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3:04-CV-00296 PINNOCK V. LIN
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CLERK OF 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.
11 PINNOCK AND ITS MEMBERS; and
12 THEODORE A. PINNOCK, An
Individual,

Case No.: '04 CV 0296 LAB JMA

13 Plaintiffs,

14 v.

15 TED LIN d.b.a. NATIONAL CITY
16 MOTEL; CATHERINE Y. LIN
17 d.b.a. NATIONAL CITY MOTEL;
18 TED LIN; CATHERIN Y. LIN;
19 SWAN C. YEN; and DOES 1
THROUGH 10, Inclusive

20 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]

21
22 INTRODUCTION

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

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

16
17 **JURISDICTION AND VENUE**

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

26 **SUPPLEMENTAL JURISDICTION**

27 2. The Judicial District of the United States District Court of
28 the Southern District of California has supplemental jurisdiction

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

18 **NAMED DEFENDANTS AND NAMED PLAINTIFFS**

19 3. Defendants are, and, at all times mentioned herein, were, a
20 business or corporation or franchise organized and existing and/or
21 doing business under the laws of the State of California. The
22 property that is the subject of this complaint is located at 510
23 National City Boulevard, National City, California 91950.
24 Plaintiffs are informed and believe and thereon allege that
25 Defendants TED LIN and CATHERINE Y. LIN, are the owners,
26 operators, and/or doing business as NATIONAL CITY MOTEL.
27 Defendants TED LIN and CATHERINE Y. LIN are located at 745 Hampton
28

1 Road, Arcadia, California 91006. Plaintiffs are informed and
2 believe and thereon allege that Defendants TED LIN, CATHERIN Y.
3 LIN, and SWAN C. YEN are the owners, operators, and/or lessors of
4 the property located at 510 National City Boulevard, National
5 City, California 91950, Assessor Parcel Number 555-042-15.
6 Defendants TED LIN and CATHERINE Y. LIN are located at 745 Hampton
7 Road, Arcadia, California 91006. Defendant SWAN C. YEN is located
8 at 7989 Hollow Mesa Court, San Diego, California 92126. The words
9 "Plaintiffs" and "Plaintiff's Member" as used herein specifically
10 include the organization MANTIC ASHANTI'S CAUSE, its Members, its
11 member Theodore A. Pinnock and persons associated with its Members
12 who accompanied Members to Defendants' facilities, as well as
13 THEODORE A. PINNOCK, An Individual.

14 4. Defendants Does 1 through 10, were at all times relevant
15 herein subsidiaries, employers, employees, agents, of TED LIN
16 d.b.a. NATIONAL CITY MOTEL; CATHERINE Y. LIN d.b.a. NATIONAL CITY
17 MOTEL; TED LIN; CATHERIN Y. LIN; SWAN C. YEN. Plaintiffs are
18 ignorant of the true names and capacities of Defendants sued
19 herein as Does 1 through 10, inclusive, and therefore sues these
20 Defendants by such fictitious names. Plaintiffs will pray leave
21 of the court to amend this complaint to allege the true names and
22 capacities of the Does when ascertained.

23 5. Plaintiffs are informed and believe, and thereon allege, that
24 Defendants and each of them herein were, at all times relevant to
25 the action, the owner, lessor, lessee, franchiser, franchisee,
26 general partner, limited partner, agent, employee, representing
27 partner, or joint venturer of the remaining Defendants and were
28

1 acting within the course and scope of that relationship.

2 Plaintiffs are further informed and believe, and thereon allege,
3 that each of the Defendants herein gave consent to, ratified,
4 and/or authorized the acts alleged herein to each of the remaining
5 Defendants.

6 CONCISE SET OF FACTS

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

14 7. On June 9, 2003, Plaintiff's member THEODORE A. PINNOCK went
15 to TED LIN d.b.a. NATIONAL CITY MOTEL and CATHERINE Y. LIN d.b.a.
16 NATIONAL CITY MOTEL facilities to utilize their goods and/or
17 services. When Plaintiff's member patronized Defendants' TED LIN
18 d.b.a. NATIONAL CITY MOTEL and CATHERINE Y. LIN d.b.a. NATIONAL
19 CITY MOTEL facilities, he was unable to use and/or had difficulty
20 using the public accommodations' disabled parking, exterior path
21 of travel, entrance, front desk, night cashier window, and
22 guestroom facilities at Defendants' business establishment because
23 they failed to comply with ADA Access Guidelines For Buildings and
24 Facilities (hereafter referred to as "ADAAG") and/or California's
25 Title 24 Building Code Requirements. Defendants failed to remove
26 access barriers within the disabled parking, exterior path of
27 travel, entrance, front desk, night cashier window, and guestroom
28

1 facilities of Defendants' TED LIN d.b.a. NATIONAL CITY MOTEL and
2 CATHERINE Y. LIN d.b.a. NATIONAL CITY MOTEL establishment.

3 8. Plaintiff's member personally experienced difficulty with
4 said access barriers at Defendants' TED LIN d.b.a. NATIONAL CITY
5 MOTEL and CATHERINE Y. LIN d.b.a. NATIONAL CITY MOTEL facilities.
6 For example, neither of the two (2) entrances to the parking area
7 has the required disability signage informing patrons they may be
8 fined or their vehicle may be towed if they unlawfully park in a
9 disabled parking space. The parking lot has a total of twenty-
10 three (23) parking spaces, with one (1) "regular" disabled parking
11 space. It is required that there is at least one (1) compliant
12 "van accessible" parking space. This parking lot fails to have
13 the required "van accessible" disabled parking space.

14 9. The exterior path of travel is inaccessible. The path of
15 travel from the public sidewalk/parking lot to the entrance fails
16 to be accessible as members of the disability community are forced
17 to maneuver through vehicular traffic with out the benefit of a
18 marked path of travel.

19 10. The front entrance fails to have the required smooth and
20 uninterrupted surface on the bottom ten-inches (10") of the door
21 that allows the door to be opened with a wheelchair footrest
22 without creating a trap condition. The front entrance door of the
23 office has an impermissible two-inch (2") threshold. Also, the
24 entrance to the office fails to have the required disabled
25 signage.

26 11. The front desk counter is inaccessible, as it is thirty-nine
27 inches (39") high when it is required to be no higher than thirty-
28

1 four inches (34") high or have a three-foot (3') section that is
2 thirty-four inches (34") high.

3 12. The night cashier window is inaccessible, as it is thirty-
4 seven inches (37") high when it is required to be no higher than
5 thirty-four inches (34") high or have a three-foot (3') section
6 that is thirty-four inches (34") high.

7 13. The Defendants' establishment has twenty-seven (27) rooms,
8 none of which are accessible. If a hotel has between twenty-six
9 and fifty (26 and 50) guestrooms, the hotel shall provide two (2)
10 accessible guestrooms. If a hotel has between twenty-six and fifty
11 (26 and 50) guestrooms, the hotel shall provide two (2) accessible
12 guestrooms for the hearing impaired. The accessible guestrooms
13 must be dispersed among the various classes of sleeping
14 accommodations, providing a range of options applicable to room
15 sizes, costs, amenities provided, and the number of beds provided.
16 Defendants' motel fails to have the required two (2) fully
17 accessible guestrooms.

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

26 15. Plaintiffs believe and herein allege Defendants' facilities
27 have access violations not directly experienced by Plaintiff's
28

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

15
16 16. Based on these facts, Plaintiffs allege Plaintiff's Member
17 and Plaintiff Theodore A. Pinnock was discriminated against each
18 time he patronized Defendants' establishments. Plaintiff's Member
19 and Plaintiff Theodore A. Pinnock was extremely upset due to
20 Defendants' conduct. Further, Plaintiff's Member and Plaintiff
21 THEODORE A. PINNOCK experienced pain in his legs, back, arms,
22 shoulders and wrists when he attempted to enter, use, and exit
23 Defendants' TED LIN d.b.a. NATIONAL CITY MOTEL and CATHERINE Y.
24 LIN d.b.a. NATIONAL CITY MOTEL establishment.

25
26 **WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED DEFENDANT**

27 17. TED LIN d.b.a. NATIONAL CITY MOTEL; CATHERINE Y. LIN d.b.a.
28 NATIONAL CITY MOTEL; TED LIN; CATHERIN Y. LIN; SWAN C. YEN; and

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

3 18. 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 19. Based on the facts plead at ¶¶ 6-16 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 20. 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's 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**

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

23 22. Additionally, the Defendants undertook an alteration that
24 affects or could affect the usability of or access to an area of
25 the facility containing a primary function after January 26, 1992.
26 Defendants further failed to make the alterations in such a manner
27 that, to the maximum extent feasible, the path of travel to the
28 altered area and the bathrooms, telephones, and drinking fountains
serving the altered area, are readily accessible to and usable by

1 individuals with disabilities in violation 42 U.S.C. §12183(a)(2).

2 23. Pursuant to 42 U.S.C. §12183(a), this failure to make the
3 alterations in a manner that, to the maximum extent feasible, are
4 readily accessible to and usable by individuals with disabilities
5 constitutes discrimination for purposes of 42 U.S.C. §12183(a).

6 Therefore, Defendants discriminated against Plaintiff's Member
7 Theodore A. Pinnock in violation of 42 U.S.C. § 12182(a).

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

13
14 **CLAIM III AGAINST ALL DEFENDANTS: Failure To Remove**
Architectural Barriers

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

1 Closets, Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks,
2 Storage, Handrails, Grab Bars, and Controls and Operating
3 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.
4 Title III requires places of public accommodation to remove
5 architectural barriers that are structural in nature to existing
6 facilities. [See, 42 United States Code 12182(b)(2)(A)(iv).]
7 Failure to remove such barriers and disparate treatment against a
8 person who has a known association with a person with a disability
9 are forms of discrimination. [See 42 United States Code
10 12182(b)(2)(A)(iv).] Thus, Plaintiff's Member was subjected to
11 discrimination in violation of 42 United States Code
12 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was
13 denied equal access to Defendants' existing facilities.
14

15 CLAIM IV AGAINST ALL DEFENDANTS: Failure To Modify Practices,
16 Policies And Procedures

17 26. Based on the facts plead at ¶¶ 6-16 above and elsewhere in
18 this complaint, Defendants failed and refused to provide a
19 reasonable alternative by modifying its practices, policies and
20 procedures in that they failed to have a scheme, plan, or design
21 to assist Plaintiff's Member and/or others similarly situated in
22 entering and utilizing Defendants' services, as required by 42
23 U.S.C. § 12188(a). Thus, said Member was subjected to
24 discrimination in violation of 42 United States Code
25 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was
26 denied equal access to Defendants' existing facilities.

27 27. Based on the facts plead at ¶¶ 6-16 above, Claims I, II, and
28 III of Plaintiffs' First Cause Of Action above, and the facts

1 elsewhere herein this complaint, Plaintiffs will suffer
2 irreparable harm unless Defendants are ordered to remove
3 architectural, non-architectural, and communication barriers at
4 Defendants' public accommodation. Plaintiffs allege that
5 Defendants' discriminatory conduct is capable of repetition, and
6 this discriminatory repetition adversely impacts Plaintiffs and a
7 substantial segment of the disability community. Plaintiffs
8 allege there is a national public interest in requiring
9 accessibility in places of public accommodation. Plaintiffs have
10 no adequate remedy at law to redress the discriminatory conduct of
11 Defendants. Plaintiff's Member desires to return to Defendants'
12 places of business in the immediate future. Accordingly, the
13 Plaintiffs allege that a structural or mandatory injunction is
14 necessary to enjoin compliance with federal civil rights laws
15 enacted for the benefit of individuals with disabilities.
16
17 28. WHEREFORE, Plaintiffs pray for judgment and relief as
18 hereinafter set forth.

19 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER**
20 **CALIFORNIA ACCESSIBILITY LAWS**

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

22 29. Based on the facts plead at ¶¶ 6-16 above and elsewhere in
23 this complaint, Plaintiff's Member was denied full and equal
24 access to Defendants' goods, services, facilities, privileges,
25 advantages, or accommodations within a public accommodation owned,
26 leased, and/or operated by Defendants as required by Civil Code
27 Sections 54 and 54.1. Defendants' facility violated California's
28 Title 24 Accessible Building Code by failing to provide access to

1 Defendants' facilities due to violations pertaining to the Space
2 Allowance and Reach Ranges, Accessible Route, Protruding Objects,
3 Ground and Floor Surfaces, Parking and Passenger Loading Zones,
4 Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair
5 Lifts), Windows, Doors, Entrances, Drinking Fountains and Water
6 Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and
7 Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and
8 Operating Mechanisms, Alarms, Detectable Warnings, Signage, and
9 Telephones.

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

15 CLAIM II: Failure To Modify Practices, Policies And
16 Procedures

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

25 CLAIM III: Violation Of The Unruh Act

26 32. Based on the facts plead at ¶¶ 6-16 above and elsewhere
27 herein this complaint and because Defendants violated the Civil
28

1 Code § 51 by failing to comply with 42 United States Code §
2 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and
3 continue to discriminate against Plaintiff's Member and persons
4 similarly situated in violation of Civil Code §§ 51, 52, and 54.1.
5 33. Based on the facts plead at ¶¶ 6-16 above, Claims I, II, and
6 III of Plaintiffs' Second Cause Of Action above, and the facts
7 elsewhere herein this complaint, Plaintiffs will suffer
8 irreparable harm unless Defendants are ordered to remove
9 architectural, non-architectural, and communication barriers at
10 Defendants' public accommodation. Plaintiffs allege that
11 Defendants' discriminatory conduct is capable of repetition, and
12 this discriminatory repetition adversely impacts Plaintiffs and a
13 substantial segment of the disability community. Plaintiffs
14 allege there is a state and national public interest in requiring
15 accessibility in places of public accommodation. Plaintiffs have
16 no adequate remedy at law to redress the discriminatory conduct of
17 Defendants. Plaintiff's Member desires to return to Defendants'
18 places of business in the immediate future. Accordingly, the
19 Plaintiffs allege that a structural or mandatory injunction is
20 necessary to enjoin compliance with state civil rights laws
21 enacted for the benefit of individuals with disabilities.
22 34. Wherefore, Plaintiffs pray for damages and relief as
23 hereinafter stated.
24

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

27 35. Defendants, each of them respectively, at times prior to and
28 including, the month of June, 2003, and continuing to the present

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

25
26 36. Defendants', and each of their, actions have also been
27 oppressive to persons with physical disabilities and of other
28 members of the public, and have evidenced actual or implied

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

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

19 38. Wherefore, Plaintiffs pray for damages and relief as
20 hereinafter stated.
21

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

25 39. Based on the facts plead at ¶¶ 6-16 above and elsewhere in
26 this complaint, Defendants owed Plaintiff Theodore A. Pinnock a
27 statutory duty to make their facility accessible and owed
28 Plaintiff Theodore A. Pinnock a duty to keep Plaintiff Theodore A.

1 Pinnock reasonably safe from known dangers and risks of harm.
2 This said duty arises by virtue of legal duties proscribed by
3 various federal and state statutes including, but not limited to,
4 ADA, ADAAG, Civil Code 51, 52, 54, 54.1 and Title 24 of the
5 California Administrative Code and applicable 1982 Uniform
6 Building Code standards as amended.

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

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

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

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

13 DEMAND FOR JUDGMENT FOR RELIEF:

14 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3,
15 3281, and 3333;

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

19 C. In the alternative to the damages pursuant to Cal. Civil
20 Code § 52 in Paragraph B above, for \$1,000 in damages pursuant to
21 Cal. Civil Code § 54.3 for each and every offense of Civil Code §
22 54.1, Title 24 of the California Building Code, ADA, and ADA
23 Accessibility Guidelines;

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

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

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

11 G. A Jury Trial and;

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

13 Respectfully submitted:

PINNOCK & WAKEFIELD

14
15 Dated: February 11, 2004

By: 
MICHELLE L. WAKEFIELD, ESQ.
Attorneys for Plaintiffs

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CIVIL COVER SHEET

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

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

DEFENDANTS
TED LIN d.b.a. NATIONAL CITY MOTEL; CATHERINE Y. LIN d.b.a. NATIONAL CITY MOTEL; TED LIN, CATHERINE Y. LIN; SWAN C. YEN; and DOES 1 THROUGH 10, Inclusive

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

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)
U4 CV 0296 LAB JMA

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) (For Diversity Cases Only)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PT DEF
PT DEF

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, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories and checkboxes.

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

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

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23 DEMAND \$ To Be Determined At Trial Check YES only if demanded in complaint: JURY DEMAND: [X] YES [] NO

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

DATE February 11, 2004

SIGNATURE OF ATTORNEY OF RECORD

Signature of Michelle L. Wakefield

Handwritten notes: PD \$150.00 2/12/04 # 101074 VB