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3:04-CV-00582 PINNOCK V. HITCHING POST MOTELS

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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DEPUTY

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

'04 CV 00582 WQH ~~100~~(POR)

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

Case No.:

CIVIL COMPLAINT:
DISCRIMINATORY PRACTICES IN
PUBLIC ACCOMMODATIONS
[42 U.S.C. 12182(a) ET. SEQ;
CIVIL CODE 51, 52, 54, 54.1]

Plaintiffs,

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

v.

DEMAND FOR JURY TRIAL
[F.R.Civ.P. rule 38(b);
Civ.L.R. 38.1]

HITCHING POST MOTELS, INC.
d.b.a. EMBASSY HOTEL a.k.a.
EMBASSY HOTEL & CAFE;
HITCHING POST MOTEL, INC.;
AMERICAN A-ONE INVESTMENT
COMPANY, INC.; And DOES 1
THROUGH 10, Inclusive

Defendants.

INTRODUCTION

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

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 **JURISDICTION AND VENUE**

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

25 **SUPPLEMENTAL JURISDICTION**

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

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.
22 Defendant HITCHING POST MOTELS, INC. d.b.a. EMBASSY HOTEL a.k.a.
23 EMBASSY HOTEL & CAFE is located at 3645 Park Boulevard, San Diego,
24 California 92103. Plaintiffs are informed and believe and thereon
25 allege that Defendants HITCHING POST MOTEL, INC. is the owners,
26 operators, and/or doing business as EMBASSY HOTEL & CAFE.
27 Plaintiffs are informed and believe and thereon allege that
28

1 Defendant AMERICAN A-ONE INVESTMENT COMPANY, INC. is the owner,
2 operator, and/or lessor of the property located at 3645 Park
3 Boulevard, San Diego, California 92103, Assessor Parcel Number
4 452-361-28. Defendant AMERICAN A-ONE INVESTMENT COMPANY, INC. is
5 located at P.O. Box 15488, San Diego, California 92175. The words
6 "Plaintiffs" and "Plaintiff's Member" as used herein specifically
7 include the organization MANTIC ASHANTI'S CAUSE, its Members, its
8 member Theodore A. Pinnock and persons associated with its Members
9 who accompanied Members to Defendants' facilities, as well as
10 THEODORE A. PINNOCK, An Individual.

11 4. Defendants Does 1 through 10, were at all times relevant
12 herein subsidiaries, employers, employees, agents, of HITCHING
13 POST MOTELS, INC. d.b.a. EMBASSY HOTEL a.k.a. EMBASSY HOTEL &
14 CAFE; HITCHING POST MOTEL, INC.; AMERICAN A-ONE INVESTMENT
15 COMPANY, INC. Plaintiffs are ignorant of the true names and
16 capacities of Defendants sued herein as Does 1 through 10,
17 inclusive, and therefore sues these Defendants by such fictitious
18 names. Plaintiffs will pray leave of the court to amend this
19 complaint to allege the true names and capacities of the Does when
20 ascertained.

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

27 Plaintiffs are further informed and believe, and thereon allege,
28

1 that each of the Defendants herein gave consent to, ratified,
2 and/or authorized the acts alleged herein to each of the remaining
3 Defendants.

4 CONCISE SET OF FACTS

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

12 7. On or about December 30, 2003, Plaintiff's member THEODORE A.
13 PINNOCK went to Defendants' HITCHING POST MOTELS, INC. d.b.a.
14 EMBASSY HOTEL a.k.a. EMBASSY HOTEL & CAFE facilities to utilize
15 their goods and/or services. When Plaintiff's member patronized
16 Defendants' HITCHING POST MOTELS, INC. d.b.a. EMBASSY HOTEL a.k.a.
17 EMBASSY HOTEL & CAFE facilities, he was unable to use and/or had
18 difficulty using the public accommodations' exterior path of
19 travel, entrance, interior path of travel, café entrance, café
20 public seating, front/registration counter, guestroom, and
21 elevator facilities at Defendants' business establishment because
22 they failed to comply with ADA Access Guidelines For Buildings and
23 Facilities (hereafter referred to as "ADAAG") and/or California's
24 Title 24 Building Code Requirements. Defendants failed to remove
25 access barriers within the exterior path of travel, entrance,
26 interior path of travel, café entrance, café public seating,
27 front/registration counter, men's restroom located in the lobby,
28

1 guestroom, and elevator facilities of Defendants' HITCHING POST
2 MOTELS, INC. d.b.a. EMBASSY HOTEL a.k.a. EMBASSY HOTEL & CAFE
3 establishment.

4 8. Plaintiff's member personally experienced difficulty with
5 said access barriers at Defendants' HITCHING POST MOTELS, INC.
6 d.b.a. EMBASSY HOTEL a.k.a. EMBASSY HOTEL & CAFE facilities. For
7 example, the exterior path of travel of the Defendants'
8 establishment is inaccessible, as it is as narrow as twenty-one
9 inches (21") in some areas.

10 9. The side entrance door to the Defendants establishment is
11 inaccessible, as it has an impermissible threshold between one
12 half of an inch and three quarters of an inch (1/2"-3/4"). The
13 side entrance door to the hotel fails to have the required
14 disability signage.

15 10. The interior path of travel to the microwave located in the
16 lobby is inaccessible, as it is blocked by a cooler/soda machine
17 and does not provide the required thirty-six inches (36") of clear
18 floor space.

19 11. The front/registration counter is inaccessible, as it is an
20 impermissible forty-one inches (41") high. The maximum height
21 requirement is thirty-four inches (34").

22 12. The entrance to the café is inaccessible. The doorknob on
23 the exterior door of the café is inaccessible, as it require tight
24 grasping and/or twisting of the wrist to operate. The clear
25 opening width of one (1) of the exterior double doors of the café
26 is only twenty-five inches (25"), making it inaccessible, as it is
27 required to be a minimum of thirty-two inches (32"). The entrance
28

1 door to the cafe fails to have the required disability signage.

2 13. The public seating located inside the café is inaccessible.

3 There are a total of twenty-one (21) seats, all with a knee
4 clearance depth of a mere four inches (4"). The requirement is
5 that five percent (5%) of all seats, but no less than one (1)
6 seat, must have a knee clearance depth of at least nineteen inches
7 (19").

8 14. The Defendants' establishment has seventy-nine (79)
9 guestrooms, none of which are designated as "accessible rooms".

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

21 15. The elevator at the Defendants' establishment is
22 inaccessible. The elevator does not have the required numbers on
23 the doorjams that identify the floor by both raised Arabic
24 numerals and Braille symbols. The clear opening width of the
25 elevator is only thirty-one inches (31"), when it is required to
26 be at least thirty-six inches (36"). The dimensions of the
27 elevator car platform are an impermissible 47"X58". The emergency
28

1 button located inside the elevator is inaccessible, as it is
2 mounted at fifty-eight inches (58") high. The elevator buttons
3 fail to have the required Arabic numeral, alphabet, or other
4 standard character immediately to the left of the control button.
5 The elevator fails to have the required Braille symbols. The
6 elevator also does not have the required visual and audible
7 signals.

8 16. In addition to the violations personally experienced by
9 Plaintiff's Member and Plaintiff THEODORE A. PINNOCK, additional
10 violations of federal and state disability laws exist at
11 Defendants' HITCHING POST MOTELS, INC. d.b.a. EMBASSY HOTEL a.k.a.
12 EMBASSY HOTEL & CAFE. For example, the restroom located in the
13 lobby of the Defendants' establishment is inaccessible. The
14 restroom door fails to have the required disability signage. The
15 clear opening width of the restroom doorway is only twenty-seven
16 inches (27"), when it should be at least thirty-two inches (32").
17 The restroom doorknob fails to be accessible, as it requires tight
18 grasping and/or twisting of the wrist to operate. The strike-side
19 clearance of the restroom door is a mere six inches (6"), when the
20 minimum requirement is eighteen inches (18"). The locking
21 mechanism on the restroom is inaccessible, as it requires tight
22 grasping and/or twisting of the wrist to operate. The restroom
23 fails to have the required wheelchair turnaround space, as it is
24 only 41"X60". The minimum requirement for wheelchair turnaround
25 space is sixty inches (60") in diameter. The commode fails to have
26 any of the required grab bars. The distance from the side edge of
27 the commode to the far wall is a mere thirteen inches (13"), when
28

1 it should be at least thirty-two inches (32"). The commode seat
2 cover dispenser is located at an impermissible height of sixty
3 inches (60"). The commode is inaccessible, as it is only fifteen
4 inches (15") high. The coat hook is mounted at seventy-seven
5 inches (77") high, and is inaccessible. The toilet paper
6 dispenser is inaccessible, as it is mounted at an impermissible
7 twenty-four inches (24") from the front edge of the commode.

8 17. The lavatory sink is inaccessible, as the area beneath it is
9 enclosed and fails to have the required knee clearance. The
10 mirror is inaccessible as the height of its bottom edge is fifty-
11 three inches (53"), when it is required to be no more than forty
12 inches (40"). The soap dispenser is mounted at an inaccessible
13 forty-six inches (46") in height. The round faucet handles on the
14 lavatory fail to be accessible, as they required tight grasping
15 and/or twisting of the wrist to operate. The paper towel
16 dispenser fails to be accessible as it is mounted at sixty inches
17 (60") above the floor surface. The restroom also fails to have the
18 required audible visual alarm system. The distance from the
19 centerline of the lavatory sink to the adjacent wall is only ten
20 inches (10"), when it is required to be no less than eighteen
21 inches (18").

22 18. Pursuant to federal and state law, Defendants are required to
23 remove barriers to their existing facilities. Further, Defendants
24 had actual knowledge of their barrier removal duties under the
25 Americans with Disabilities Act and the Civil Code before January
26 26, 1992. Also, Defendants should have known that individuals
27 with disabilities are not required to give notice to a
28

1 governmental agency before filing suit alleging Defendants failed
2 to remove architectural barriers.

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

19 20. Based on these facts, Plaintiffs allege Plaintiff's Member
20 and Plaintiff Theodore A. Pinnock was discriminated against each
21 time he patronized Defendants' establishments. Plaintiff's Member
22 and Plaintiff Theodore A. Pinnock was extremely upset due to
23 Defendants' conduct. Further, Plaintiff's Member and Plaintiff
24 THEODORE A. PINNOCK experienced pain in his legs, back, arms,
25 shoulders and wrists when he attempted to enter, use, and exit
26 Defendants' HITCHING POST MOTELS, INC. d.b.a. EMBASSY HOTEL a.k.a.
27 EMBASSY HOTEL & CAFE establishment.
28

1 WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED DEFENDANT

2
3 21. HITCHING POST MOTELS, INC. d.b.a. EMBASSY HOTEL a.k.a.
4 EMBASSY HOTEL & CAFE; HITCHING POST MOTEL, INC.; AMERICAN A-ONE
5 INVESTMENT COMPANY, INC.; and Does 1 through 10 will be referred
6 to collectively hereinafter as "Defendants."

7 22. Plaintiffs aver that the Defendants are liable for the
8 following claims as alleged below:

9 DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS

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

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

14 23. Based on the facts plead at ¶¶ 6-20 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. Plaintiffs allege Defendants are a
18 public accommodation owned, leased and/or operated by Defendants.
19 Defendants' existing facilities and/or services failed to provide
20 full and equal access to Defendants' facility as required by 42
21 U.S.C. § 12182(a). Thus, Plaintiff's 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 Plaintiff's
24 Member was denied equal access to Defendants' existing facilities.

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

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

9
10 CLAIM II AGAINST ALL DEFENDANTS: Failure To Make Alterations In
11 Such A Manner That The Altered Portions Of The Facility Are
12 Readily Accessible And Usable By Individuals With Disabilities

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

26 26. Additionally, the Defendants undertook an alteration that
27 affects or could affect the usability of or access to an area of
28 the facility containing a primary function after January 26, 1992.
Defendants further failed to make the alterations in such a manner

1 that, to the maximum extent feasible, the path of travel to the
2 altered area and the bathrooms, telephones, and drinking fountains
3 serving the altered area, are readily accessible to and usable by
4 individuals with disabilities in violation 42 U.S.C. §12183(a)(2).

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

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

11 28. Thus, Plaintiff's Member Theodore A. Pinnock was subjected to
12 discrimination in violation of 42 U.S.C. § 12183(a), 42 U.S.C.
13 §12182(a) and 42 U.S.C. §12188 because said Member Theodore A.
14 Pinnock was denied equal access to Defendants' existing
15 facilities.

16
17 CLAIM III AGAINST ALL DEFENDANTS: Failure To Remove
Architectural Barriers

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

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

7 Title III requires places of public accommodation to remove
8 architectural barriers that are structural in nature to existing
9 facilities. [See, 42 United States Code 12182(b)(2)(A)(iv).]

10 Failure to remove such barriers and disparate treatment against a
11 person who has a known association with a person with a disability
12 are forms of discrimination. [See 42 United States Code
13 12182(b)(2)(A)(iv).] Thus, Plaintiff's Member was subjected to
14 discrimination in violation of 42 United States Code
15 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was
16 denied equal access to Defendants' existing facilities.

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

19 30. Based on the facts plead at ¶¶ 6-20 above and elsewhere in
20 this complaint, Defendants failed and refused to provide a
21 reasonable alternative by modifying its practices, policies and
22 procedures in that they failed to have a scheme, plan, or design
23 to assist Plaintiff's Member and/or others similarly situated in
24 entering and utilizing Defendants' services, as required by 42
25 U.S.C. § 12188(a). Thus, said Member was subjected to
26 discrimination in violation of 42 United States Code
27 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was
28

1 denied equal access to Defendants' existing facilities.

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

19
20 32. WHEREFORE, Plaintiffs pray for judgment and relief as
21 hereinafter set forth.

22 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER**
23 **CALIFORNIA ACCESSIBILITY LAWS**

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

25 33. Based on the facts plead at ¶¶ 6-20 above and elsewhere in
26 this complaint, Plaintiff's Member was denied full and equal
27 access to Defendants' goods, services, facilities, privileges,
28 advantages, or accommodations within a public accommodation owned,

1 leased, and/or operated by Defendants as required by Civil Code
2 Sections 54 and 54.1. Defendants' facility violated California's
3 Title 24 Accessible Building Code by failing to provide access to
4 Defendants' facilities due to violations pertaining to the Space
5 Allowance and Reach Ranges, Accessible Route, Protruding Objects,
6 Ground and Floor Surfaces, Parking and Passenger Loading Zones,
7 Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair
8 Lifts), Windows, Doors, Entrances, Drinking Fountains and Water
9 Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and
10 Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and
11 Operating Mechanisms, Alarms, Detectable Warnings, Signage, and
12 Telephones.

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

19 **CLAIM II: Failure To Modify Practices, Policies And Procedures**

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

28 ///

1 CLAIM III: Violation Of The Unruh Act

2 36. Based on the facts plead at ¶¶ 6-20 above and elsewhere
3 herein this complaint and because Defendants violated the Civil
4 Code § 51 by failing to comply with 42 United States Code §
5 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and
6 continue to discriminate against Plaintiff's Member and persons
7 similarly situated in violation of Civil Code §§ 51, 52, and 54.1.

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

25
26 38. Wherefore, Plaintiffs pray for damages and relief as
27 hereinafter stated.

28 ///

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

3 39. Defendants, each of them respectively, at times prior to and
4 including, the month of December, 2003, and continuing to the
5 present time, knew that persons with physical disabilities were
6 denied their rights of equal access to all portions of this public
7 facility. Despite such knowledge, Defendants, and each of them,
8 failed and refused to take steps to comply with the applicable
9 access statutes; and despite knowledge of the resulting problems
10 and denial of civil rights thereby suffered by Plaintiff's Member
11 THEODORE A. PINNOCK and other similarly situated persons with
12 disabilities. Defendants, and each of them, have failed and
13 refused to take action to grant full and equal access to persons
14 with physical disabilities in the respects complained of
15 hereinabove. Defendants, and each of them, have carried out a
16 course of conduct of refusing to respond to, or correct complaints
17 about, denial of disabled access and have refused to comply with
18 their legal obligations to make Defendants' HITCHING POST MOTELS,
19 INC. d.b.a. EMBASSY HOTEL a.k.a. EMBASSY HOTEL & CAFE facilities
20 accessible pursuant to the Americans With Disability Act Access
21 Guidelines (ADAAG) and Title 24 of the California Code of
22 Regulations (also known as the California Building Code). Such
23 actions and continuing course of conduct by Defendants, and each
24 of them, evidence despicable conduct in conscious disregard of the
25 rights and/or safety of Plaintiff's Member and of other similarly
26 situated persons, justifying an award of treble damages pursuant
27 to sections 52(a) and 54.3(a) of the California Civil Code.

28 40. Defendants', and each of their, actions have also been

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

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

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

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

26 43. Based on the facts plead at ¶¶ 6-20 above and elsewhere in
27 this complaint, Defendants owed Plaintiff Theodore A. Pinnock a
28 statutory duty to make their facility accessible and owed

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

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

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

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

12 46. Wherefore, Plaintiffs pray for damages and relief as
13 hereinafter stated.

14 DEMAND FOR JUDGMENT FOR RELIEF:

15 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3,
16 3281, and 3333;

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

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

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

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

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

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

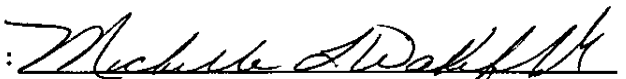
12 G. A Jury Trial and;

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

14 Respectfully submitted:

15 PINNOCK & WAKEFIELD

16
17 Dated: March 18, 2004

18 By: 
19 MICHELLE L. WAKEFIELD, ESQ.
20 DAVID C. WAKEFIELD, ESQ.
21 Attorneys for Plaintiffs
22
23
24
25
26
27
28

(Rev. 07/89)

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 the court, 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
HITCHING POST MOTELS, INC. d.b.a. EMBASSY HOTEL
a.k.a. EMBASSY HOTEL & CAFE HITCHING POST MOTEL,
INC.; AMERICAN A-ONE INVESTMENT COMPANY, INC.; And
DOES 1 THROUGH 10, ~~IN~~ ^{CLERK'S OFFICE} 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 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)
'04 CV 00582 WQH (POR)

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)
(For Diversity Cases Only)
Citizen of This State 1 1 Incorporated or Principal Place of Business in This State 4 4
Citizen of Another State 2 2 Incorporated and Principal Place of Business in Another State 5 5
Citizen or Subject of a Foreign Country 3 3 Foreign Nation 6 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 <input type="checkbox"/> Marine <input type="checkbox"/> Miller Act <input type="checkbox"/> Negotiable Instrument <input type="checkbox"/> 150 Recovery of overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury-Medical Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure Of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 660 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. <input type="checkbox"/> Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (823) <input type="checkbox"/> 863 DRWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 28 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ACC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input checked="" type="checkbox"/> 440 Other Civil Rights PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prisoner Conditions			

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

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

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER fr.c.p. 23

DEMAND \$ To Be Determined At Trial

Check YES only if demanded in complaint:
JURY DEMAND: YES NO

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

Docket Number

DATE MARCH 12, 2004

SIGNATURE OF ATTORNEY OF RECORD

#102048 MS 150-

Michelle J. Wakefield

OR