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3:04-CV-00017 PINNOCK V. S WILSON UPTOWN INC

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\*CMP.\*

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BY

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

S. WILSON UPTOWN, INC d.b.a.  
HILLCREST INN f.k.a. THE  
HILLCREST INN HOTEL; S.  
WILSON UPTOWN, INC;  
And

DOES 1 THROUGH 10, Inclusive

Defendants.

Case No: **04 CV 0017 W(AJB)**

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]

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

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

17 JURISDICTION AND VENUE

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

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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. Plaintiffs are informed and believe and thereon allege that Defendant S. WILSON UPTOWN, INC., is the owner, operator, and/or doing business as HILLCREST INN f.k.a. THE HILLCREST INN HOTEL.

1 Defendant S. WILSON UPTOWN, INC. d.b.a. HILLCREST INN f.k.a. THE  
2 HILLCREST INN HOTEL is located at 3754 Fifth Avenue, San Diego,  
3 California, 92103-4224. Plaintiffs are informed and believe and  
4 thereon allege that Defendant S. WILSON UPTOWN, INC. is the owner,  
5 operator, and/or lessor of the property located at 3754 Fifth  
6 Avenue, San Diego, California, 92103-4224, Assessor Parcel Number  
7 452-063-50. Defendant S. WILSON UPTOWN, INC., is located at 3739  
8 Rosecroft Ln., San Diego, California 92106. The words Plaintiffs"  
9 and "Plaintiff's Member" as used herein specifically include the  
10 organization MANTIC ASHANTI'S CAUSE, its Members, its member  
11 Theodore A. Pinnock and persons associated with its Members who  
12 accompanied Members to Defendants' facilities, as well as THEODORE  
13 A. PINNOCK, An Individual.

14 4. Defendants Does 1 through 10, were at all times relevant  
15 herein subsidiaries, employers, employees, agents, of S. WILSON  
16 UPTOWN, INC d.b.a. HILLCREST INN f.k.a. THE HILLCREST INN HOTEL;  
17 S. WILSON UPTOWN, INC. Plaintiffs are ignorant of the true names  
18 and capacities of Defendants sued herein as Does 1 through 10,  
19 inclusive, and therefore sues these Defendants by such fictitious  
20 names. Plaintiffs will pray leave of the court to amend this  
21 complaint to allege the true names and capacities of the Does when  
22 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 September 3 and 4, 2003, Plaintiff's member THEODORE A.  
15 PINNOCK went to S. WILSON UPTOWN, INC d.b.a. HILLCREST INN f.k.a.  
16 THE HILLCREST INN HOTEL facilities to utilize their goods and/or  
17 services. When Plaintiff's member patronized Defendants' S.  
18 WILSON UPTOWN, INC d.b.a. HILLCREST INN f.k.a. THE HILLCREST INN  
19 HOTEL facilities, he was unable to use and/or had difficulty using  
20 the public accommodations' disabled parking, exterior path of  
21 travel, entrance, front desk/registration counter, guestroom,  
22 guestroom interior path of travel, guestroom lamp, guestroom  
23 storage, and guestroom bathroom facilities at Defendants' business  
24 establishment because they failed to comply with ADA Access  
25 Guidelines For Buildings and Facilities (hereafter referred to as  
26 "ADAAG") and/or California's Title 24 Building Code Requirements.  
27 Defendants failed to remove access barriers within the disabled  
28

1 parking, exterior path of travel, entrance, front  
2 desk/registration counter, guestroom, guestroom interior path of  
3 travel, guestroom lamp, guestroom storage, and guestroom bathroom  
4 facilities of Defendants' S. WILSON UPTOWN, INC d.b.a. HILLCREST  
5 INN f.k.a. THE HILLCREST INN HOTEL establishment.

6 8. Plaintiff's member personally experienced difficulty with  
7 said access barriers at Defendants' S. WILSON UPTOWN, INC d.b.a.  
8 HILLCREST INN f.k.a. THE HILLCREST INN HOTEL facilities. For  
9 example, the parking facility of Defendants' establishment is  
10 inaccessible. The entryway into the parking lot fails to have the  
11 required signage warning motorists that anyone illegally parking  
12 in a disabled parking space would be towed/fined or both. The  
13 parking facility has a total of twenty-eight (28) parking spaces.

14 The facilities fail to have both the required disabled parking  
15 and the "van accessible" disabled parking space. It is required  
16 that there is at least one (1) compliant "regular" disabled  
17 parking space, that is at least eighteen feet (18'), not to exceed  
18 a slope of 2% and with an access aisle that is a minimum of five  
19 feet (5') in width. There also should be at least one (1)  
20 compliant "van accessible" parking space, not to exceed a slope of  
21 2% and with an access aisle that is a minimum of eight feet (8')  
22 in width.

23  
24 9. The exterior path of travel is inaccessible. The path of  
25 travel from the parking lot to the entrance fails to be accessible  
26 as members of the disability community are forced to maneuver  
27 through vehicular traffic with out the benefit of a marked path of  
28 travel. The exterior path of travel from the street to the

1 entrance has a ramp that is too steep and is inaccessible. The  
2 slope of an access ramp cannot exceed 8.33%, and a ramp with a  
3 slope of 5%-8.33% is required to have handrails.

4 10. The front entrance to Defendants' establishment is  
5 inaccessible. There is a three-inch (3") step, at the front  
6 entrance door of the office. The entrance area fails to have an  
7 access ramp. The slope of an access ramp cannot exceed 8.33%, and  
8 a ramp with a slope of 5%-8.33% is required to have handrails.  
9 The front entrance door fails to have the required disability  
10 signage.

11 11. The front desk/registration counter is inaccessible, as it is  
12 forty-four inches (44") high when it is required to be no higher  
13 than thirty-four inches (34") high or have a three-foot (3')  
14 section that is thirty-four inches (34") high.

15 12. Within the Hotel, the coffeepot is mounted at forty-eight  
16 inches (48") from the floor surface, when it should be no higher  
17 than forty inches (40") high.

18 13. The Defendants' establishment has forty-four (44) rooms with  
19 one (1) designated "accessible room". If a hotel has between  
20 twenty-six and fifty (26 and 50) guestrooms, the hotel shall  
21 provide two (2) accessible guestrooms. If a hotel has between  
22 twenty-six and fifty (26 and 50) guestrooms, the hotel shall  
23 provide two (2) accessible guestrooms for members of the  
24 disability community who are hearing impaired. The accessible  
25 guestrooms must be dispersed among the various classes of sleeping  
26 accommodations, providing a range of options applicable to room  
27 sizes, costs, amenities provided, and the number of beds provided.  
28



1 Defendants' hotel fails to have one (1) of the required accessible  
2 guestrooms.

3 14. Plaintiff's member and Plaintiff Theodore A. Pinnock was  
4 given guestroom 112. The interior path of travel of guestroom 112  
5 is too narrow and is completely inaccessible as Plaintiffs' Member  
6 and Plaintiff THEODORE A. PINNOCK was forced to get out of his  
7 wheelchair in order to move around the guestroom. The bathroom  
8 located inside guestroom 112 is also inaccessible. The entrance  
9 to the bathroom is too narrow to be accessible. The bathroom  
10 fails to have any of the required grab bars around the tub/shower  
11 and around the commode. The levers on the faucets of the sink and  
12 the tub/shower are inaccessible, as they require tight grasping to  
13 operate. The bathroom also has insufficient clear floor space.  
14 The lamp switches in guestroom 112 are inaccessible, as they  
15 require tight grasping or twisting of the wrist to operate. The  
16 height of the cloth's hanger inside the closet is too high to be  
17 accessible.

18 15. 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 16. 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 17. 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' S. WILSON UPTOWN, INC d.b.a. HILLCREST INN f.k.a. THE  
24 HILLCREST INN HOTEL establishment.

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

27 18. S. WILSON UPTOWN, INC d.b.a. HILLCREST INN f.k.a. THE  
28 HILLCREST INN HOTEL; S. WILSON UPTOWN, INC; and Does 1 through 10

1 will be referred to collectively hereinafter as "Defendants."

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

4 DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS

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

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

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

20 21. Plaintiff's member Theodore A. Pinnock has physical  
21 impairments as alleged in ¶ 6 above because his conditions affect  
22 one or more of the following body systems: neurological,  
23 musculoskeletal, special sense organs, and/or cardiovascular.  
24 Further, Plaintiff's member Theodore A. Pinnock's said physical  
25 impairments substantially limits one or more of the following  
26 major life activities: walking. In addition, Plaintiff's member  
27 Theodore A. Pinnock cannot perform one or more of the said major  
28

1 life activities in the manner, speed, and duration when compared  
2 to the average person. Moreover, Plaintiff's member Theodore A.  
3 Pinnock has a history of or has been classified as having a  
4 physical impairment as required by 42 U.S.C. § 12102(2)(A).  
5

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

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

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

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

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

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

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

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

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

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

25 28. Based on the facts plead at ¶¶ 6-17 above, Claims I, II, and  
26 III of Plaintiffs' First Cause Of Action above, and the facts  
27 elsewhere herein this complaint, Plaintiffs will suffer  
28

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

15 29. WHEREFORE, Plaintiffs pray for judgment and relief as  
16 hereinafter set forth.  
17

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

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

21 30. Based on the facts plead at ¶¶ 6-17 above and elsewhere in  
22 this complaint, Plaintiff's Member was denied full and equal  
23 access to Defendants' goods, services, facilities, privileges,  
24 advantages, or accommodations within a public accommodation owned,  
25 leased, and/or operated by Defendants as required by Civil Code  
26 Sections 54 and 54.1. Defendants' facility violated California's  
27 Title 24 Accessible Building Code by failing to provide access to  
28 Defendants' facilities due to violations pertaining to the Space

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

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

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

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

24 CLAIM III: Violation Of The Unruh Act

25 33. Based on the facts plead at ¶¶ 6-17 above and elsewhere  
26 herein this complaint and because Defendants violated the Civil  
27 Code § 51 by failing to comply with 42 United States Code §  
28



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

21  
22 35. Wherefore, Plaintiffs pray for damages and relief as  
23 hereinafter stated.

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

26 36. Defendants, each of them respectively, at times prior to and  
27 including, the month of September, 2003, and continuing to the  
28 present time, knew that persons with physical disabilities were

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

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

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

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

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

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

23 40. Based on the facts plead at ¶¶ 6-17 above and elsewhere in  
24 this complaint, Defendants owed Plaintiff Theodore A. Pinnock a  
25 statutory duty to make their facility accessible and owed  
26 Plaintiff Theodore A. Pinnock a duty to keep Plaintiff Theodore A.  
27 Pinnock reasonably safe from known dangers and risks of harm.  
28 This said duty arises by virtue of legal duties proscribed by

1 various federal and state statutes including, but not limited to,  
2 ADA, ADAAG, Civil Code 51, 52, 54, 54.1 and Title 24 of the  
3 California Administrative Code and applicable 1982 Uniform  
4 Building Code standards as amended.

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

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

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

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

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 Floor Surfaces, Parking and Passenger Loading Zones, Curb Ramps,  
28 Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts),

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

5 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C.  
6 § 12205, and Cal. Civil Code § 55;

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


9 G. A Jury Trial and;

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

11 Respectfully submitted:

PINNOCK & WAKEFIELD

12  
13 Dated: December 22, 2003

14 By:   
15 MICHELLE L. WAKEFIELD, ESQ.  
16 DAVID C. WAKEFIELD, ESQ.  
17 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

S. WILSON UPTOWN, INC d.b.a. HILLCREST INN f.k.a. THE HILLCREST INN HOTEL; S. WILSON UPTOWN, INC; And DOES 1 THROUGH 10, Inclusive

FILED stamp: JAN 5 2004, CLERK U.S. DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

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

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT San Diego (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE COUNTY OF LOCATION OF PROPERTY 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 0017 W (AJB)

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 4 5 6

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

42 U.S.C. Sections 12101-12102, 12181-12183, and 12201, Et. Seq.

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

Table with columns: CONTRACT, REAL PROPERTY, PERSONAL INJURY, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES. Includes checkboxes for various legal categories.

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 JURY DEMAND: YES NO

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

DATE December 22, 2003 SIGNATURE OF ATTORNEY OF RECORD Michelle L. Wakefield

Handwritten notes: Pd \$ 150.00 1/6/04 #99925 VA