. PINNOCK, An
16 Individual, only
17

18 45. Based on the facts plead at ¶¶ 7-26 above and elsewhere in
19 this complaint, Defendants owed Plaintiff THEODORE A. PINNOCK a
20 statutory duty to make their facility accessible and owed
21 Plaintiff THEODORE A. PINNOCK a duty to keep Plaintiff THEODORE A.
22 PINNOCK reasonably safe from known dangers and risks of harm.
23 This said duty arises by virtue of legal duties proscribed by
24 various federal and state statutes including, but not limited to,
25 ADA, ADAAG, Civil Code 51, 52, 54, 54.1, 54.3, and Title 24 of the
26 California Administrative Code and applicable 1982 Uniform
27 Building Code standards as amended.

28 46. Title III of the ADA mandates removal of architectural

1 barriers and prohibits disability discrimination. As well,
2 Defendants' facility, and other goods, services, and/or facilities
3 provided to the public by Defendants are not accessible to and
4 usable by persons with disabilities as required by Health and
5 Safety Code § 19955 which requires private entities to make their
6 facility accessible before and after remodeling, and to remove
7 architectural barriers on and after AB 1077 went into effect.

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

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

3 48. Wherefore, Plaintiff THEODORE A. PINNOCK prays for judgment
4 as hereinafter set forth.

5
6 DEMAND FOR JUDGMENT FOR RELIEF:

7 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3,
8 3281, and 3333;

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

12 C. In the alternative to the damages pursuant to Cal. Civil
13 Code § 52 in Paragraph B above, for \$1,000 in damages pursuant to
14 Cal. Civil Code § 54.3 for each and every offense of Civil Code §
15 54.1, Title 24 of the California Building Code, ADA, and ADA
16 Accessibility Guidelines;

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

2 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C.
3 § 12205, and Cal. Civil Code § 55;

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

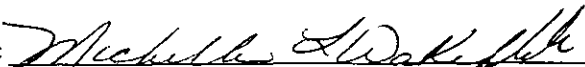
6 G. A Jury Trial and;

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

8
9 Respectfully submitted:

10
11 PINNOCK & WAKEFIELD, A.P.C.

12 Dated: April 28, 2004

13 By: 
14 MICHELLE L. WAKEFIELD, ESQ.
15 Attorneys for Plaintiffs
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CIVIL COVER SHEET

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

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

DEFENDANTS
BEST WESTERN SUITES HOTEL -CORONADO ISLAND; CORONADO EVERGREEN, LLC d.b.a. BEST WESTERN SUITES HOTEL - CORONADO ISLAND; 275 ORANGE, LLC d.b.a. BEST WESTERN SUITES HOTEL - CORONADO ISLAND; CORONADO EVERGREEN 28 LP 2732 ORANGE, LLC; AndDOES 1 THROUGH 10, Inclusive

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

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

(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)
'04 CV 00887 JH (POR)

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 [] 1
Citizen of Another State [] 2
Citizen or Subject of a Foreign Country [] 3
PT DEF [] 1 Incorporated or Principal Place of Business in This State
PT DEF [] 2 Incorporated and Principal Place of Business in Another State
PT DEF [] 3 Foreign Nation
PT DEF [] 4
PT DEF [] 5
PT DEF [] 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.

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes for selection.

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)
[X] 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: [X] YES [] NO

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

DATE April 27, 2004
SIGNATURE OF ATTORNEY OF RECORD
#103263 150-MV Michelle L. Wakefield