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3:04-CV-02137 PINNOCK V. COURTYRAD
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1 **PINNOCK & WAKEFIELD**

2 A Professional Corporation
3 David C. Wakefield, Esq.
4 Michelle L. Wakefield, Esq.
5 3033 Fifth Avenue, Suite 410
6 San Diego, CA 92103-5973
7 Telephone: (619) 858-3671
8 Facsimile: (619) 858-3646

9 Attorneys for Plaintiffs

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U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY: *SB*

DEPUTY

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

12 '04 CV 2137

JAH (WMC)

Case No.:

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

Plaintiffs,

v.

18 **COURTYRAD BY MARRIOTT –**
19 **CARLSBAD; CARLSBAD HHG/APM**
20 **HOTEL VENTURE, LP d.b.a.**
21 **COURTYARD BY MARRIOTT;**
22 **CARLSBAD HHG/APM HOTEL**
23 **VENTURE, LP;**
24 **HUNTINGTON/ANDRUS S.D. HOTEL**
25 **DEVELOPMENT, INC., A General**
26 **Partner; And DOES 1 THROUGH 10,**
27 **Inclusive**

Defendants.

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]

28 **INTRODUCTION**

Plaintiffs MANTIC ASHANTI'S CAUSE SUING ON BEHALF OF THEODORE A.
PINNOCK AND ITS MEMBERS and THEODORE A. PINNOCK, An Individual, herein
complain, by filing this Civil Complaint in accordance with rule 8 of the Federal Rules of Civil
Procedure in the Judicial District of the United States District Court of the Southern District of
California, that Defendants have in the past, and presently are, engaging in discriminatory practices
against individuals with disabilities, specifically including minorities with disabilities. Plaintiffs

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

9
10 **JURISDICTION AND VENUE**

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

16 **SUPPLEMENTAL JURISDICTION**

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

1 judicial proceeding.

2 **NAMED DEFENDANTS AND NAMED PLAINTIFFS**

3 3. Defendants are, and, at all times mentioned herein, were, a business or corporation or
4 franchise organized and existing and/or doing business under the laws of the State of California.
5 Defendant COURTYRAD BY MARRIOTT – CARLSBAD is located at 5835 Owens Avenue,
6 Carlsbad, California 92008. Plaintiffs are informed and believe and thereon allege that Defendant
7 CARLSBAD HHG/APM HOTEL VENTURE, LP is the owner, operator, and/or doing business as
8 COURTYRAD BY MARRIOTT. Defendant CARLSBAD HHG/APM HOTEL VENTURE, LP is
9 located at 4441 West Airport Freeway, Irving, Texas 75062. Plaintiffs are informed and believe
10 and thereon allege that Defendant CARLSBAD HHG/APM HOTEL VENTURE, LP is also the
11 owner, operator, and/or lessor of the property located at 5835 Owens Avenue, Carlsbad, California
12 92008, Assessor Parcel number 212-093-18. Plaintiffs are informed and believe and thereon allege
13 that Defendant HUNTINGTON/ANDRUS S.D. HOTEL DEVELOPMENT, INC. is a general
14 partner of the CARLSBAD HHG/APM HOTEL VENTURE, LP. Defendant
15 HUNTINGTON/ANDRUS S.D. HOTEL DEVELOPMENT, INC. is located at 4545 Fuller Drive,
16 Suite 370, Irving, Texas 75038. The words "Plaintiffs" and "Plaintiff's Member" as used herein
17 specifically include the organization MANTIC ASHANTI'S CAUSE, its Members, its member
18 Theodore A. Pinnock and persons associated with its Members who accompanied Members to
19 Defendants' facilities, as well as THEODORE A. PINNOCK, An Individual.

20 4. Defendants Does 1 through 10, were at all times relevant herein subsidiaries, employers,
21 employees, agents, of COURTYRAD BY MARRIOTT – CARLSBAD; CARLSBAD HHG/APM
22 HOTEL VENTURE, LP d.b.a. COURTYARD BY MARRIOTT; CARLSBAD HHG/APM
23 HOTEL VENTURE, LP; and HUNTINGTON/ANDRUS S.D. HOTEL DEVELOPMENT, INC., A
24 General Partner. Plaintiffs are ignorant of the true names and capacities of Defendants sued herein
25 as Does 1 through 10, inclusive, and therefore sues these Defendants by such fictitious names.
26 Plaintiffs will pray leave of the court to amend this complaint to allege the true names and
27 capacities of the Does when ascertained.
28

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

8 **CONCISE SET OF FACTS**

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

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

1 8. Plaintiff's member personally experienced difficulty with said access barriers at
2 Defendants' COURTYRAD BY MARRIOTT – CARLSBAD facility. For example, the parking
3 facility has one hundred and eighty seven (187) parking spaces, eight (8) of which are non-
4 compliant disabled parking spaces. Two (2) of the eight (8) existing disabled parking spaces are
5 non-compliant "van accessible" disabled parking spaces that are only sixteen feet (16') long, have
6 an impermissible encroachment into the access aisle and one (1) space fails to have the required
7 signage. Two (2) of the remaining six (6) disabled parking spaces are non-complaint "regular"
8 disabled parking spaces that are only sixteen feet (16') long and have an impermissible
9 encroachment of a ramp into the access aisle. The two (2) of the remaining four (4) disabled
10 parking spaces are non-complaint "van accessible" disabled parking spaces that are only sixteen
11 feet to seventeen feet (16'- 17') long with a slope of up to three percent (3%) and one space also
12 fails to have the required disability signage. The remaining two (2) disabled parking spaces are
13 non-complaint "regular" disabled parking spaces that are only sixteen feet to seventeen feet (16'-
14 17') long with a slope of up to three percent (3%). It is required that all disabled parking spaces are
15 at least eighteen feet (18') long. All "regular" disabled parking spaces are required to have a five-
16 foot (5') wide access aisle on the right hand side of the disabled parking space without the
17 encroachment of a ramp in to the access aisle. All disabled parking spaces are required to have a
18 slope no greater than two percent (2%). All disabled parking spaces are required to have the proper
19 disability signage.
20

21 9. The exterior path of travel is inaccessible. The ramp leading from the disabled parking
22 spaces located by the lobby has an impermissible one-inch (1") change in level. Changes in level
23 greater than one half of an inch (1/2") are required to be ramped.

24 10. The front entrance to the Defendants' establishment is inaccessible, as it fails to have the
25 required disability signage.

26 11. The lobby men's restroom is inaccessible. The restroom door fails to have the required
27 smooth and uninterrupted surface on the bottom ten inches (10") of all doors that allow the door to
28 be opened by a wheelchair footrest without creating a hazard. The pressure that is required to open

1 the restroom door is an impermissible eighteen pounds (18 lbs.), when it is required to be no more
2 than five pounds (5 lbs.). The stall door opens inward, when it is required to open outward. The
3 stall door fails to have the required self-closing mechanism. The height of the soap dispenser is
4 forty-eight inches (48"), when it is required to be no higher than forty inches (40"). The men's
5 restroom door fails to have the proper disability signage.

6 12. The pool is inaccessible. The pool area entrance door fails to have the required smooth and
7 uninterrupted surface on the bottom ten inches (10") of all doors that allow the door to be opened
8 by a wheelchair footrest without creating a hazard. The pool fails to have the required device to
9 assist disabled patrons in and out of the water.

10 13. The Defendants' establishment has a total of one hundred and thirty nine (139) guestrooms,
11 including four (4) non-complaint "accessible" guestrooms, two (2) of which have a roll-in shower.
12 If a hotel has between one hundred and one and one hundred and fifty (101 and 150) guestrooms,
13 the hotel shall provide at least five (5) fully accessible rooms, plus two (2) additional fully
14 accessible guestrooms with a roll-in shower. If a hotel has between one hundred and one and one
15 hundred and fifty (101 and 150) guestrooms, the hotel shall provide five (5) accessible guestrooms
16 for members of the disability community who are hearing impaired. The accessible guestrooms
17 must be dispersed among the various classes of sleeping accommodations, providing a range of
18 options applicable to room sizes, costs, amenities provided, and the number of beds provided.
19 Defendants' hotel fails to have the required accessible guestrooms.

20 14. Plaintiff's member and Plaintiff Theodore A. Pinnock was given Guestroom 104, a
21 designated "accessible" guestroom. However, Guestroom 104 is inaccessible. The entrance door
22 to Guestroom 104 fails to have the required smooth and uninterrupted surface on the bottom ten
23 inches (10") of all doors that allow the door to be opened by a wheelchair footrest without creating
24 a hazard. The locking mechanism on the entrance door is inaccessible, as it requires tight grasping
25 and/or twisting of the wrist to operate. The small round lamp switches are inaccessible, as they
26 require tight grasping and/or twisting of the wrist to operate. The control switch on the air-
27 conditioning unit is inaccessible, as it requires tight grasping and/or twisting of the wrist to operate.
28

1 The shelf is in accessible as it is sixty-nine inches (69") high, when it is required to be no higher
2 than forty-eight inches (48") high. The clothes hanger is sixty-three inches (63") high, when it is
3 required to be no higher than forty-eight inches (48") high. The storage for the iron is an
4 impermissible sixty-eight inches (68") high. The area beneath the sink is enclosed and fails to
5 provide the required knee clearance. The height of the counter top in the kitchen is approximately
6 thirty-six inches (36"), when it is required to be no more than thirty-four inches (34").

7 15. The bathroom inside Guestroom 104 is inaccessible. The bathroom fails to have the
8 required clear floor space of at least sixty inches (60") in diameter. The commode fails to have any
9 of the required grab bars. The flush mechanism on the commode tank is on the narrow side of the
10 tank, when it is required to be on the wide side of the tank. The shower fails to have any of the
11 required grab bars. The handheld shower sprayer unit is mounted at approximately sixty-five
12 inches (65") high, when it is required to be between forty-seven inches and forty-nine inches (47"-
13 49") from the floor surface. The hot water and drainpipes under the lavatory fail to have the
14 required covering. The soap dish is mounted at approximately forty-five inches (45") high, when it
15 is required to be no higher than forty inches (40") high. The height of the towels is fifty-five inches
16 (55"), when they are required to be no higher than forty-eight inches (48"). The bathroom fails to
17 have the required audible and visual alarm system.

18 16. In addition to the violations personally experienced by Plaintiff's member and Plaintiff
19 Theodore A. Pinnock, additional violations of federal and state disability laws exist at Defendants'
20 COURTYRAD BY MARRIOTT – CARLSBAD establishment. For example, the women's
21 restroom located in the lobby area is inaccessible. The restroom door fails to have the required
22 smooth and uninterrupted surface on the bottom ten inches (10") of all doors that allow the door to
23 be opened by a wheelchair footrest without creating a hazard. The pressure that is required to open
24 the restroom door is an impermissible eighteen pounds (18 lbs.), when it is required to be no more
25 than five pounds (5 lbs.).

26 17. The exercise room located in the Defendants establishment is inaccessible. The pressure
27 that is required to open the exercise room door is an impermissible thirteen pounds (13 lbs.), when
28

1 it is required to be no more than five pounds (5 lbs.). The exercise room door fails to have the
2 required smooth and uninterrupted surface on the bottom ten inches (10") of all doors that allow the
3 door to be opened by a wheelchair footrest without creating a hazard. The interior path of travel in
4 the exercise room is as narrow as thirty inches (30"), when it is required to be at least thirty-six
5 inches (36") wide.

6 18. The public seating in the restaurant, which is located in the lobby of the Defendants'
7 establishment, fails to be accessible. There are approximately eighty (80) seats, all of which have a
8 knee clearance depth of a mere three inches (3"). It is required that five percent (5%) of all seats
9 must have a knee clearance depth of at least nineteen inches (19").

10 19. The pay telephone at the Defendants establishment is inaccessible, as it fails to have the
11 required volume control unit and signage.

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

17 21. Plaintiffs believe and herein allege Defendants' facilities have access violations not
18 directly experienced by Plaintiff's Member which preclude or limit access by others with
19 disabilities, including, but not limited to, Space Allowance and Reach Ranges, Accessible Route,
20 Protruding Objects, Ground and Floor Surfaces, Parking and Passenger Loading Zones, Curb
21 Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows, Doors, Entrances,
22 Drinking Fountains and Water Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and
23 Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and Operating Mechanisms, Alarms,
24 Detectable Warnings, Signage, and Telephones. Accordingly, Plaintiffs allege Defendants are
25 required to remove all architectural barriers, known or unknown. Also, Plaintiffs allege Defendants
26 are required to utilize the ADA checklist for Readily Achievable Barrier Removal approved by the
27 United States Department of Justice and created by Adaptive Environments.
28

1 22. Based on these facts, Plaintiffs allege Plaintiff's Member and Plaintiff Theodore A. Pinnock
2 was discriminated against each time he patronized Defendants' establishment. Plaintiff's Member
3 and Plaintiff Theodore A. Pinnock was extremely upset due to Defendants' conduct. Further,
4 Plaintiff's Member and Plaintiff THEODORE A. PINNOCK experienced pain in his legs, back,
5 arms, shoulders and wrists when he attempted to enter, use, and exit Defendants' establishment.

6 **WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED**
7 **DEFENDANT**

8 23. COURTYRAD BY MARRIOTT – CARLSBAD; CARLSBAD HHG/APM HOTEL
9 VENTURE, LP d.b.a. COURTYARD BY MARRIOTT; CARLSBAD HHG/APM HOTEL
10 VENTURE, LP; and HUNTINGTON/ANDRUS S.D. HOTEL DEVELOPMENT, INC., A General
11 Partner; and Does 1 through 10 will be referred to collectively hereinafter as "Defendants."

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

13 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

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

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

17 25. Based on the facts plead at ¶¶ 6-22 above and elsewhere in this complaint, Plaintiff's
18 Member was denied full and equal access to Defendants' goods, services, facilities, privileges,
19 advantages, or accommodations. Plaintiffs allege Defendants are a public accommodation owned,
20 leased and/or operated by Defendants. Defendants' existing facilities and/or services failed to
21 provide full and equal access to Defendants' facility as required by 42 U.S.C. § 12182(a). Thus,
22 Plaintiff's Member was subjected to discrimination in violation of 42 United States Code
23 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's Member was denied equal access to
24 Defendants' existing facilities.

25 26. Plaintiff's member Theodore A. Pinnock has physical impairments as alleged in ¶ 6 above
26 because his conditions affect one or more of the following body systems: neurological,
27 musculoskeletal, special sense organs, and/or cardiovascular. Further, Plaintiff's member Theodore
28

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

7 **CLAIM II AGAINST ALL DEFENDANTS: Failure To Provide Equal Access In New**
8 **Construction For Individuals With Disabilities**

9
10 27. Based on the facts plead at ¶¶ 6-22 above and elsewhere in this complaint, Plaintiff's
11 Member Theodore A. Pinnock was denied full and equal access to Defendants' goods, services,
12 facilities, privileges, advantages, or accommodations within a public accommodation owned,
13 leased, and/or operated by Defendants. Defendants constructed their facilities after January 26,
14 1992. In performing said construction, Defendants failed to construct the facilities to the new
15 construction standards to make the facilities readily accessible to and usable by individuals with
16 disabilities, including individuals who use wheelchairs, in violation of 42 U.S.C. §12183(a).

17 28. Pursuant to 42 U.S.C. §12183(a), this failure to construct the facilities after January 26,
18 1992 such that the facilities are readily accessible to and usable by individuals with disabilities
19 constitutes discrimination for purposes of 42 U.S.C. §12183(a). Therefore, Defendants
20 discriminated against Plaintiff's Member Theodore A. Pinnock in violation of 42 U.S.C. §
21 12182(a).

22 29. Thus, Plaintiff's Member Theodore A. Pinnock was subjected to discrimination in violation
23 of 42 U.S.C. § 12183(a), 42 U.S.C. §12182(a) and 42 U.S.C. §12188 because said Member
24 Theodore A. Pinnock was denied equal access to Defendants' newly constructed facilities.

25
26 **CLAIM III AGAINST ALL DEFENDANTS: Failure To Make Alterations In Such A**
27 **Manner That The Altered Portions Of The Facility Are Readily Accessible And Usable By**
28 **Individuals With Disabilities**

30. Based on the facts plead at ¶¶ 6-22 above and elsewhere in this complaint, Plaintiff's

1 Member Theodore A. Pinnock was denied full and equal access to Defendants' goods, services,
2 facilities, privileges, advantages, or accommodations within a public accommodation owned,
3 leased, and/or operated by Defendants. Defendants altered their facility in a manner that affects or
4 could affect the usability of the facility or a part of the facility after January 26, 1992. In performing
5 the alteration, Defendants failed to make the alteration in such a manner that, to the maximum
6 extent feasible, the altered portions of the facility are readily accessible to and usable by individuals
7 with disabilities, including individuals who use wheelchairs, in violation of 42 U.S.C.
8 §12183(a)(2).

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

15 32. Pursuant to 42 U.S.C. §12183(a), this failure to make the alterations in a manner that, to the
16 maximum extent feasible, are readily accessible to and usable by individuals with disabilities
17 constitutes discrimination for purposes of 42 U.S.C. §12183(a). Therefore, Defendants
18 discriminated against Plaintiff's Member Theodore A. Pinnock in violation of 42 U.S.C. §
19 12182(a).

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

23
24 **CLAIM IV AGAINST ALL DEFENDANTS: Failure To Remove Architectural Barriers**

25 34. Based on the facts plead at ¶¶ 6-22 above and elsewhere in this complaint, Plaintiff's
26 Member was denied full and equal access to Defendants' goods, services, facilities, privileges,
27 advantages, or accommodations within a public accommodation owned, leased, and/or operated by
28 Defendants. Defendants failed to remove barriers as required by 42 U.S.C. § 12182(a). Plaintiffs

1 are informed, believe, and thus allege that architectural barriers which are structural in nature exist
2 within the following physical elements of Defendants' facilities: Space Allowance and Reach
3 Ranges, Accessible Route, Protruding Objects, Ground and Floor Surfaces, Parking and Passenger
4 Loading Zones, Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts),
5 Windows, Doors, Entrances, Drinking Fountains and Water Coolers, Water Closets, Toilet Stalls,
6 Urinals, Lavatories and Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and Operating
7 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones. Title III requires places of
8 public accommodation to remove architectural barriers that are structural in nature to existing
9 facilities. [See, 42 United States Code 12182(b)(2)(A)(iv).] Failure to remove such barriers and
10 disparate treatment against a person who has a known association with a person with a disability
11 are forms of discrimination. [See 42 United States Code 12182(b)(2)(A)(iv).] Thus, Plaintiff's
12 Member was subjected to discrimination in violation of 42 United States Code 12182(b)(2)(A)(iv)
13 and 42 U.S.C. § 12188 because said Member was denied equal access to Defendants' existing
14 facilities.

15
16
17 **CLAIM V AGAINST ALL DEFENDANTS: Failure To Modify Practices, Policies And**
18 **Procedures**

19 35. Based on the facts plead at ¶¶ 6-22 above and elsewhere in this complaint, Defendants
20 failed and refused to provide a reasonable alternative by modifying its practices, policies and
21 procedures in that they failed to have a scheme, plan, or design to assist Plaintiff's Member and/or
22 others similarly situated in entering and utilizing Defendants' services, as required by 42 U.S.C. §
23 12188(a). Thus, said Member was subjected to discrimination in violation of 42 United States
24 Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was denied equal access to
25 Defendants' existing facilities.

26 36. Based on the facts plead at ¶¶ 6-22 above, Claims I, II, III and IV of Plaintiffs' First Cause
27 Of Action above, and the facts elsewhere herein this complaint, Plaintiffs will suffer irreparable
28 harm unless Defendants are ordered to remove architectural, non-architectural, and communication

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

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

10
11 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER**
12 **CALIFORNIA ACCESSIBILITY LAWS**

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

14 38. Based on the facts plead at ¶¶ 6-22 above and elsewhere in this complaint, Plaintiff's
15 Member was denied full and equal access to Defendants' goods, services, facilities, privileges,
16 advantages, or accommodations within a public accommodation owned, leased, and/or operated by
17 Defendants as required by Civil Code Sections 54 and 54.1. Defendants' facility violated
18 California's Title 24 Accessible Building Code by failing to provide access to Defendants' facilities
19 due to violations pertaining to the Space Allowance and Reach Ranges, Accessible Route,
20 Protruding Objects, Ground and Floor Surfaces, Parking and Passenger Loading Zones, Curb
21 Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows, Doors, Entrances,
22 Drinking Fountains and Water Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and
23 Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and Operating Mechanisms, Alarms,
24 Detectable Warnings, Signage, and Telephones.

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

1
2 CLAIM II: Failure To Modify Practices, Policies And Procedures

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

8 CLAIM III: Violation Of The Unruh Act

9 41. Based on the facts plead at ¶¶ 6-22 above and elsewhere herein this complaint and because
10 Defendants violated the Civil Code § 51 by failing to comply with 42 United States Code §
11 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and continue to discriminate
12 against Plaintiff's Member and persons similarly situated in violation of Civil Code §§ 51, 52, and
13 54.1.

14 42. Based on the facts plead at ¶¶ 6-22 above, Claims I, II, III and IV of Plaintiffs' Second
15 Cause Of Action above, and the facts elsewhere herein this complaint, Plaintiffs will suffer
16 irreparable harm unless Defendants are ordered to remove architectural, non-architectural, and
17 communication barriers at Defendants' public accommodation. Plaintiffs allege that Defendants'
18 discriminatory conduct is capable of repetition, and this discriminatory repetition adversely impacts
19 Plaintiffs and a substantial segment of the disability community. Plaintiffs allege there is a state
20 and national public interest in requiring accessibility in places of public accommodation. Plaintiffs
21 have no adequate remedy at law to redress the discriminatory conduct of Defendants. Plaintiff's
22 Member desires to return to Defendants' places of business in the immediate future. Accordingly,
23 the Plaintiffs allege that a structural or mandatory injunction is necessary to enjoin compliance with
24 state civil rights laws enacted for the benefit of individuals with disabilities.

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

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

27 44. Defendants, each of them respectively, at times prior to and including, the month of August,
28 2004, and continuing to the present time, knew that persons with physical disabilities were denied

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

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

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

1 purposes of section 52(a) of the California Civil Code and section 54.3 of the California Civil
2 Code.

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

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

6 48. Based on the facts plead at ¶¶ 6-22 above and elsewhere in this complaint, Defendants owed
7 Plaintiff Theodore A. Pinnock a statutory duty to make their facility accessible and owed Plaintiff
8 Theodore A. Pinnock a duty to keep Plaintiff Theodore A. Pinnock reasonably safe from known
9 dangers and risks of harm. This said duty arises by virtue of legal duties proscribed by various
10 federal and state statutes including, but not limited to, ADA, ADAAG, Civil Code 51, 52, 54, 54.1,
11 54.3, and Title 24 of the California Administrative Code and applicable 1982 Uniform Building
12 Code standards as amended.

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

18 50. Therefore, Defendants engaged in discriminatory conduct in that they failed to comply with
19 known duties under the ADA, ADAAG, Civil Code 51, 52, 54, 54.1, 54.3, ADAAG, and Title 24,
20 and knew or should have known that their acts of nonfeasance would cause Plaintiff THEODORE
21 A. PINNOCK emotional, bodily and personal injury. Plaintiff THEODORE A. PINNOCK alleges
22 that there was bodily injury in this matter because when Plaintiff THEODORE A. PINNOCK
23 attempted to enter, use, and exit Defendants' establishment, Plaintiff THEODORE A. PINNOCK
24 experienced pain in his legs, back, arms, shoulders, and wrists. Plaintiffs further allege that such
25 conduct was done in reckless disregard of the probability of said conduct causing Plaintiff
26 THEODORE A. PINNOCK to suffer bodily or personal injury, anger, embarrassment, depression,
27 anxiety, mortification, humiliation, distress, and fear of physical injury. Plaintiff THEODORE A.
28

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

6 51. Wherefore, Plaintiffs pray for damages and relief as hereinafter stated.
7

8 DEMAND FOR JUDGMENT FOR RELIEF:

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

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

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

18 D. For injunctive relief pursuant to 42 U.S.C. § 12188(a) and Cal. Civil Code § 55. Plaintiffs
19 request this Court enjoin Defendants to remove all architectural barriers in, at, or on their facilities
20 related to the following: Space Allowance and Reach Ranges, Accessible Route, Protruding
21 Objects, Ground and Floor Surfaces, Parking and Passenger Loading Zones, Curb Ramps, Ramps,
22 Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows, Doors, Entrances, Drinking
23 Fountains and Water Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks,
24 Storage, Handrails, Grab Bars, and Controls and Operating Mechanisms, Alarms, Detectable
25 Warnings, Signage, and Telephones.
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27 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C. § 12205, and Cal. Civil Code
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§ 55;

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

G. A Jury Trial and;

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

Respectfully submitted:

Dated: 10/25/2004

PINNOCK & WAKEFIELD, A.P.C.

By: David C. Wakefield
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 COURTYRAD BY MARRIOTT - CARLSBAD; CARLSBAD HHG/APM HOTEL VENTURE, LP d.b.a. COURTYARD BY MARRIOTT; CARLSBAD HHG/APM HOTEL VENTURE, LP; HUNTINGTON ANDRUS S. DAHRT DEVELOPMENT, INC., A General Partner; And DOES 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 LANDS/CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

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

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

ATTORNEYS (IF KNOWN)

04 CV 2137 JAH (WMC)

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

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

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

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

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, CIVIL RIGHTS, PERSONAL INJURY, PERSONAL PROPERTY, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various sub-categories like 110 Insurance, 310 Airplane, 610 Agriculture, 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 fr.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

October 25, 2004

SIGNATURE OF ATTORNEY OF RECORD

David C. Wakefield

#108110 \$150,000.00