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3:04-CV-01344 PINNOCK V. ECONOLODGE

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CLERK OF COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY: *SO* DEPUTY

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

(POR)

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

04 CV 1344 L
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.

ECONOLOGGE; NAGRAJ, INC.
d.b.a. ECONOLOGGE; NAGRAJ,
INC.; And DOES 1 THROUGH 10,
Inclusive

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

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
District of California, that Defendants have in the past, and
presently are, engaging in discriminatory practices against
individuals with disabilities, specifically including minorities

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

13 **JURISDICTION AND VENUE**

14 1. The federal jurisdiction of this action is based on the
15 Americans with Disabilities Act, 42 United States Code 12101-
16 12102, 12181-12183 and 12201, et seq. Venue in the Judicial
17 District of the United States District Court of the Southern
18 District of California is in accordance with 28 U.S.C. § 1391(b)
19 because a substantial part of Plaintiffs' claims arose within the
20 Judicial District of the United States District Court of the
21 Southern District of California.

22 **SUPPLEMENTAL JURISDICTION**

23 2. The Judicial District of the United States District Court of
24 the Southern District of California has supplemental jurisdiction
25 over the state claims as alleged in this Complaint pursuant to 28
26 U.S.C. § 1367(a). The reason supplemental jurisdiction is proper
27 in this action is because all the causes of action or claims
28

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

15
16 **NAMED DEFENDANTS AND NAMED PLAINTIFFS**

17 3. Defendants are, and, at all times mentioned herein, were, a
18 business or corporation or franchise organized and existing and/or
19 doing business under the laws of the State of California.
20 Defendant ECONO LODGE is located at 1700 East Plaza Boulevard,
21 National City, California 91950. Plaintiffs are informed and
22 believe and thereon allege that Defendant NAGRAJ, INC. is the
23 owner, operator, and/or doing business as ECONO LODGE. Defendant
24 NAGRAJ, INC. is located at 1700 East Plaza Boulevard, National
25 City, California 91950. Plaintiffs are informed and believe and
26 thereon allege that Defendant NAGRAJ, INC. is also the owner,
27 operator, and/or lessor of the property located at 1700 East Plaza
28 Boulevard, National City, California 91950, Assessor Parcel Number

1 557-410-19. The words "Plaintiffs" and "Plaintiff's Member" as
2 used herein specifically include the organization MANTIC ASHANTI'S
3 CAUSE, its Members, its member Theodore A. Pinnock and persons
4 associated with its Members who accompanied Members to Defendants'
5 facilities, as well as THEODORE A. PINNOCK, An Individual.

6 4. Defendants Does 1 through 10, were at all times relevant
7 herein subsidiaries, employers, employees, agents, of ECONOLODGE;
8 NAGRAJ, INC. d.b.a. ECONOLODGE; and NAGRAJ, INC. Plaintiffs are
9 ignorant of the true names and capacities of Defendants sued
10 herein as Does 1 through 10, inclusive, and therefore sues these
11 Defendants by such fictitious names. Plaintiffs will pray leave of
12 the court to amend this complaint to allege the true names and
13 capacities of the Does when ascertained.

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

20 Plaintiffs are further informed and believe, and thereon allege,
21 that each of the Defendants herein gave consent to, ratified,
22 and/or authorized the acts alleged herein to each of the remaining
23 Defendants.

24
25 CONCISE SET OF FACTS

26 6. Plaintiff MANTIC ASHANTI'S CAUSE is an organization that
27 advocates on the behalf of its members with disabilities when
28 their civil rights and liberties have been violated. Plaintiff's

1 member THEODORE A. PINNOCK is a member of Plaintiff Organization
2 and has an impairment in that he has Cerebral Palsy and due to
3 this impairment he has learned to successfully operate a
4 wheelchair.

5 7. On May 22, 2004, Plaintiff's member THEODORE A. PINNOCK went
6 to ECONO LODGE facilities to utilize their goods and/or services.
7 When Plaintiff's member patronized Defendants' ECONO LODGE
8 facilities, he was unable to use and/or had difficulty using the
9 public accommodations' disabled parking, exterior path of travel,
10 entrance, front desk counter, guestroom, guestroom entrance,
11 guestroom storage, guestroom operable controls, and guestroom
12 bathroom facilities at Defendants' business establishment because
13 they failed to comply with ADA Access Guidelines For Buildings and
14 Facilities (hereafter referred to as "ADAAG") and/or California's
15 Title 24 Building Code Requirements. Defendants failed to remove
16 access barriers within the disabled parking, exterior path of
17 travel, entrance, front desk counter, washing machines, sink
18 located in the office, guestroom, guestroom entrance, guestroom
19 interior path of travel, guestroom storage, guestroom operable
20 controls, and guestroom bathroom facilities of Defendants'
21 ECONO LODGE establishment.

22 8. Plaintiff's member personally experienced difficulty with
23 said access barriers at Defendants' ECONO LODGE facilities. For
24 example, the parking facility of Defendants' establishment is
25 inaccessible. The entryway into the parking lot fails to have the
26 required signage warning motorists that anyone illegally parking
27 in a disabled parking space would be towed/fined or both. The
28

1 parking facility has a total of thirty-eight (38) parking spaces,
2 none of which are a disabled parking space. It is required that
3 there is at least One (1) "van accessible" disabled parking space
4 and one (1) "regular" disabled parking space.

5 9. The exterior path of travel of the Defendants' establishment
6 is inaccessible. There fails to be a safe and accessible path of
7 travel from the public sidewalk and parking lot to the primary
8 accessible entrance, as members of the disability community are
9 forced to traverse through vehicular traffic without the benefit
10 of a marked path of travel. There is a five inches (5") high bump
11 from the public sidewalk to the entrance, which fails to have the
12 required ramp. Changes in level greater than one half of an inch
13 (1/2") are required to have a ramp.

14 10. The entrance door fails to have the required smooth and
15 uninterrupted surface on the bottom ten inches (10") of the door
16 that allows the door to be opened with a wheelchair footrest
17 without creating a hazard. The front entrance door also fails to
18 have the required disability signage.

19 11. The entrance to the office located at the Defendants'
20 establishment is inaccessible, as the threshold at the office
21 entrance door is one half of an inch (1/2") high and fails to be
22 beveled.

23 12. The front desk counter is inaccessible, as it is forty-five
24 inches (45") high, when the maximum height requirement is thirty-
25 four inches (34").

26 13. The Defendants' establishment has thirty-two (32) guestrooms
27 with one (1) designated "accessible room", which is not
28

1 accessible. If a hotel has between twenty-six and fifty (26 and
2 50) guestrooms, the hotel shall provide two (2) fully accessible
3 guestrooms. If a hotel has between twenty-six and fifty (26 and
4 50) guestrooms, the hotel shall provide two (2) accessible
5 guestrooms for members of the disability community who are hearing
6 impaired. The accessible guestrooms must be dispersed among the
7 various classes of sleeping accommodations, providing a range of
8 options applicable to room sizes, costs, amenities provided, and
9 the number of beds provided. Defendants' hotel fails to have the
10 required accessible guestrooms.

11 14. Plaintiff's member and Plaintiff Theodore A. Pinnock was
12 given guestroom 114, a designated "accessible" Guestroom, however
13 it fails to be accessible. The closet rack in Guestroom 114 is
14 mounted too high to be accessible. The lamps in Guestroom 114 are
15 inaccessible, as they require tight grasping and/or twisting of
16 the wrist to operate. The bathroom located inside Guestroom 114
17 is completely inaccessible, as Plaintiff Theodore A. Pinnock was
18 unable to enter the bathroom due to the width of the doorway being
19 less than twenty-seven inches (27"). The wheelchair turn-around
20 space inside the bathroom is too small to be accessible. The
21 commode grab bar is too short to be accessible. The flush
22 mechanism is inaccessible, as it is located on the wrong side of
23 the commode. The bathtub fails to have any of the required grab
24 bars.
25

26 15. In addition to the violations not personally experienced by
27 Plaintiff's member and Plaintiff Theodore A. Pinnock, additional
28 violations of federal and state disability laws exist at

1 Defendants' ECONOLODGE establishment. For example, the washing
2 machines located in the Defendants' establishment are
3 inaccessible, as they are not the required front-load type.

4 16. The area beneath the sink in the office is enclosed and fails
5 to have the required knee clearance. It is required that there is
6 a minimum of twenty-nine inches (29") of clearance from the bottom
7 of the apron to the floor. The knee clearance underneath the sink
8 is required to be at least twenty-seven inches (27") high, thirty
9 inches (30") wide, and extends a minimum of eight inches (8") in
10 depth from the front of the sink. The toe clearance underneath
11 the sink is required to be at least nine inches (9") high and
12 extends a minimum of seventeen inches (17") in depth from the
13 front of the sink.

14 17. Guestroom 112 located in the Defendants' establishment is
15 inaccessible. The entrance door to Guestroom 112 fails to have
16 the required smooth and uninterrupted surface on the bottom ten
17 inches (10") of the door that allows the door to be opened with a
18 wheelchair footrest without creating a hazard. The clear opening
19 width of the entrance doorway is only twenty-nine inches (29"),
20 when it is required to be at least thirty-two inches (32"). The
21 height of the threshold of the entrance door is one inch (1") high
22 and fails to have the required ramp. Changes in level greater
23 than one half of an inch (1/2") are required to have a ramp. The
24 round locking mechanism on the entrance door is inaccessible, as
25 it requires tight grasping and/or twisting of the wrist to
26 operate. The peephole on the entrance door is inaccessible, as
27 the peephole is located sixty inches (60") high, when it is
28

1 required to be between thirty-six inches and forty-four inches
2 (36" - 44") high. The lamp switches are inaccessible, as they
3 require tight grasping and/or twisting of the wrist to operate.
4 The path of travel along one (1) side of the bed is only sixteen
5 inches (16") wide, when it is required to be at least thirty-six
6 inches (36") wide. The small round switches on the climate control
7 device are inaccessible, as they require tight grasping and/or
8 twisting of the wrist to operate. The clothes bar located inside
9 the closet is inaccessible, as it is located sixty-six inches
10 (66") from the floor surface, when it is required to be no higher
11 than forty-eight inches (48"). The shelf inside the closet is
12 inaccessible, as it is located seventy inches (70") from the floor
13 surface, when it is required to be located no higher than forty-
14 eight inches (48"). The round control switches on the microwave
15 located in Guestroom 112 are inaccessible, as they require tight
16 grasping and/or twisting of the wrist to operate. Guestroom 112
17 fails to have the required audible and visual alarm system.
18
19 18. The bathroom inside guestroom 112 is inaccessible. The
20 bathroom doorknob is inaccessible, as it requires tight grasping
21 and/or twisting of the wrist to operate. The clear opening width
22 of the bathroom doorway is only twenty-two inches (22"), when it
23 is required to be at least thirty-two inches (32"). The wheelchair
24 turn-around space is only forty-one inches by fifteen inches (41"x
25 15"), when it is required to be at least sixty inches in diameter
26 (60"). The commode fails to have any of the required grab bars.
27 The distance from the side edge of the commode to the far wall is
28 only fourteen and one half inches (14 ½"), when it is required to

1 be at least thirty-two inches (32"). The distance from the front
2 edge of the commode to the front wall is only thirty-one inches
3 (31"), when it is required to be at least forty-eight inches
4 (48"). The height of the commode is only fifteen inches (15"),
5 when it is required to be between seventeen inches and nineteen
6 inches (17" - 19"). The bathtub fails to have any of the required
7 grab bars. The bathtub fails to have the required seat. The
8 round mixing valve in the bathtub is inaccessible, as it requires
9 tight grasping and/or twisting of the wrist to operate. The
10 height of the area beneath the lavatory is only twenty-five inches
11 (25"), when it is required to be at least twenty-seven inches
12 (27") high. The hot water and drainpipes under the lavatory fail
13 to have the required covering. The faucet handles on the lavatory
14 are inaccessible, as they require tight grasping and/or twisting
15 of the wrist to operate. The towel racks located behind the
16 commode are inaccessible, as they are located at sixty-four inches
17 (64") high, when they should be no higher than forty inches (40").
18 The bathroom fails to have the required audible and visual alarm
19 system.

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

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

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

26 ///

27 WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED DEFENDANT

28 22. ECONOLODGE; NAGRAJ, INC. d.b.a. ECONOLODGE; NAGRAJ, INC.; and

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

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

5 DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS

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

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

10 24. Based on the facts plead at ¶¶ 6-30 above and elsewhere in
11 this complaint, Plaintiff's Member was denied full and equal
12 access to Defendants' goods, services, facilities, privileges,
13 advantages, or accommodations. Plaintiffs allege Defendants are a
14 public accommodation owned, leased and/or operated by Defendants.
15 Defendants' existing facilities and/or services failed to provide
16 full and equal access to Defendants' facility as required by 42
17 U.S.C. § 12182(a). Thus, Plaintiff's Member was subjected to
18 discrimination in violation of 42 United States Code
19 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's
20 Member was denied equal access to Defendants' existing facilities.

21 25. Plaintiff's member Theodore A. Pinnock has physical
22 impairments as alleged in ¶ 6 above because his conditions affect
23 one or more of the following body systems: neurological,
24 musculoskeletal, special sense organs, and/or cardiovascular.
25 Further, Plaintiff's member Theodore A. Pinnock's said physical
26 impairments substantially limits one or more of the following
27 major life activities: walking. In addition, Plaintiff's member
28

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

6 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 26. Based on the facts plead at ¶¶ 6-30 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 27. 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

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

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

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

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

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

15 30. Based on the facts plead at ¶¶ 6-30 above and elsewhere in
16 this complaint, Plaintiff's Member was denied full and equal
17 access to Defendants' goods, services, facilities, privileges,
18 advantages, or accommodations within a public accommodation owned,
19 leased, and/or operated by Defendants. Defendants failed to
20 remove barriers as required by 42 U.S.C. § 12182(a). Plaintiffs
21 are informed, believe, and thus allege that architectural barriers
22 which are structural in nature exist within the following physical
23 elements of Defendants' facilities: Space Allowance and Reach
24 Ranges, Accessible Route, Protruding Objects, Ground and Floor
25 Surfaces, Parking and Passenger Loading Zones, Curb Ramps, Ramps,
26 Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows,
27 Doors, Entrances, Drinking Fountains and Water Coolers, Water
28 Closets, Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks,

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 31. Based on the facts plead at ¶¶ 6-30 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 32. Based on the facts plead at ¶¶ 6-30 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 33. 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 34. Based on the facts plead at ¶¶ 6-30 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 35. 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 36. Based on the facts plead at ¶¶ 6-30 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 37. Based on the facts plead at ¶¶ 6-30 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 38. Based on the facts plead at ¶¶ 6-30 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 39. Wherefore, Plaintiffs pray for damages and relief as
22 hereinafter stated.

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

25 40. Defendants, each of them respectively, at times prior to and
26 including, the month of May, 2004, and continuing to the present
27 time, knew that persons with physical disabilities were denied
28 their rights of equal access to all portions of this public

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

21
22 41. Defendants', and each of their, actions have also been
23 oppressive to persons with physical disabilities and of other
24 members of the public, and have evidenced actual or implied
25 malicious intent toward those members of the public, such as
26 Plaintiff's Member and other persons with physical disabilities
27 who have been denied the proper access to which they are entitled
28 by law. Further, Defendants', and each of their, refusals on a

1 day-to-day basis to correct these problems evidence despicable
2 conduct in conscious disregard for the rights of Plaintiff's
3 Member THEODORE A. PINNOCK and other members of the public with
4 physical disabilities.

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

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

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

19 44. Based on the facts plead at ¶¶ 6-30 above and elsewhere in
20 this complaint, Defendants owed Plaintiff Theodore A. Pinnock a
21 statutory duty to make their facility accessible and owed
22 Plaintiff Theodore A. Pinnock a duty to keep Plaintiff Theodore A.
23 Pinnock reasonably safe from known dangers and risks of harm.
24 This said duty arises by virtue of legal duties proscribed by
25 various federal and state statutes including, but not limited to,
26 ADA, ADAAG, Civil Code 51, 52, 54, 54.1 and Title 24 of the
27 California Administrative Code and applicable 1982 Uniform
28

1 Building Code standards as amended.

2 45. 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 46. 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 suffer damages as a result of these
5 injuries.

6 47. 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

1 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.

2 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C.
3 § 12205, and Cal. Civil Code § 55;

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

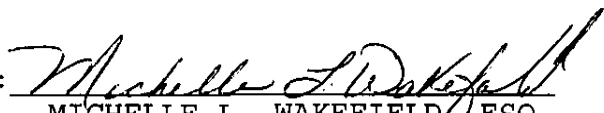
6 G. A Jury Trial and;

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

8 Respectfully submitted:

PINNOCK & WAKEFIELD, A.P.C.

9
10 Dated: July 2, 2004

11 By: 
12 MICHELLE L. WAKEFIELD, ESQ.
13 DAVID C. WAKEFIELD, ESQ.
14 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
(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego (EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS
ECONOLOGDE; NAGRAJ, INC. d.b.a. ECONOLOGDE; NAGRAJ, INC.; And DOES 1 THROUGH 10, Inclusive
FILED
04 JUL -6 AM 11:03
04 CV 1344 L (POR)
COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT San Diego
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

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

ATTORNEYS (IF KNOWN)

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 Diversity Cases Only)
FOR PLAINTIFF AND ONE BOX FOR DEFENDANT
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PT/DEF
[] 1 Incorporated or Principal Place of Business in This State
[] 2 Incorporated and Principal Place of Business in Another State
[] 3 Foreign Nation
PT/DEF
[] 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 like 110 Insurance, 310 Airplane, 422 Appeal 28 USC 158, etc.

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)
[X] 1 Original Proceeding
[] 2 Removal from State Court
[] 3 Remanded from Appellate Court
[] 4 Reinstated or Reopened
[] 5 Transferred from another district (specify)
[] 6 Multidistrict Litigation
[] 7 Appeal to District Judge from Magistrate Judgment

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

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

DATE July 2, 2004

SIGNATURE OF ATTORNEY OF RECORD

Signature of Michelle L. Wakefield

Handwritten notes: 105145 150⁰⁰ 7/6/04