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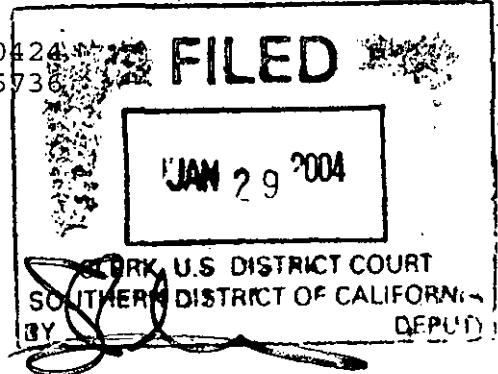
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3:04-CV-00191 PINNOCK V. LIN
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7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA

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

12 Plaintiffs,

13
14 v.

15 ANDY T A LIN d.b.a. RAMADA
LIMITED a.k.a. RAMADA INN
16 LIMITED a.k.a. RAMADA LIMITED
- SAN MARCOS; ESTHER K. LIN
17 d.b.a. RAMADA LIMITED a.k.a.
18 RAMADA INN LIMITED a.k.a.
RAMADA LIMITED - SAN MARCOS;
19 ANDY T A LIN; ESTHER K. LIN;

20 And

21 DOES 1 THROUGH 10, Inclusive

22 Defendants.
23
24
25

Case No' 04 CV 0191

J (LSP)

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]

26 INTRODUCTION

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

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

19
20 **JURISDICTION AND VENUE**

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

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SUPPLEMENTAL JURISDICTION

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

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NAMED DEFENDANTS AND NAMED PLAINTIFFS

3. Defendants are, and, at all times mentioned herein, were, a business or corporation or franchise organized and existing and/or doing business under the laws of the State of California. Defendants ANDY T A LIN d.b.a. RAMADA LIMITED a.k.a. RAMADA INN LIMITED a.k.a. RAMADA LIMITED - SAN MARCOS and ESTHER K. LIN d.b.a. RAMADA LIMITED a.k.a. RAMADA INN LIMITED a.k.a. RAMADA

1 LIMITED - SAN MARCOS are located at 517 San Marcos Boulevard, San
2 Marcos, California 92069. Plaintiffs are informed and believe and
3 thereon allege that Defendants ANDY T A LIN and ESTHER K. LIN are
4 the owners, operators, and/or doing business as RAMADA LIMITED
5 a.k.a. RAMADA INN LIMITED a.k.a. RAMADA LIMITED - SAN MARCOS.

6 Defendants ANDY T A LIN and ESTHER K. LIN are located at 517 San
7 Marcos Boulevard, San Marcos, California 92069. Plaintiffs are
8 informed and believe and thereon allege that Defendants ANDY T A
9 LIN and ESTHER K. LIN, are the owners, operators, and/or lessors
10 of the property located at 517 San Marcos Boulevard, San Marcos,
11 California 92069, Assessor Parcel number 220-170-33. Defendants
12 ANDY T A LIN and ESTHER K. LIN are located at 517 San Marcos
13 Boulevard, San Marcos, California 92069. The words "Plaintiffs"
14 and "Plaintiff's Member" as used herein specifically include the
15 organization MANTIC ASHANTI'S CAUSE, its Members, its member
16 Theodore A. Pinnock and persons associated with its Members who
17 accompanied Members to Defendants' facilities, as well as THEODORE
18 A. PINNOCK, An Individual.

19 4. Defendants Does 1 through 10, were at all times relevant
20 herein subsidiaries, employers, employees, agents, of ANDY T A LIN
21 d.b.a. RAMADA LIMITED a.k.a. RAMADA INN LIMITED a.k.a. RAMADA
22 LIMITED - SAN MARCOS; ESTHER K. LIN d.b.a. RAMADA LIMITED a.k.a.
23 RAMADA INN LIMITED a.k.a. RAMADA LIMITED - SAN MARCOS; ANDY T A
24 LIN; and ESTHER K. LIN. Plaintiffs are ignorant of the true names
25 and capacities of Defendants sued herein as Does 1 through 10,
26 inclusive, and therefore sues these Defendants by such fictitious
27 names. Plaintiffs will pray leave of the court to amend this
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1 complaint to allege the true names and capacities of the Does when
2 ascertained.

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

9 Plaintiffs are further informed and believe, and thereon allege,
10 that each of the Defendants herein gave consent to, ratified,
11 and/or authorized the acts alleged herein to each of the remaining
12 Defendants.

13 CONCISE SET OF FACTS

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

21 7. On November 25, 2003, Plaintiff's Member and Plaintiff
22 THEODORE A. PINNOCK went to Defendants' ANDY T A LIN d.b.a. RAMADA
23 LIMITED a.k.a. RAMADA INN LIMITED a.k.a. RAMADA LIMITED - SAN
24 MARCOS and ESTHER K. LIN d.b.a. RAMADA LIMITED a.k.a. RAMADA INN
25 LIMITED a.k.a. RAMADA LIMITED - SAN MARCOS facilities to utilize
26 their goods and/or services. When Plaintiff's Member and
27 Plaintiff THEODORE A. PINNOCK patronized Defendants' ANDY T A LIN
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1 d.b.a. RAMADA LIMITED a.k.a. RAMADA INN LIMITED a.k.a. RAMADA
2 LIMITED - SAN MARCOS and ESTHER K. LIN d.b.a. RAMADA LIMITED
3 a.k.a. RAMADA INN LIMITED a.k.a. RAMADA LIMITED - SAN MARCOS
4 facilities, he was unable to use and/or had difficulty using the
5 public accommodations' disabled parking, exterior path of travel,
6 counter, pool, guestroom, guestroom interior path of travel,
7 guestroom bathroom facilities at Defendants' business
8 establishments because they failed to comply with ADA Access
9 Guidelines For Buildings and Facilities (hereafter referred to as
10 "ADAAG") and/or California's Title 24 Building Code Requirements.
11 Defendants failed to remove access barriers within the public
12 accommodations' disabled parking, exterior path of travel,
13 counter, pool, guestroom, guestroom interior path of travel,
14 guestroom bathroom facilities of Defendants' ANDY T A LIN d.b.a.
15 RAMADA LIMITED a.k.a. RAMADA INN LIMITED a.k.a. RAMADA LIMITED -
16 SAN MARCOS and ESTHER K. LIN d.b.a. RAMADA LIMITED a.k.a. RAMADA
17 INN LIMITED a.k.a. RAMADA LIMITED - SAN MARCOS establishment.

18 8. Plaintiff's member personally experienced difficulty with
19 said access barriers at Defendants' ANDY T A LIN d.b.a. RAMADA
20 LIMITED a.k.a. RAMADA INN LIMITED a.k.a. RAMADA LIMITED - SAN
21 MARCOS and ESTHER K. LIN d.b.a. RAMADA LIMITED a.k.a. RAMADA INN
22 LIMITED a.k.a. RAMADA LIMITED - SAN MARCOS facility. For example,
23 the parking facility is comprised of eighty-one (81) parking
24 spaces, four (4) of which are designated as disabled parking
25 spaces. The parking facilities fail to have the required "Van
26 Accessible" disabled parking space. There should be a total of
27 four (4) disabled parking spaces, one (1) of which must be a "Van
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1 Accessible" disabled parking space. The existing disabled parking
2 spaces are not compliant, as the access aisles of each space are
3 impermissibly encroached upon by a ramp. The disabled parking is
4 not placed in the location closest to the hotel entrance.

5 9. The exterior path of travel is inaccessible. The path of
6 travel from the public sidewalk to the primary accessible entrance
7 fails to be accessible as it forces members of the disability
8 community to traverse through vehicular traffic without the
9 benefit of a marked path of travel. The side slope "or flared
10 sides" of the ramps from the parking lot are excessive, as they
11 are up to seventeen percent (17%), when they are required to be no
12 more than ten percent (10%). The ramp from the lobby to the
13 accessible rooms has a two-inch (2") section with a slope of up to
14 thirteen percent (13%), and it does not have the required
15 handrails. The slope of a ramp cannot exceed 8.33%. The path of
16 travel from the guestrooms to the pool also fails to be a marked
17 path of travel.

18 10. The front entrance door to the office does not have the
19 required kick plate. There should be a smooth uninterrupted
20 surface on the bottom ten inches (10") of all doors that allows
21 for a door to be opened with a wheelchair footrest without
22 creating a hazard. The front entrance door also fails to have
23 the required disability signage.

24 11. The pool is inaccessible. The front entrance door to the
25 pool does not have the required kick plate. There should be a
26 smooth uninterrupted surface on the bottom ten inches (10") of all
27 doors that allows for a door to be opened with a wheelchair
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1 footrest without creating a hazard. The pool also does not have
2 an assistance device to assist disabled patrons into and out of
3 the pool.

4 12. The front desk, at a height of forty-five inches (45") with
5 stacks of magazines, and the night window, at forty-one inches
6 (41"), are both inaccessible, as they exceed the height limit of
7 thirty-four inches (34").

8 13. The Defendants' establishment has a total of eighty-three
9 (83) rooms, with two (2) rooms designated as accessible rooms. If
10 a hotel has between seventy-six and one hundred (76 and 100)
11 guestrooms, the hotel shall provide at least four (4) fully
12 accessible rooms, and one (1) additional accessible room with a
13 roll-in shower. If a hotel has between seventy-six and one
14 hundred (76 and 100) guestrooms, the hotel shall provide four (4)
15 accessible guestrooms for members of the disability community who
16 are hearing impaired. The accessible guestrooms must be dispersed
17 among the various classes of sleeping accommodations, providing a
18 range of options applicable to room sizes, costs, amenities
19 provided, and the number of beds provided. Defendants' hotel fails
20 to have the required accessible guestrooms.

21 14. After requesting an accessible room with a roll-in shower
22 Plaintiff's member and Plaintiff Theodore A. Pinnock was informed
23 that the Defendants' establishment did not have an accessible room
24 with a roll-in shower. Plaintiff's member and Plaintiff Theodore
25 A. Pinnock was then given guestroom 136, a designated accessible
26 guestroom. The interior path of travel of guestroom 136 is
27 inaccessible, as the width is less than thirty-two inches (32") in
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1 some areas. A desk blocks the accessible path of travel to the
2 closet. The closet shelf bar and the closet shelf are too high to
3 be accessible. The iron is mounted too high. The switch on the
4 lamp requires grasping or twisting by the wrist and is therefore
5 inaccessible.

6 15. In addition to the violations not personally experienced by
7 Plaintiff's member and Plaintiff Theodore A. Pinnock, additional
8 violations of federal and state disability laws exist at
9 Defendants' ANDY T A LIN d.b.a. RAMADA LIMITED a.k.a. RAMADA INN
10 LIMITED a.k.a. RAMADA LIMITED - SAN MARCOS and ESTHER K. LIN
11 d.b.a. RAMADA LIMITED a.k.a. RAMADA INN LIMITED a.k.a. RAMADA
12 LIMITED - SAN MARCOS establishment. For example, the clear
13 opening width of the guest laundry doorway (one of the double
14 doors) is only twenty-two inches (22"), when it should be at least
15 thirty-two inches (32").

16 16. Also, Guestroom 115, a designated "accessible" room, located
17 in the Defendants' hotel is inaccessible. The entrance door to
18 guestroom 115 does not have the required kick plate. There should
19 be a smooth uninterrupted surface on the bottom ten inches (10")
20 of all doors that allows for a door to be opened with a wheelchair
21 footrest without creating a hazard. The round locking mechanism
22 on the room entrance door is not compliant, as it requires
23 grasping or twisting by the wrist to operate. The small round
24 lamp-switches and the control switches on the climate control unit
25 are non compliant as they too require grasping or twisting of the
26 wrist to operate. The clear floor space in front of the closet is
27 only 17" x23". The height of the iron bracket is mounted at
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1 seventy inches (70") from the floor surface, which exceeds the
2 maximum requirement of forty-eight inches (48"). The distance
3 from one side of the bed to the wall is only is an impermissible
4 twenty-six inches (26"). The path of travel from the front
5 entrance door of the guestroom to the climate controls, microwave,
6 and refrigerator is a mere twenty-five inches (25"), when it
7 should be at least thirty-six inches (36"). The opening mechanism
8 on the window fails to be accessible, as the mechanism requires
9 tight grasping and/or twisting of the wrist to operate. The
10 guestroom fails to have the required audible and visual alarm
11 system.

12 17. The bathroom inside guestroom 115 is inaccessible. The
13 commode is inaccessible, as the length of the rear grab bar is
14 only nineteen inches (19") and the length of the side grab bar is
15 only twenty-four inches (24"). The distance from the side edge of
16 the commode to the far wall is only eleven inches (11") when it
17 should be at least thirty-two inches (32"). The distance from the
18 side edge of the commode to the near wall is only sixteen inches
19 (16") when it should be at least eighteen inches (18"). The
20 height of the commode is only fifteen inches (15"), when it should
21 be between seventeen inches to nineteen inches (17"-19") high.
22 The bathtub does not have the required seat. The bathtub is
23 completely inaccessible, as there fails to be any of the required
24 grab bars. The round mixing valve in the bathtub fails to be
25 compliant, as it requires grasping or twisting of the wrist to
26 operate. The height of the storage for the towels is too high to
27 be accessible, as the towels are stored fifty-eight inches (58")
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1 high. They should be no more than forty inches (40"). The
2 lavatory sink is too low, as the lavatory is only twenty-four
3 inches (24") from the bottom of the apron, when there should be a
4 twenty-nine inch (29") clearance from the bottom of the apron to
5 the floor. Knee clearance under the lavatory should be a minimum
6 of twenty-seven inches (27") high, thirty inches (30") wide, and
7 extend a minimum of eight inches (8") in depth from the front of
8 the lavatory. The lavatory faucet handles fail to be accessible,
9 as they require grasping or twisting of the wrist to operate. The
10 hot water and drainpipes under the lavatory fail to have the
11 required insulation. There is no audible/visual alarm system
12 within the guestroom bathroom.

13 18. Pursuant to federal and state law, Defendants are required to
14 remove barriers to their existing facilities. Further, Defendants
15 had actual knowledge of their barrier removal duties under the
16 Americans with Disabilities Act and the Civil Code before January
17 26, 1992. Also, Defendants should have known that individuals
18 with disabilities are not required to give notice to a
19 governmental agency before filing suit alleging Defendants failed
20 to remove architectural barriers.

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

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

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

19 21. ANDY T A LIN d.b.a. RAMADA LIMITED a.k.a. RAMADA INN LIMITED
20 a.k.a. RAMADA LIMITED - SAN MARCOS; ESTHER K. LIN d.b.a. RAMADA
21 LIMITED a.k.a. RAMADA INN LIMITED a.k.a. RAMADA LIMITED - SAN
22 MARCOS; ANDY T A LIN; ESTHER K. LIN; and Does 1 through 10 will be
23 referred to collectively hereinafter as "Defendants."

24 22. Plaintiffs aver that the Defendants are liable for the
25 following claims as alleged below:
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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 AGAINST ALL DEFENDANTS: Denial Of Full And Equal
5 Access

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

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

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

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

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

26 27. Pursuant to 42 U.S.C. §12183(a), this failure to make the
27 alterations in a manner that, to the maximum extent feasible, are
28 readily accessible to and usable by individuals with disabilities

1 constitutes discrimination for purposes of 42 U.S.C. §12183(a).
2 Therefore, Defendants discriminated against Plaintiff's Member
3 Theodore A. Pinnock in violation of 42 U.S.C. § 12182(a).

4 28. Thus, Plaintiff's Member Theodore A. Pinnock was subjected to
5 discrimination in violation of 42 U.S.C. § 12183(a), 42 U.S.C.
6 §12182(a) and 42 U.S.C. §12188 because said Member Theodore A.
7 Pinnock was denied equal access to Defendants' existing
8 facilities.

9
10 CLAIM III AGAINST ALL DEFENDANTS: Failure To Remove
11 Architectural Barriers

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

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

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

13 30. Based on the facts plead at ¶¶ 6-20 above and elsewhere in
14 this complaint, Defendants failed and refused to provide a
15 reasonable alternative by modifying its practices, policies and
16 procedures in that they failed to have a scheme, plan, or design
17 to assist Plaintiff's Member and/or others similarly situated in
18 entering and utilizing Defendants' services, as required by 42
19 U.S.C. § 12188(a). Thus, said Member was subjected to
20 discrimination in violation of 42 United States Code
21 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was
22 denied equal access to Defendants' existing facilities.

23 31. Based on the facts plead at ¶¶ 6-20 above, Claims I, II, and
24 III of Plaintiffs' First Cause Of Action above, and the facts
25 elsewhere herein this complaint, Plaintiffs will suffer
26 irreparable harm unless Defendants are ordered to remove
27 architectural, non-architectural, and communication barriers at
28 Defendants' public accommodation. Plaintiffs allege that

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

12 32. WHEREFORE, Plaintiffs pray for judgment and relief as
13 hereinafter set forth.
14

15 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER**
16 **CALIFORNIA ACCESSIBILITY LAWS**

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

18 33. Based on the facts plead at ¶¶ 6-20 above and elsewhere in
19 this complaint, Plaintiff's Member was denied full and equal
20 access to Defendants' goods, services, facilities, privileges,
21 advantages, or accommodations within a public accommodation owned,
22 leased, and/or operated by Defendants as required by Civil Code
23 Sections 54 and 54.1. Defendants' facility violated California's
24 Title 24 Accessible Building Code by failing to provide access to
25 Defendants' facilities due to violations pertaining to the Space
26 Allowance and Reach Ranges, Accessible Route, Protruding Objects,
27 Ground and Floor Surfaces, Parking and Passenger Loading Zones,
28 Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair

1 Lifts), Windows, Doors, Entrances, Drinking Fountains and Water
2 Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and
3 Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and
4 Operating Mechanisms, Alarms, Detectable Warnings, Signage, and
5 Telephones.

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

11 CLAIM II: Failure To Modify Practices, Policies And
12 Procedures

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

21 CLAIM III: Violation Of The Unruh Act

22 36. Based on the facts plead at ¶¶ 6-20 above and elsewhere
23 herein this complaint and because Defendants violated the Civil
24 Code § 51 by failing to comply with 42 United States Code §
25 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and
26 continue to discriminate against Plaintiff's Member and persons
27 similarly situated in violation of Civil Code §§ 51, 52, and 54.1.
28

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

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

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

23 39. Defendants, each of them respectively, at times prior to and
24 including, the month of November, 2003, and continuing to the
25 present time, knew that persons with physical disabilities were
26 denied their rights of equal access to all portions of this public
27 facility. Despite such knowledge, Defendants, and each of them,
28 failed and refused to take steps to comply with the applicable

1 access statutes; and despite knowledge of the resulting problems
2 and denial of civil rights thereby suffered by Plaintiff's Member
3 THEODORE A. PINNOCK and other similarly situated persons with
4 disabilities. Defendants, and each of them, have failed and
5 refused to take action to grant full and equal access to persons
6 with physical disabilities in the respects complained of
7 hereinabove. Defendants, and each of them, have carried out a
8 course of conduct of refusing to respond to, or correct complaints
9 about, denial of disabled access and have refused to comply with
10 their legal obligations to make Defendants' ANDY T A LIN d.b.a.
11 RAMADA LIMITED a.k.a. RAMADA INN LIMITED a.k.a. RAMADA LIMITED -
12 SAN MARCOS; ESTHER K. LIN d.b.a. RAMADA LIMITED a.k.a. RAMADA INN
13 LIMITED a.k.a. RAMADA LIMITED - SAN MARCOS facility accessible
14 pursuant to the Americans With Disability Act Access Guidelines
15 (ADAAG) and Title 24 of the California Code of Regulations (also
16 known as the California Building Code). Such actions and
17 continuing course of conduct by Defendants, and each of them,
18 evidence despicable conduct in conscious disregard of the rights
19 and/or safety of Plaintiff's Member and of other similarly
20 situated persons, justifying an award of treble damages pursuant
21 to sections 52(a) and 54.3(a) of the California Civil Code.
22 40. Defendants', and each of their, actions have also been
23 oppressive to persons with physical disabilities and of other
24 members of the public, and have evidenced actual or implied
25 malicious intent toward those members of the public, such as
26 Plaintiff's Member and other persons with physical disabilities
27 who have been denied the proper access to which they are entitled
28

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

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

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

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

22 43. Based on the facts plead at ¶¶ 6-20 above and elsewhere in
23 this complaint, Defendants owed Plaintiff Theodore A. Pinnock a
24 statutory duty to make their facility accessible and owed
25 Plaintiff Theodore A. Pinnock a duty to keep Plaintiff Theodore A.
26 Pinnock reasonably safe from known dangers and risks of harm.
27 This said duty arises by virtue of legal duties proscribed by
28 various federal and state statutes including, but not limited to,

1 ADA, ADAAG, Civil Code 51, 52, 54, 54.1, 54.3, and Title 24 of the
2 California Administrative Code and applicable 1982 Uniform
3 Building Code standards as amended.

4 44. 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 45. 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, 54.3, ADAAG, and Title 24, and knew
15 or 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 suffer damages as a result of these
7 injuries.

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

10
11 DEMAND FOR JUDGMENT FOR RELIEF:

12 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3,
13 3281, and 3333;

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

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

22 D. For injunctive relief pursuant to 42 U.S.C. § 12188(a) and
23 Cal. Civil Code § 55. Plaintiffs request this Court enjoin
24 Defendants to remove all architectural barriers in, at, or on
25 their facilities related to the following: Space Allowance and
26 Reach Ranges, Accessible Route, Protruding Objects, Ground and
27
28

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

7
8 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C.
9 § 12205, and Cal. Civil Code § 55;

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

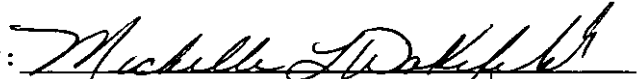
12 G. A Jury Trial and;

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

14
15 Respectfully submitted:

16
17
18 PINNOCK & WAKEFIELD

19 Dated: January 27, 2004

20 By: 
21 MICHELLE L. WAKEFIELD, ESQ.
22 Attorneys for Plaintiffs
23
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27
28

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

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

DEFENDANTS

ANDY T A LIN d.b.a. RAMADA LIMITED a.k.a. RAMADA INN LIMITED a.k.a. RAMADA LIMITED - SAN MARCOS; ESTHER K. LIN d.b.a. RAMADA LIMITED a.k.a. RAMADA INN LIMITED a.k.a. RAMADA LIMITED - SAN MARCOS; ANDY T A LIN; ESTHER K. LIN; And DOES 1 THROUGH 10, Inclusive

FILED stamp with date JAN 29 2004 and court name CLERK, U.S. DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION 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 0191 J (LSP)

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 Incorporated or Principal Place of Business in This State Incorporated and Principal Place of Business in Another State 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 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like 110 Insurance, 310 Airplane, 362 Personal Injury, 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 January 27, 2004

SIGNATURE OF ATTORNEY OF RECORD

Signature of Michelle L. Wakefield

100684 - Pet \$1500