

USDC SCAN INDEX SHEET



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3:04-CV-00687 PINNOCK V. GOODSON
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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY:

DEPUTY

7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA

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

12
13 Plaintiffs,

14 v.

15 MARY LOU GOODSON d.b.a. LA
16 ESTANCIA INN; WILLAIM G.
17 GOODSON d.b.a. LA ESTANCIA
INN; MARY LOU GOODSON;
18 WILLAIM G. GOODSON; And DOES
19 1 THROUGH 10, Inclusive

20 Defendants.

Case No: 04 CV 0687 BTM (NLS)

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]

21 INTRODUCTION

22
23 Plaintiffs MANTIC ASHANTI'S CAUSE SUING ON BEHALF OF THEODORE
24 A. PINNOCK AND ITS MEMBERS and THEODORE A. PINNOCK, An Individual,
25 herein complain, by filing this Civil Complaint in accordance with
26 rule 8 of the Federal Rules of Civil Procedure in the Judicial
27 District of the United States District Court of the Southern
28 District of California, that Defendants have in the past, and

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

15 **JURISDICTION AND VENUE**

16 1. The federal jurisdiction of this action is based on the
17 Americans with Disabilities Act, 42 United States Code 12101-
18 12102, 12181-12183 and 12201, et seq. Venue in the Judicial
19 District of the United States District Court of the Southern
20 District of California is in accordance with 28 U.S.C. § 1391(b)
21 because a substantial part of Plaintiffs' claims arose within the
22 Judicial District of the United States District Court of the
23 Southern District of California.
24

25 **SUPPLEMENTAL JURISDICTION**

26 2. The Judicial District of the United States District Court of
27 the Southern District of California has supplemental jurisdiction
28 over the state claims as alleged in this Complaint pursuant to 28

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

17 NAMED DEFENDANTS AND NAMED PLAINTIFFS

18 3. Defendants are, and, at all times mentioned herein, were, a
19 business or corporation or franchise organized and existing and/or
20 doing business under the laws of the State of California.
21 Defendants MARY LOU GOODSON d.b.a. LA ESTANCIA INN and WILLAIM G.
22 GOODSON d.b.a. LA ESTANCIA INN are located at 3135 Highway 395
23 South, Fallbrook, California 92028. Plaintiffs are informed and
24 believe and thereon allege that Defendants MARY LOU GOODSON and
25 WILLAIM G. GOODSON are the owners, operators, and/or doing
26 business as LA ESTANCIA INN. Plaintiffs are informed and believe
27 and thereon allege that Defendants MARY LOU GOODSON and WILLAIM G.
28

1 GOODSON are also the owners, operators, and/or lessors of the
2 property located at 3135 Highway 395 South, Fallbrook, California
3 92028, Assessor Parcel Number 125-050-57. Defendants MARY LOU
4 GOODSON and WILLAIM G. GOODSON are located at 375 Ranger Road,
5 Fallbrook, California 92028. The words "Plaintiffs" and
6 "Plaintiff's Member" as used herein specifically include the
7 organization MANTIC ASHANTI'S CAUSE, its Members, its member
8 Theodore A. Pinnock and persons associated with its Members who
9 accompanied Members to Defendants' facilities, as well as THEODORE
10 A. PINNOCK, An Individual.

11 4. Defendants Does 1 through 10, were at all times relevant
12 herein subsidiaries, employers, employees, agents, of MARY LOU
13 GOODSON d.b.a. LA ESTANCIA INN; WILLAIM G. GOODSON d.b.a. LA
14 ESTANCIA INN; MARY LOU GOODSON; and WILLAIM G. GOODSON. Plaintiffs
15 are ignorant of the true names and capacities of Defendants sued
16 herein as Does 1 through 10, inclusive, and therefore sues these
17 Defendants by such fictitious names. Plaintiffs will pray leave
18 of the court to amend this complaint to allege the true names and
19 capacities of the Does when ascertained.

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

26 Plaintiffs are further informed and believe, and thereon allege,
27 that each of the Defendants herein gave consent to, ratified,
28

1 and/or authorized the acts alleged herein to each of the remaining
2 Defendants.

3 CONCISE SET OF FACTS

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

11 7. On January 27, 2004, Plaintiff's member THEODORE A. PINNOCK
12 went to Defendants' MARY LOU GOODSON d.b.a. LA ESTANCIA INN and
13 WILLAIM G. GOODSON d.b.a. LA ESTANCIA INN facilities to utilize
14 their goods and/or services. When Plaintiff's member patronized
15 Defendants' MARY LOU GOODSON d.b.a. LA ESTANCIA INN and WILLAIM G.
16 GOODSON d.b.a. LA ESTANCIA INN facilities, he was unable to use
17 and/or had difficulty using the public accommodations' disabled
18 parking, office entrance, registration counter, pool area
19 entrance, pool, spa, guestroom, guestroom entrance, guestroom
20 lamps, guestroom interior path of travel, guestroom desk,
21 guestroom climate controls, and guestroom bathroom facilities at
22 Defendants' business establishment because they failed to comply
23 with ADA Access Guidelines For Buildings and Facilities (hereafter
24 referred to as "ADAAG") and/or California's Title 24 Building Code
25 Requirements. Defendants failed to remove access barriers within
26 the disabled parking, office entrance, registration counter, lobby
27 public seating, men's restroom in the lobby, pool area entrance,
28

1 pool, pool area men's restroom, spa, guestroom, guestroom
2 entrance, guestroom lamps, guestroom interior path of travel,
3 guestroom desk, guestroom climate controls, and guestroom bathroom
4 facilities of Defendants' MARY LOU GOODSON d.b.a. LA ESTANCIA INN
5 and WILLAIM G. GOODSON d.b.a. LA ESTANCIA INN establishment.

6 8. Plaintiff's member personally experienced difficulty with
7 said access barriers at Defendants' MARY LOU GOODSON d.b.a. LA
8 ESTANCIA INN and WILLAIM G. GOODSON d.b.a. LA ESTANCIA INN
9 facilities. For example, the parking facility of Defendants'
10 establishment is inaccessible. The entryway into the parking lot
11 fails to have the required signage warning motorists that anyone
12 illegally parking in a disabled parking space would be towed/fined
13 or both. The parking facility has a total of forty-nine (49)
14 parking spaces including one (1) "regular" disabled parking space.
15 The existing "regular" disabled parking space is inaccessible, as
16 it is only fifteen feet (15') long and has a slope of up to four
17 percent (4%). The parking facility fails to have the required
18 "van accessible" disabled parking space. It is required that there
19 is at least one (1) compliant "van accessible" disabled parking
20 space, that is at least eighteen feet (18') long, with an eight
21 foot (8') wide access aisle and the proper signage. There also
22 should be at least one (1) compliant "regular" disabled parking
23 space, that is at least eighteen feet (18') long, with the
24 appropriate access aisles and the proper signage. The width of
25 all disabled parking spaces must be at least nine feet (9') and
26 have a slope of no greater than two percent (2%).
27

28 9. The front and side entrance doors to the office are

1 inaccessible, as they fail to have the required smooth and
2 uninterrupted surface on the bottom ten inches (10") of the door
3 that allows the door to be opened with a wheelchair footrest
4 without creating a hazard. The front entrance door fails to have
5 the required disability signage.

6 10. The registration counter is inaccessible because it is an
7 impermissible forty-one inches (41") high.

8 11. The pool entrance is inaccessible. The entrance door to the
9 pool area fails to have the required smooth and uninterrupted
10 surface on the bottom ten inches (10") of the door that allows the
11 door to be opened with a wheelchair footrest without creating a
12 hazard. One of the doors to the pool fails to have the required
13 level landing that is five foot by five foot (5'X5'). The door
14 handle of the pool door is inaccessible, as it is mounted fifty
15 inches (50") high.

16 12. The pool is inaccessible, as it does not have the required
17 device for assisting disabled patrons in and out of the water.

18 13. The spa is inaccessible, as it does not have the required
19 device for assisting disabled patrons in and out of the water.

20 14. The Defendants' establishment has forty-one (41) guestrooms
21 with one (1) designated "accessible room", which is not compliant.

22 If a hotel has between twenty-six and fifty (26 and 50)
23 guestrooms, the hotel shall provide two (2) accessible guestrooms.

24 If a hotel has between twenty-six and fifty (26 and 50)
25 guestrooms, the hotel shall provide two (2) accessible guestrooms
26 for members of the disability community who are hearing impaired.

27 The accessible guestrooms must be dispersed among the various
28

1 classes of sleeping accommodations, providing a range of options
2 applicable to room sizes, costs, amenities provided, and the
3 number of beds provided. Defendants' hotel fails to have the
4 required accessible guestrooms.

5 15. The accessible guestroom given to Plaintiff's member Theodore
6 A. Pinnock, Guestroom 121, is inaccessible. The round locking
7 mechanism on the guestroom entrance door is inaccessible, as it
8 requires tight grasping and/or twisting of the wrist to operate.
9 The lamps located inside Guestroom 121 fail to be accessible, as
10 they require tight grasping or twisting by the wrist to operate.
11 The peephole on the guestroom entrance door is mounted at sixty-
12 two inches (62"), when it is required to be no more than forty
13 inches (40").

14 16. The interior path of travel of Guestroom 121 is inaccessible,
15 as the clear floor space along one side of the bed is only thirty
16 inches (30"). The path of travel to the climate control unit and
17 window is partially blocked by a desk and chairs. It is required
18 that a minimum of thirty-six inches (36") of clear floor space is
19 provided in order to access all of the elements within the
20 guestroom. The desk is inaccessible, as it has a knee clearance
21 depth of a mere three inches (3"). Guestroom 121 fails to have
22 the required audible and visual alarm system.

23 17. The bathroom in Guestroom 121 is inaccessible. The
24 wheelchair turn-around space inside the bathroom is only forty-
25 eight inches by fifty inches (48'X50"), when it is required to be
26 at least sixty inches (60") in diameter. The side grab bar around
27 the commode extends only seventeen inches (17") beyond the front
28

1 edge of the commode, when it is required to extend a minimum of
2 twenty-four inches (24") beyond the front edge of the commode.
3 The distance from the side edge of the commode to the near wall is
4 only sixteen inches (16"), when it should be eighteen inches
5 (18"). The distance from the front edge of the commode to the
6 front wall is a mere nineteen inches (19"), when it is required to
7 be at least forty-eight inches (48"). The height of the commode
8 is only fifteen inches (15"). The bathtub does not have the
9 required seat. The bathtub only has one (1) of the two (2)
10 required grab bars. The bathtub is not accessible, as the depth
11 of the tub will prevent the required seat from being level with a
12 wheelchair, therefore making it impossible to transfer from a
13 wheelchair to the required tub seat. The round mixing valve in
14 the bathtub fails to be accessible, as it requires tight grasping
15 and/or twisting of the wrist to operate. The towels are located
16 too high to be accessible, as they are located fifty-five inches
17 (55") high. The hot water and drainpipes under the lavatory fail
18 to have the required covering. The bathroom in Guestroom 121 fails
19 to have the required audible and visual alarm system.

20
21 18. In addition to the violations personally experienced by
22 Plaintiff's Member and Plaintiff THEODORE A. PINNOCK, additional
23 violations of federal and state disability laws exist at
24 Defendants' MARY LOU GOODSON d.b.a. LA ESTANCIA INN and WILLAIM G.
25 GOODSON d.b.a. LA ESTANCIA INN. For example, the Men's Restroom
26 located in the lobby of Defendants' establishment is inaccessible.
27 The pressure that is required to open the restroom door is eight
28 pounds (8 lbs.), when the maximum requirement is five pounds (5

1 lbs.) of pressure. The stall fails to have the required handles
2 on both sides of the stall door. The stall door fails to have the
3 required self-closing mechanism. The locking mechanism on the
4 stall door is inaccessible, as it requires tight grasping and/or
5 twisting of the wrist to operate. The height of the coat hook is
6 an impermissible sixty-eight inches (68"). The commode seat cover
7 dispenser is inaccessible, as it is mounted at forty-eight inches
8 (48") high. The toilet paper dispenser is mounted at eighteen
9 inches (18") from the front edge of the commode, when it should be
10 no more than twelve inches (12"). The urinal lip is mounted at
11 twenty-eight inches (28") high, when it is required to be no more
12 than seventeen inches (17") high. The height of the lavatory knee
13 clearance is only twenty-seven inches (27"). The paper towel
14 dispenser is mounted at an impermissible fifty-nine inches (59")
15 high. The required audible visual alarm system is not installed.
16
17 19. The lobby area bar is inaccessible, as the height of the bar
18 is forty inches (40"), which exceeds the maximum requirement of
19 thirty-four inches (34").
20
21 20. The lobby area seating is inaccessible, as all of the seats
22 fail to meet the minimum required knee clearance depth. There are
23 six (6) seats with a knee clearance depth of a mere five inches
24 (5").
25
26 21. The pool area men's restroom is inaccessible. There are
27 three (3) steps from the pool to the pool are restroom, which
28 makes the restroom inaccessible. The restroom doorknob is
inaccessible, as it requires tight grasping and/or twisting of the
wrist to operate. The clear opening width of the restroom doorway

1 is only twenty-six inches (26") wide and fails to meet the minimum
2 requirement of thirty-two inches (32") wide. The commode fails to
3 have the required grab bars. The commode seat cover dispenser is
4 inaccessible as it is mounted fifty-four inches (54") high. The
5 height of the commode is only fifteen inches (15"), when it should
6 be between seventeen and nineteen inches (17"-19"). The toilet
7 paper dispenser is mounted at twenty-seven inches (27") from the
8 front edge of the commode, when it should be mounted no more than
9 twelve inches (12"). The distance from the lavatory to the
10 adjacent wall is only fourteen inches (14"), when it is required
11 to be at least eighteen inches (18"). The soap dispenser is
12 mounted at forty-four inches (44"), when it is required to be
13 mounted no higher than forty inches (40"). The lavatory faucet
14 handles fail to be accessible, as they require tight grasping
15 and/or twisting of the wrist to operate. The hot water pipes and
16 drainpipes under the lavatory fail to have the required covering.
17 The paper towel dispenser is inaccessible, as it is mounted at an
18 impermissible fifty-nine inches (59"). The bathroom fails to have
19 the required audible and visual alarm system.

20
21 22. Pursuant to federal and state law, Defendants are required to
22 remove barriers to their existing facilities. Further, Defendants
23 had actual knowledge of their barrier removal duties under the
24 Americans with Disabilities Act and the Civil Code before January
25 26, 1992. Also, Defendants should have known that individuals
26 with disabilities are not required to give notice to a
27 governmental agency before filing suit alleging Defendants failed
28 to remove architectural barriers.

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

17
18 24. Based on these facts, Plaintiffs allege Plaintiff's Member
19 was discriminated against each time he patronized Defendants'
20 establishments. Plaintiff's Member Theodore A. Pinnock was
21 extremely upset due to Defendants' conduct. Further, Plaintiff's
22 Member THEODORE A. PINNOCK experienced pain in his legs, back,
23 arms, shoulders and wrists when he attempted to enter, use, and
24 exit Defendants' MARY LOU GOODSON d.b.a. LA ESTANCIA INN and WILLAIM
25 G. GOODSON d.b.a. LA ESTANCIA INN establishment.

26 WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED DEFENDANT

27 25. MARY LOU GOODSON d.b.a. LA ESTANCIA INN; WILLAIM G. GOODSON
28 d.b.a. LA ESTANCIA INN; MARY LOU GOODSON; WILLAIM G. GOODSON; and

1 Does 1 through 10 will be referred to collectively hereinafter as
2 "Defendants."

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

5 DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS

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

8 CLAIM I AGAINST ALL DEFENDANTS: Denial Of Full And Equal

9 Access

10 27. Based on the facts plead at ¶¶ 6-29 above and elsewhere in
11 this complaint, Plaintiff's member was denied full and equal
12 access to Defendants' goods, services, facilities, privileges,
13 advantages, or accommodations. Plaintiffs allege Defendants are a
14 public accommodation owned, leased and/or operated by Defendants.
15 Defendants' existing facilities and/or services failed to provide
16 full and equal access to Defendants' facility as required by 42
17 U.S.C. § 12182(a). Thus, Plaintiff's member was subjected to
18 discrimination in violation of 42 United States Code
19 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's
20 member was denied equal access to Defendants' existing facilities.

21 28. Plaintiff's member THEODORE A. PINNOCK has physical
22 impairments as alleged in ¶ 6 above because his conditions affect
23 one or more of the following body systems: neurological,
24 musculoskeletal, special sense organs, and/or cardiovascular.
25 Further, Plaintiff's member THEODORE A. PINNOCK said physical
26 impairments substantially limits one or more of the following
27 major life activities: walking. In addition, Plaintiff's member
28

1 THEODORE A. PINNOCK cannot perform one or more of the said major
2 life activities in the manner, speed, and duration when compared
3 to the average person. Moreover, Plaintiff's member THEODORE A.
4 PINNOCK has a history of or has been classified as having a
5 physical impairment as required by 42 U.S.C. § 12102(2)(A).
6

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

9 29. Based on the facts plead at ¶¶ 6-29 above and elsewhere in
10 this complaint, Plaintiff's member was denied full and equal
11 access to Defendants' goods, services, facilities, privileges,
12 advantages, or accommodations within a public accommodation owned,
13 leased, and/or operated by Defendants. Defendants altered their
14 facility in a manner that affects or could affect the usability of
15 the facility or a part of the facility after January 26, 1992. In
16 performing the alteration, Defendants failed to make the
17 alteration in such a manner that, to the maximum extent feasible,
18 the altered portions of the facility are readily accessible to and
19 usable by individuals with disabilities, including individuals who
20 use wheelchairs, in violation of 42 U.S.C. §12183(a)(2).

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

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

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

11
12 **CLAIM III AGAINST ALL DEFENDANTS: Failure To Remove**
Architectural Barriers

13 33. Based on the facts plead at ¶¶ 6-29 above and elsewhere in
14 this complaint, Plaintiff's member was denied full and equal
15 access to Defendants' goods, services, facilities, privileges,
16 advantages, or accommodations within a public accommodation owned,
17 leased, and/or operated by Defendants. Defendants failed to
18 remove barriers as required by 42 U.S.C. § 12182(a). Plaintiffs
19 are informed, believe, and thus allege that architectural barriers
20 which are structural in nature exist within the following physical
21 elements of Defendants' facilities: Space Allowance and Reach
22 Ranges, Accessible Route, Protruding Objects, Ground and Floor
23 Surfaces, Parking and Passenger Loading Zones, Curb Ramps, Ramps,
24 Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows,
25 Doors, Entrances, Drinking Fountains and Water Coolers, Water
26 Closets, Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks,
27 Storage, Handrails, Grab Bars, and Controls and Operating
28

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

13 CLAIM IV AGAINST ALL DEFENDANTS: Failure To Modify Practices,
14 Policies And Procedures

15 34. Based on the facts plead at ¶¶ 6-29 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/or others similarly situated in
20 entering and utilizing Defendants' services, as required by 42
21 U.S.C. § 12188(a). Thus, said Member was subjected to
22 discrimination in violation of 42 United States Code
23 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was
24 denied equal access to Defendants' existing facilities.

25 35. Based on the facts plead at ¶¶ 6-29 above, Claims I, II, and
26 III of Plaintiffs' First Cause Of Action above, and the facts
27 elsewhere herein this complaint, Plaintiffs will suffer
28 irreparable harm unless Defendants are ordered to remove

1 architectural, non-architectural, and communication barriers at
2 Defendants' public accommodation. Plaintiffs allege that
3 Defendants' discriminatory conduct is capable of repetition, and
4 this discriminatory repetition adversely impacts Plaintiffs and a
5 substantial segment of the disability community. Plaintiffs
6 allege there is a national public interest in requiring
7 accessibility in places of public accommodation. Plaintiffs have
8 no adequate remedy at law to redress the discriminatory conduct of
9 Defendants. Plaintiff's Member desires to return to Defendants'
10 places of business in the immediate future. Accordingly, the
11 Plaintiffs allege that a structural or mandatory injunction is
12 necessary to enjoin compliance with federal civil rights laws
13 enacted for the benefit of individuals with disabilities.

14 36. WHEREFORE, Plaintiffs pray for judgment and relief as
15 hereinafter set forth.
16

17 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER**
18 **CALIFORNIA ACCESSIBILITY LAWS**

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

20 37. Based on the facts plead at ¶¶ 6-29 above and elsewhere in
21 this complaint, Plaintiff's member was denied full and equal
22 access to Defendants' goods, services, facilities, privileges,
23 advantages, or accommodations within a public accommodation owned,
24 leased, and/or operated by Defendants as required by Civil Code
25 Sections 54 and 54.1. Defendants' facility violated California's
26 Title 24 Accessible Building Code by failing to provide access to
27 Defendants' facilities due to violations pertaining to the Space
28 Allowance and Reach Ranges, Accessible Route, Protruding Objects,

1 Ground and Floor Surfaces, Parking and Passenger Loading Zones,
2 Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair
3 Lifts), Windows, Doors, Entrances, Drinking Fountains and Water
4 Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and
5 Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and
6 Operating Mechanisms, Alarms, Detectable Warnings, Signage, and
7 Telephones.

8 38. These violations denied Plaintiff's member full and equal
9 access to Defendants' facility. Thus, said Member was subjected
10 to discrimination pursuant to Civil Code §§ 51, 52, and 54.1
11 because Plaintiff's Member was denied full, equal and safe access
12 to Defendants' facility, causing severe emotional distress.

13 CLAIM II: Failure To Modify Practices, Policies And
14 Procedures

15 39. Based on the facts plead at ¶¶ 6-29 above and elsewhere
16 herein 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/or others similarly situated in
20 entering and utilizing Defendants' services as required by Civil
21 Code § 54.1. Thus, said Member was subjected to discrimination in
22 violation of Civil Code § 54.1.

23 CLAIM III: Violation Of The Unruh Act

24 40. Based on the facts plead at ¶¶ 6-29 above and elsewhere
25 herein this complaint and because Defendants violated the Civil
26 Code § 51 by failing to comply with 42 United States Code §
27 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and
28

1 continue to discriminate against Plaintiff's Member and persons
2 similarly situated in violation of Civil Code §§ 51, 52, and 54.1.
3 41. Based on the facts plead at ¶¶ 6-29 above, Claims I, II, and
4 III of Plaintiffs' Second Cause Of Action above, and the facts
5 elsewhere herein this complaint, Plaintiffs will suffer
6 irreparable harm unless Defendants are ordered to remove
7 architectural, non-architectural, and communication barriers at
8 Defendants' public accommodation. Plaintiffs allege that
9 Defendants' discriminatory conduct is capable of repetition, and
10 this discriminatory repetition adversely impacts Plaintiffs and a
11 substantial segment of the disability community. Plaintiffs
12 allege there is a state and national public interest in requiring
13 accessibility in places of public accommodation. Plaintiffs have
14 no adequate remedy at law to redress the discriminatory conduct of
15 Defendants. Plaintiff's Member desires to return to Defendants'
16 places of business in the immediate future. Accordingly, the
17 Plaintiffs allege that a structural or mandatory injunction is
18 necessary to enjoin compliance with state civil rights laws
19 enacted for the benefit of individuals with disabilities.

20 42. Wherefore, Plaintiffs pray for damages and relief as
21 hereinafter stated.
22

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

25 43. Defendants, each of them respectively, at times prior to and
26 including, the month of January, 2004, and continuing to the
27 present time, knew that persons with physical disabilities were
28 denied their rights of equal access to all portions of this public

1 facility. Despite such knowledge, Defendants, and each of them,
2 failed and refused to take steps to comply with the applicable
3 access statutes; and despite knowledge of the resulting problems
4 and denial of civil rights thereby suffered by Plaintiff's Member
5 THEODORE A. PINNOCK and other similarly situated persons with
6 disabilities. Defendants, and each of them, have failed and
7 refused to take action to grant full and equal access to persons
8 with physical disabilities in the respects complained of
9 hereinabove. Defendants, and each of them, have carried out a
10 course of conduct of refusing to respond to, or correct complaints
11 about, denial of disabled access and have refused to comply with
12 their legal obligations to make Defendants' MARY LOU GOODSON
13 d.b.a. LA ESTANCIA INN and WILLAIM G. GOODSON d.b.a. LA ESTANCIA
14 INN facilities accessible pursuant to the Americans With
15 Disability Act Access Guidelines (ADAAG) and Title 24 of the
16 California Code of Regulations (also known as the California
17 Building Code). Such actions and continuing course of conduct by
18 Defendants, and each of them, evidence despicable conduct in
19 conscious disregard of the rights and/or safety of Plaintiff's
20 Member and of other similarly situated persons, justifying an
21 award of treble damages pursuant to sections 52(a) and 54.3(a) of
22 the California Civil Code.

23
24 44. Defendants', and each of their, actions have also been
25 oppressive to persons with physical disabilities and of other
26 members of the public, and have evidenced actual or implied
27 malicious intent toward those members of the public, such as
28 Plaintiff's Member and other persons with physical disabilities

1 who have been denied the proper access to which they are entitled
2 by law. Further, Defendants', and each of their, refusals on a
3 day-to-day basis to correct these problems evidence despicable
4 conduct in conscious disregard for the rights of Plaintiff's
5 Member THEODORE A. PINNOCK and other members of the public with
6 physical disabilities.

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

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

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

21 47. Based on the facts plead at ¶¶ 6-29 above and elsewhere in
22 this complaint, Defendants owed Plaintiff Theodore A. Pinnock a
23 statutory duty to make their facility accessible and owed
24 Plaintiff Theodore A. Pinnock a duty to keep Plaintiff Theodore A.
25 Pinnock reasonably safe from known dangers and risks of harm.
26 This said duty arises by virtue of legal duties proscribed by
27 various federal and state statutes including, but not limited to,
28

1 ADA, ADAAG, Civil Code 51, 52, 54, 54.1 and Title 24 of the
2 California Administrative Code and applicable 1982 Uniform
3 Building Code standards as amended.

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

12 49. Therefore, Defendants engaged in discriminatory conduct in
13 that they failed to comply with known duties under the ADA, ADAAG,
14 Civil Code 51, 52, 54, 54.1, ADAAG, and Title 24, and knew or
15 should have known that their acts of nonfeasance would cause
16 Plaintiff Theodore A. Pinnock emotional, bodily and personal
17 injury. Plaintiff THEODORE A. PINNOCK alleges that there was
18 bodily injury in this matter because when Plaintiff THEODORE A.
19 PINNOCK attempted to enter, use, and exit Defendants'
20 establishment, Plaintiff THEODORE A. PINNOCK experienced pain in
21 his legs, back, arms, shoulders, and wrists. Plaintiffs further
22 allege that such conduct was done in reckless disregard of the
23 probability of said conduct causing Plaintiff Theodore A. Pinnock
24 to suffer bodily or personal injury, anger, embarrassment,
25 depression, anxiety, mortification, humiliation, distress, and
26 fear of physical injury. Plaintiff THEODORE A. PINNOCK, An
27 Individual, alleges that such conduct caused THEODORE A. PINNOCK,
28

1 An Individual, to suffer the injuries of mental and emotional
2 distress, including, but not limited to, anger, embarrassment,
3 depression, anxiety, mortification, humiliation, distress, and
4 fear of physical injury. Plaintiff THEODORE A. PINNOCK, An
5 Individual, additionally alleges that such conduct caused THEODORE
6 A. PINNOCK, An Individual, to
7 suffer damages as a result of these injuries.

8 50. Wherefore, Plaintiffs pray for damages and relief as
9 hereinafter stated.

10 DEMAND FOR JUDGMENT FOR RELIEF:

11 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3,
12 3281, and 3333;

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

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

21 D. For injunctive relief pursuant to 42 U.S.C. § 12188(a) and
22 Cal. Civil Code § 55. Plaintiffs request this Court enjoin
23 Defendants to remove all architectural barriers in, at, or on
24 their facilities related to the following: 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 Windows, Doors, Entrances, Drinking Fountains and Water Coolers,

1 Water Closets, Toilet Stalls, Urinals, Lavatories and Mirrors,
2 Sinks, Storage, Handrails, Grab Bars, and Controls and Operating
3 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.

4 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C.
5 § 12205, and Cal. Civil Code § 55;

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

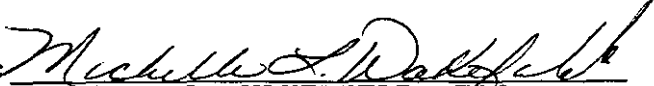
8 G. A Jury Trial and;

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

10 Respectfully submitted:

PINNOCK & WAKEFIELD

11
12 Dated: March 24, 2004

By: 
MICHELLE L. WAKEFIELD, ESQ.
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

MARY LOU GOODSON d.b.a. LA ESTANCIA INN; WILLAIM G. GOODSON d.b.a. LA ESTANCIA INN; MARY LOU GOODSON; WILLAIM G. GOODSON; And DOES 1 THROUGH 10, Inclusive

FILED ON APR 5 11:08 AM 2004 CLERK, U.S. DISTRICT COURT 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

(IN U.S. PLAINTIFF CASES ONLY)

San Diego

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Michelle L. Wakefield, Esq. SBN: 200424 David C. Wakefield, Esq. SBN: 185736 Pinnock & Wakefield; 3033 Fifth Avenue, Suite 410 San Diego, CA 92103 Telephone: (619) 858-3671; Facsimile: (619) 858-3646

ATTORNEYS (IF KNOWN)

'04 CV 0687 BTM (NLS)

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 Diversity Cases Only)

FOR PLAINTIFF AND ONE BOX FOR DEFENDANT

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
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

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 5 columns: CONTRACT, TORTS, FORFEITURE/PENALTY, LABOR, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories and checkboxes.

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 April 2, 2004

SIGNATURE OF ATTORNEY OF RECORD

#102466 150-MS

Michelle L. Wakefield