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3:03-CV-02536 PINNOCK V. CHU
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CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY:

DEPUTY

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.

GEORGE M. CHU d.b.a. DAYS INN
LA MESA SUITES; CONNIE C. CHU
d.b.a. DAYS INN LA MESA
SUITES; GEORGE M. CHU; CONNIE
C. CHU;

And

DOES 1 THROUGH 10, Inclusive

Defendants.

Case No.:

03 CV 2536

J (LSP)

CIVIL COMPLAINT:

DISCRIMINATORY PRACTICES IN
PUBLIC ACCOMMODATIONS

[42 U.S.C. 12182(a) ET. SEQ;
CIVIL CODE 51, 52, 54, 54.1]

NEGLIGENCE

[CIVIL CODE 1714(a), 2338,
3333; EVIDENCE CODE 669(a)]

DEMAND FOR JURY TRIAL

[F.R.Civ.P. rule 38(b);
Civ.L.R. 38.1]

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

cl

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
18 **JURISDICTION AND VENUE**

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.

27 **SUPPLEMENTAL JURISDICTION**

28 2. The Judicial District of the United States District Court of

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

19
20 **NAMED DEFENDANTS AND NAMED PLAINTIFFS**

21 3. Defendants are, and, at all times mentioned herein, were, a
22 business or corporation or franchise organized and existing and/or
23 doing business under the laws of the State of California.
24 Defendants GEORGE M. CHU d.b.a. DAYS INN LA MESA SUITES and CONNIE
25 C. CHU are located at 7475 El Cajon Blvd., La Mesa, California,
26 91941. Plaintiffs are informed and believe and thereon allege
27 that Defendant GEORGE M. CHU and CONNIE C. CHU, are the owners,
28 operators, and/or lessors of the property located at 7475 El Cajon

1 Blvd., La Mesa, California, 91941, Assessor Parcel Number 469-230-
2 15. Defendants GEORGE M. CHU and CONNIE C. CHU are located at
3 7059 Del Cerro Blvd., San Diego, California 92120. The words
4 "Plaintiffs" and "Plaintiff's Member" as used herein specifically
5 include the organization MANTIC ASHANTI'S CAUSE, its Members, its
6 member Theodore A. Pinnock and persons associated with its Members
7 who accompanied Members to Defendants' facilities, as well as
8 THEODORE A. PINNOCK, An Individual.

9 4. Defendants Does 1 through 10, were at all times relevant
10 herein subsidiaries, employers, employees, agents, of GEORGE M.
11 CHU d.b.a. DAYS INN LA MESA SUITES; CONNIE C. CHU d.b.a. DAYS INN
12 LA MESA SUITES; GEORGE M. CHU; CONNIE C. CHU. Plaintiffs are
13 ignorant of the true names and capacities of Defendants sued
14 herein as Does 1 through 10, inclusive, and therefore sues these
15 Defendants by such fictitious names. Plaintiffs will pray leave
16 of the court to amend this complaint to allege the true names and
17 capacities of the Does when ascertained.

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

24 Plaintiffs are further informed and believe, and thereon allege,
25 that each of the Defendants herein gave consent to, ratified,
26 and/or authorized the acts alleged herein to each of the remaining
27 Defendants.
28

CONCISE SET OF FACTS

1
2
3 6. Plaintiff MANTIC ASHANTI'S CAUSE is an organization that
4 advocates on the behalf of its members with disabilities when
5 their civil rights and liberties have been violated. Plaintiff's
6 member THEODORE A. PINNOCK is a member of Plaintiff Organization
7 and has an impairment in that he has Cerebral Palsy and due to
8 this impairment he has learned to successfully operate a
9 wheelchair.

10 7. On September 11, 2003, Plaintiff's member THEODORE A. PINNOCK
11 went to Defendants' GEORGE M. CHU d.b.a. DAYS INN LA MESA SUITES
12 and CONNIE C. CHU d.b.a. DAYS INN LA MESA SUITES facilities to
13 utilize their goods and/or services. When Plaintiff's member
14 patronized Defendants' GEORGE M. CHU d.b.a. DAYS INN LA MESA
15 SUITES and CONNIE C. CHU d.b.a. DAYS INN LA MESA SUITES
16 facilities, he was unable to use and/or had difficulty using the
17 public accommodations' parking, exterior path of travel, entrance,
18 front desk, and guestroom facilities at Defendants' business
19 establishment because they failed to comply with ADA Access
20 Guidelines For Buildings and Facilities (hereafter referred to as
21 "ADAAG") and/or California's Title 24 Building Code Requirements.
22 Defendants failed to remove access barriers within the parking,
23 exterior path of travel, entrance, front-desk, and guestroom
24 facilities of Defendants' GEORGE M. CHU d.b.a. DAYS INN LA MESA
25 SUITES and CONNIE C. CHU d.b.a. DAYS INN LA MESA SUITES
26 establishment.

27 8. Plaintiff's member personally experienced difficulty with
28 said access barriers at Defendants' GEORGE M. CHU d.b.a. DAYS INN

1 LA MESA SUITES and CONNIE C. CHU d.b.a. DAYS INN LA MESA SUITES
2 facilities. For example, the parking facilities of Defendants'
3 establishment is inaccessible. The entryway into the parking lot
4 fails to have the required signage warning motorists that anyone
5 illegally parking in a disabled parking space would be towed/fined
6 or both. The parking facility has a total of forty-three (43)
7 parking spaces including two (2) disabled parking spaces, neither
8 of which are compliant. One (1) of the two (2) disabled spaces is
9 a seventeen foot (17') long "regular" disabled parking space with
10 a slope of up to 3.5%. The other disabled parking space is a
11 seventeen foot (17') long "regular" disabled parking space with a
12 slope of up to 4% and a n access aisle of a mere twenty-five
13 inches (25"). It is required that there is at least one (1)
14 compliant "regular" disabled parking space, that is at least
15 eighteen feet (18'), not to exceed a slope of 2% and with an
16 access aisle that is a minimum of five feet (5') in width. There
17 also should be at least one (1) compliant "van accessible" parking
18 space, not to exceed a slope of 2% and with an access aisle that
19 is a minimum of eight feet (8)' in width.
20

21 9. The exterior path of travel and the front entrance are
22 inaccessible. The slope of the ramp from the public sidewalk to
23 the office is up to twenty-five percent (25%). The maximum
24 allowable slope is 8.33%, and a ramp with a slope of 5%-8.33% must
25 have handrails. The width of the ramp from one (1) of the two (2)
26 disabled parking spaces is only forty-two inches (42"), which
27 fails to meet the minimum width requirement of forty-eight inches
28 (48").

1 10. The front entrance to Defendants' establishment is
2 inaccessible. The front entrance door does not have the required
3 kick plate. There should be a ten-inch (10") high abrasion
4 resistant plate affixed on the bottom portion of the door to
5 prevent a trap condition. The entrance also fails to have the
6 required disability signage.

7 11. The front desk is inaccessible because it is forty-six inches
8 (46") high.

9 12. When Plaintiff's member and Plaintiff Theodore A. Pinnock
10 attempted to patronize Defendants' establishment, personnel of the
11 hotel refused to rent a guestroom to Plaintiffs' member and
12 Plaintiff Theodore A. Pinnock, stating the facility has no
13 accessible guestrooms. Therefore, Defendants' hotel completely
14 denied access to Plaintiff's member and Plaintiff Theodore A
15 Pinnock with regards to their public accommodations.

16 13. The Defendants' establishment has forty-two (42) rooms with
17 two (2) designated "accessible rooms" that are not compliant. If
18 a hotel has between twenty-six and fifty (26 and 50) guestrooms,
19 the hotel shall provide two (2) accessible guestrooms. If a hotel
20 has between twenty-six and fifty (26 and 50) guestrooms, the hotel
21 shall provide two (2) accessible guestrooms for members of the
22 disability community who are hearing impaired. The accessible
23 guestrooms must be dispersed among the various classes of sleeping
24 accommodations, providing a range of options applicable to room
25 sizes, costs, amenities provided, and the number of beds provided.
26 Defendants' hotel fails to have four (4) of the required
27 accessible guestrooms.
28

1
2
3 14. In addition to the violations personally experienced by
4 Plaintiff's Member and Plaintiff THEODORE A. PINNOCK, additional
5 violations of federal and state disability laws exist at
6 Defendants' GEORGE M. CHU d.b.a. DAYS INN LA MESA SUITES and
7 CONNIE C. CHU d.b.a. DAYS INN LA MESA SUITES. For example,
8 Guestroom 314 is designated as an "accessible room", however it
9 remains inaccessible. The entrance door of the room does not have
10 a kick plate. Should have a ten inch (10") high abrasion
11 resistance plate affixed to the bottom portion of the door to
12 prevent a trap condition. The round locking mechanism on the room
13 entrance door is not compliant. The door should have a lock that
14 does not require grasping or twisting by the wrist to operate.

15 15. The small round lamp-switches are not compliant. There should
16 be ones that do not require grasping or twisting by the wrist to
17 operate. There is no audible/visual alarm system. The knee
18 clearance depth of the desk inside the room is only five inches
19 (5"). There should be a knee clearance depth of nineteen inches
20 (19"), a width of thirty inches (30") and height of twenty-seven
21 inches (27") minimum.

22 16. The round control switches on the stove are not compliant.
23 The stove should have control switches that do not require
24 grasping or twisting by the wrist. The height of the sink is
25 thirty-six inches (36") and exceeds the requirement is that it is
26 no more than thirty-four inches (34") high. The round faucet
27 handles on the sink are also not compliant. The sink should have
28 handles that do not require grasping or twisting by the wrist.

1 The area beneath the sink is enclosed and does not have a knee
2 clearance. The required knee clearance under front lip is a
3 minimum of twenty-seven inches (27") high, thirty inches (30")
4 wide, and provides an absolute depth of nineteen inches (19")
5 underneath the sink.

6 17. The distance between the two (2) beds is only thirty-three
7 inches (33"), which fails to meet the minimum requirement of
8 thirty-six inches (36").

9 18. The microwave is placed on top of a refrigerator with a
10 height of sixty-six inches (66"), which exceeds the maximum height
11 requirement of thirty-four inches (34"). The control switches on
12 the microwave are not compliant. The microwave should have control
13 switches that do not require grasping or twisting by the wrist.

14 19. The bracket in which the iron rests is mounted at a height of
15 seventy-two inches (72"). The requirement is that it should be no
16 more than forty-eight inches (48") high for the required front
17 reach. The height of the cloth's hanger inside the closet is
18 seventy inches (70"). The requirement is that it is no more than
19 forty-eight inches (48") high for the required front reach. The
20 height of the shelf inside the closet is seventy-two inches (72").
21 The requirement is that it is no more than forty-eight inches
22 (48") high for the required front reach.

23 20. The height of the locking mechanism on the window is fifty-
24 six inches (56") and blocked by a nightstand. The requirement is
25 that it is in a clear place and no more than forty-eight inches
26 (48") high for the required front reach. The round AC control
27 switches are not compliant. The requirement is that they do not
28

1 require grasping or twisting by the wrist. The height of the
2 control switch on the heater is sixty inches (60"). The
3 requirement is that it is no more than forty-eight inches (48")
4 high for a front reach situation. The small round control switch
5 on the heater is not compliant. The heater should have control
6 switches that do not require grasping or twisting by the wrist.

7 21. The bathroom inside guestroom 314 is inaccessible. The
8 doorknob on the bathroom entrance is not compliant. The
9 requirement is that it does not require grasping or twisting by
10 the wrist. The wheelchair turnaround space inside the bathroom is
11 only forty inches by thirty five inches (40"X35"). The
12 requirement is that it is at least sixty inches (60") in diameter.

13 22. There is no handheld shower sprayer in the bathroom. There
14 should be a sixty inch (60") long hose that can be used both as a
15 fixed head or hand-held shower sprayer. The bathtub does not have
16 a required seat. The requirement is that it must have a seat
17 ("head end" or "in-tub" type). The round mixing valve in the
18 bathtub is not compliant. The requirement is that it has one that
19 does not require grasping or twisting by the wrist.

20 23. The length of the side grab bar around the commode is only
21 seventeen inches (17"). There should be two (2) compliant grab
22 bars, either one on either side of the commode or one on one side
23 of the commode and one behind the commode mounted at thirty-three
24 inches (33") from the floor surface. Side grab bars should be a
25 minimum of forty-two inches (42") long and extend a minimum of
26 twenty-four inches (24") beyond the front of the commode. The
27 rear grab bars should be a minimum of thirty-six inches (36") long
28

1 and be attached a maximum of six inches (6") from the corner of
2 the wall on the toilet seat. The distance from the side edge of
3 the commode to the far wall is only nine inches (9"). The
4 requirement is that it is thirty-two inches (32") minimum. The
5 distance from the front edge of the commode to the front wall is
6 only forty inches (40"). The requirement is that it be at least
7 forty-eight inches (48)".

8 24. The round faucet handles on the lavatory are not compliant.
9 There should be handles that do not require grasping or twisting
10 by the wrist. The area beneath the lavatory is enclosed and there
11 is no knee clearance. The requirement is that it has twenty-nine
12 inches (29") minimum clearance from bottom of apron to the floor.
13 Knee clearance under lavatory is a minimum of twenty-seven inches
14 (27") high, thirty inches (30") wide, and extends a minimum of
15 eight inches (8") in depth from the front of the lavatory. The
16 toe clearance under lavatory is required to be nine inches (9")
17 high and extend a minimum of seventeen inches (17") in depth from
18 the front of the lavatory. The required audible/visual alarm
19 system is not installed.

20 25. The guest laundry room facility fails to be accessible. The
21 front entrance door of the guest laundry room has an impermissible
22 one inches (1") threshold. The front entrance door of the guest
23 laundry room does not have the required kick plate. There should
24 be a ten-inch (10") high abrasion resistant plate affixed on the
25 bottom portion of the door to prevent a trap condition. The
26 doorknob on the guest laundry room door does not meet the
27 requirement that it does not require grasping or twisting of the
28

1 wrist in order to operate it. The guest laundry room also fails
2 to have the required audible visual alarm system.

3 26. The pool does not have the required device to assist disabled
4 patrons to get in and out of the water. The seating around the
5 pool is inaccessible. There are eight (8) seats by the pool with
6 a knee clearance depth of only eight inches (8"). It is required
7 that 5% of all seats must have a knee clearance depth of 19", a
8 width of 30" and a height of 27" minimum, which is at least one
9 (1) seat in this case.

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

18 28. Plaintiffs believe and herein allege Defendants' facilities
19 have access violations not directly experienced by Plaintiff's
20 Member which preclude or limit access by others with disabilities,
21 including, but not limited to, Space Allowance and Reach Ranges,
22 Accessible Route, Protruding Objects, Ground and Floor Surfaces,
23 Parking and Passenger Loading Zones, Curb Ramps, Ramps, Stairs,
24 Elevators, Platform Lifts (Wheelchair Lifts), Windows, Doors,
25 Entrances, Drinking Fountains and Water Coolers, Water Closets,
26 Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks, Storage,
27 Handrails, Grab Bars, and Controls and Operating Mechanisms,
28

1 Alarms, Detectable Warnings, Signage, and Telephones. Accordingly,
2 Plaintiffs allege Defendants are required to remove all
3 architectural barriers, known or unknown. Also, Plaintiffs allege
4 Defendants are required to utilize the ADA checklist for Readily
5 Achievable Barrier Removal approved by the United States
6 Department of Justice and created by Adaptive Environments.

7 29. Based on these facts, Plaintiffs allege Plaintiff's Member
8 and Plaintiff Theodore A. Pinnock was discriminated against each
9 time he patronized Defendants' establishments. Plaintiff's Member
10 and Plaintiff Theodore A. Pinnock was extremely upset due to
11 Defendants' conduct. Further, Plaintiff's Member and Plaintiff
12 THEODORE A. PINNOCK experienced pain in his legs, back, arms,
13 shoulders and wrists when he attempted to enter, use, and exit
14 Defendants' GEORGE M. CHU d.b.a. DAYS INN LA MESA and CONNIE C.
15 CHU d.b.a. DAYS INN LA MESA SUITES establishment.
16

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

19 30. GEORGE M. CHU d.b.a. DAYS INN LA MESA; CONNIE C. CHU d.b.a.
20 DAYS INN LA MESA SUITES; GEORGE M. CHU; CONNIE C. CHU; and Does 1
21 through 10 will be referred to collectively hereinafter as
22 "Defendants."

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

25 ///

26 ///

27 ///

28 ///

DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS

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

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

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

33. Plaintiff's member Theodore A. Pinnock has physical impairments as alleged in ¶ 6 above because his conditions affect one or more of the following body systems: neurological, musculoskeletal, special sense organs, and/or cardiovascular. Further, Plaintiff's member Theodore A. Pinnock's said physical impairments substantially limits one or more of the following major life activities: walking. In addition, Plaintiff's member Theodore A. Pinnock cannot perform one or more of the said major life activities in the manner, speed, and duration when compared to the average person. Moreover, Plaintiff's member Theodore A. Pinnock has a history of or has been classified as having a

1 physical impairment as required by 42 U.S.C. § 12102(2)(A).

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

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

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

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

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

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

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

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

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

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

12 39. Based on the facts plead at ¶¶ 6-29 above and elsewhere in
13 this complaint, Defendants failed and refused to provide a
14 reasonable alternative by modifying its practices, policies and
15 procedures in that they failed to have a scheme, plan, or design
16 to assist Plaintiff's Member and/or others similarly situated in
17 entering and utilizing Defendants' services, as required by 42
18 U.S.C. § 12188(a). Thus, said Member was subjected to
19 discrimination in violation of 42 United States Code
20 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was
21 denied equal access to Defendants' existing facilities.

22 40. Based on the facts plead at ¶¶ 6-29 above, Claims I, II, and
23 III of Plaintiffs' First Cause Of Action above, and the facts
24 elsewhere herein this complaint, Plaintiffs will suffer
25 irreparable harm unless Defendants are ordered to remove
26 architectural, non-architectural, and communication barriers at
27 Defendants' public accommodation. Plaintiffs allege that
28

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

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

14
15 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER**
CALIFORNIA ACCESSIBILITY LAWS

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

17 42. Based on the facts plead at ¶¶ 6-29 above and elsewhere in
18 this complaint, Plaintiff's Member was denied full and equal
19 access to Defendants' goods, services, facilities, privileges,
20 advantages, or accommodations within a public accommodation owned,
21 leased, and/or operated by Defendants as required by Civil Code
22 Sections 54 and 54.1. Defendants' facility violated California's
23 Title 24 Accessible Building Code by failing to provide access to
24 Defendants' facilities due to violations pertaining to the Space
25 Allowance and Reach Ranges, Accessible Route, Protruding Objects,
26 Ground and Floor Surfaces, Parking and Passenger Loading Zones,
27 Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair
28

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

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

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

13 44. Based on the facts plead at ¶¶ 6-29 above and elsewhere
14 herein this complaint, Defendants failed and refused to provide a
15 reasonable alternative by modifying its practices, policies, and
16 procedures in that they failed to have a scheme, plan, or design
17 to assist Plaintiff's Member and/or others similarly situated in
18 entering and utilizing Defendants' services as required by Civil
19 Code § 54.1. Thus, said Member was subjected to discrimination in
20 violation of Civil Code § 54.1.

21 CLAIM III: Violation Of The Unruh Act

22 45. Based on the facts plead at ¶¶ 6-29 above and elsewhere
23 herein this complaint and because Defendants violated the Civil
24 Code § 51 by failing to comply with 42 United States Code §
25 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and
26 continue to discriminate against Plaintiff's Member and persons
27 similarly situated in violation of Civil Code §§ 51, 52, and 54.1.
28

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

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

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

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

1 access statutes; and despite knowledge of the resulting problems
2 and denial of civil rights thereby suffered by Plaintiff's Member
3 THEODORE A. PINNOCK and other similarly situated persons with
4 disabilities. Defendants, and each of them, have failed and
5 refused to take action to grant full and equal access to persons
6 with physical disabilities in the respects complained of
7 hereinabove. Defendants, and each of them, have carried out a
8 course of conduct of refusing to respond to, or correct complaints
9 about, denial of disabled access and have refused to comply with
10 their legal obligations to make Defendants' GEORGE M. CHU d.b.a.
11 DAYS INN LA MESA and CONNIE C. CHU d.b.a. DAYS INN LA MESA SUITES
12 facilities accessible pursuant to the Americans With Disability
13 Act Access Guidelines (ADAAG) and Title 24 of the California Code
14 of Regulations (also known as the California Building Code). Such
15 actions and continuing course of conduct by Defendants, and each
16 of them, evidence despicable conduct in conscious disregard of the
17 rights and/or safety of Plaintiff's Member and of other similarly
18 situated persons, justifying an award of treble damages pursuant
19 to sections 52(a) and 54.3(a) of the California Civil Code.
20
21 49. Defendants', and each of their, actions have also been
22 oppressive to persons with physical disabilities and of other
23 members of the public, and have evidenced actual or implied
24 malicious intent toward those members of the public, such as
25 Plaintiff's Member and other persons with physical disabilities
26 who have been denied the proper access to which they are entitled
27 by law. Further, Defendants', and each of their, refusals on a
28 day-to-day basis to correct these problems evidence despicable

1 conduct in conscious disregard for the rights of Plaintiff's
2 Member THEODORE A. PINNOCK and other members of the public with
3 physical disabilities.

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

14 51. Wherefore, Plaintiffs pray for damages and relief as
15 hereinafter stated.

16
17
18 PLAINTIFF THEODORE A. PINNOCK'S THIRD CAUSE OF ACTION AGAINST ALL
19 DEFENDANTS- Negligence as to Plaintiff THEODORE A. PINNOCK only

20 52. Based on the facts plead at ¶¶ 6-29 above and elsewhere in
21 this complaint, Defendants owed Plaintiff Theodore A. Pinnock a
22 statutory duty to make their facility accessible and owed
23 Plaintiff Theodore A. Pinnock a duty to keep Plaintiff Theodore A.
24 Pinnock reasonably safe from known dangers and risks of harm.
25 This said duty arises by virtue of legal duties proscribed by
26 various federal and state statutes including, but not limited to,
27 ADA, ADAAG, Civil Code 51, 52, 54, 54.1 and Title 24 of the
28 California Administrative Code and applicable 1982 Uniform

1 Building Code standards as amended.

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

10 54. Therefore, Defendants engaged in discriminatory conduct in
11 that they failed to comply with known duties under the ADA, ADAAG,
12 Civil Code 51, 52, 54, 54.1, ADAAG, and Title 24, and knew or
13 should have known that their acts of nonfeasance would cause
14 Plaintiff Theodore A. Pinnock emotional, bodily and personal
15 injury. Plaintiff THEODORE A. PINNOCK alleges that there was
16 bodily injury in this matter because when Plaintiff THEODORE A.
17 PINNOCK attempted to enter, use, and exit Defendants'
18 establishment, Plaintiff THEODORE A. PINNOCK experienced pain in
19 his legs, back, arms, shoulders, and wrists. Plaintiffs further
20 allege that such conduct was done in reckless disregard of the
21 probability of said conduct causing Plaintiff Theodore A. Pinnock
22 to suffer bodily or personal injury, anger, embarrassment,
23 depression, anxiety, mortification, humiliation, distress, and
24 fear of physical injury. Plaintiff THEODORE A. PINNOCK, An
25 Individual, alleges that such conduct caused THEODORE A. PINNOCK,
26 An Individual, to suffer the injuries of mental and emotional
27 distress, including, but not limited to, anger, embarrassment,
28

1 depression, anxiety, mortification, humiliation, distress, and
2 fear of physical injury. Plaintiff THEODORE A. PINNOCK, An
3 Individual, additionally alleges that such conduct caused THEODORE
4 A. PINNOCK, An Individual, to
5 suffer damages as a result of these injuries.

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

8 DEMAND FOR JUDGMENT FOR RELIEF:

9 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3,
10 3281, and 3333;

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

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

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


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- Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.
- E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C. § 12205, and Cal. Civil Code § 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:

PINNOCK & WAKEFIELD

Dated: December 17, 2003

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

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
GEORGE M. CHU d.b.a. DAYS INN LA-MESA SUITES; CONNIE
C. CHU d.b.a. DAYS INN LA MESA SUITES; GEORGE M.
CHU; CONNIE C. CHU; And DOES 1 THROUGH 3, 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 LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OR 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)

'03 CV 2536 J (LSP)

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

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 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)

- | | | |
|---|--|---|
| | PT DEF | PT DEF |
| Citizen of This State | <input type="checkbox"/> 1 Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 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)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 810 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reappointment
<input type="checkbox"/> Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury-Medical Malpractice	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 625 Drug Related Seizure Of Property 21 USC 881	PROPERTY RIGHTS	
<input type="checkbox"/> Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 150 Recovery of overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 640 RR & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 450 Commerce/ICC Rates/etc.
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	PERSONAL PROPERTY	<input type="checkbox"/> 660 Occupational Safety/Health	SOCIAL SECURITY	
<input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA (13958)	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 160 Stockholders Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability	LABOR	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> Other Contract	<input type="checkbox"/> 360 Other Personal Injury		<input type="checkbox"/> 710 Fair Labor Standards Act 720 Labor/Mgmt Relations	<input type="checkbox"/> 863 DIWCDIWW (405(g))	<input type="checkbox"/> 850 Securities/Commodities Exchange
<input type="checkbox"/> 195 Contract Product Liability		PRISONER PETITIONS	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 875 Customer Challenge 12 USC
REAL PROPERTY	CIVIL RIGHTS		<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus	<input type="checkbox"/> 790 Other Labor Litigation	FEDERAL TAX SUITS	
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 530 General	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 535 Death Penalty		<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 240 Tort to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 540 Mandamus & Other			<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 245 Tort Product Liability	<input checked="" type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 550 Civil Rights			<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 250 All Other Real Property		<input type="checkbox"/> 555 Prisoner Conditions			<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
					<input type="checkbox"/> 960 Constitutionality of State
					<input type="checkbox"/> 890 Other Statutory Actions

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

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

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND \$

To Be Determined At Trial

Check YES only if demanded in complaint:

JURY DEMAND: YES NO

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

JUDGE

Docket Number

DATE December 17, 2003

SIGNATURE OF ATTORNEY OF RECORD

99613-150

Michelle L. Wakefield