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IMPROVED W. SIEKING
U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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7 **UNITED STATES DISTRICT COURT**
8 **NORTHERN DISTRICT OF CALIFORNIA**

9 **MANTIC ASHANTI'S CAUSE, Suing**
10 **ON BEHALF OF THEODORE A.**
11 **PINNOCK AND ITS MEMBERS; and**
12 **THEODORE A. PINNOCK, An**
13 **Individual,**

14 **Plaintiffs,**

15 **v.**

16 **THE MOSSER HOTEL aka MOSSER**
17 **VICTORIAN HOTEL OF ARTS &**
18 **MUSIC; CHARLES W. MOSSER; And**
19 **DOES 1 THROUGH 10, Inclusive**
20 **Defendants.**

Case No. **05 5080**

CIVIL COMPLAINT:
DISCRIMINATORY PRACTICES
IN PUBLIC ACCOMMODATIONS

JL

[42 U.S.C. 12182(a) ET. SEQ;
CIVIL CODE 51, 52, 54, 54.1;
HEALTH & SAFETY CODE
19995]

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]

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FILED BY FAX

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3 **INTRODUCTION**

4 1. Plaintiffs MANTIC ASHANTI'S CAUSE SUING ON BEHALF OF
5 THEODORE A. PINNOCK AND ITS MEMBERS and THEODORE A. PINNOCK,
6 An Individual, herein complain, by filing this Civil Complaint in accordance with
7 rule 8 of the Federal Rules of Civil Procedure in the Judicial District of the United
8 States District Court for the Northern District of California, that Defendants have in
9 the past, and presently are, engaging in discriminatory practices against individuals
10 with disabilities, specifically including minorities with disabilities. Plaintiffs allege
11 this civil action and others substantial similar thereto are necessary to compel access
12 compliance because empirical research on the effectiveness of Title III of the
13 Americans with Disabilities Act indicates this Title has failed to achieve full and
14 equal access simply by the executive branch of the Federal Government funding and
15 promoting voluntary compliance efforts. Further, empirical research shows when
16 individuals with disabilities give actual notice of potential access problems to places
17 of public accommodation without a federal civil rights action, the public
18 accommodations do not remove the access barriers. Therefore, Plaintiffs make the
19 following allegations in this federal civil rights action:

20 **JURISDICTION AND VENUE**

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

27 **INTRADISTRICT ASSIGNMENT**

28 3. Pursuant to Local Rule 3-2, this action should be assigned to the San
Francisco Division as the property that is the subject of this action is situated in San

1 Francisco County.
2

3 **SUPPLEMENTAL JURISDICTION**

4 4. The Judicial District of the United States District Court of the Northern
5 District of California has supplemental jurisdiction over the state claims as alleged
6 in this Complaint pursuant to 28 U.S.C. § 1367(a). The reason supplemental
7 jurisdiction is proper in this action is because all the causes of action or claims
8 derived from federal law and those arising under state law, as herein alleged, arose
9 from common nucleus of operative facts. The common nucleus of operative facts,
10 include, but are not limited to, the incidents where Plaintiff's Member Theodore A.
11 Pinnock was denied full and equal access to Defendants' facilities, goods, and/or
12 services in violation of both federal and state laws when they attempted to enter,
13 use, and/or exit Defendants' facilities as described below within this Complaint.
14 Further, due to this denial of full and equal access, THEODORE A. PINNOCK and
15 other persons with disabilities were injured. Based upon the said allegations, the
16 state actions, as stated herein, are so related to the federal actions that they form part
17 of the same case or controversy and the actions would ordinarily be expected to be
18 tried in one judicial proceeding.
19

20 **NAMED DEFENDANTS AND NAMED PLAINTIFFS**

21 5. Defendants are, and, at all times mentioned herein, were, a business or
22 corporation or franchise organized and existing and/or doing business under the
23 laws of the State of California. Defendant THE MOSSER HOTEL aka MOSSER
24 VICTORIAN HOTEL OF ARTS & MUSIC (hereinafter referred to as "MOSSER
25 HOTEL") is located at 54 Fourth Street, San Francisco, California, 94103. Plaintiffs
26 are informed and believe and thereon allege that Defendant CHARLES W.
27 MOSSER is the owner and operator of the business entity known as THE MOSSER
28 HOTEL. Additionally, Plaintiffs are informed and believe and thereon allege that

1 Defendant CHARLES W. MOSSER is the owner, operator, and/or lessor of the
2 property located at 54 Fourth Street, San Francisco, California, 94103, Assessor
3 Parcel Number: 3705 -004. Defendant CHARLES W. MOSSER is located at 54
4 Fourth Street, San Francisco, California, 94103. The words Plaintiffs” and
5 "Plaintiff's Member" as used herein specifically include the organization MANTIC
6 ASHANTI’S CAUSE, its Members, its member Theodore A. Pinnock and persons
7 associated with its Members who accompanied Members to Defendants’ facilities,
8 as well as THEODORE A. PINNOCK, An Individual.

9 6. Defendants Does 1 through 10, were at all times relevant herein subsidiaries,
10 employers, employees, agents, of THE MOSSER HOTEL aka MOSSER
11 VICTORIAN HOTEL OF ARTS & MUSIC and CHARLES W. MOSSER.
12 Plaintiffs are ignorant of the true names and capacities of Defendants sued herein as
13 Does 1 through 10, inclusive, and therefore sues these Defendants by such fictitious
14 names. Plaintiffs will pray leave of the court to amend this complaint to allege the
15 true names and capacities of the Does when ascertained.

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

24 CONCISE SET OF FACTS

25 8. Plaintiff MANTIC ASHANTI'S CAUSE is an organization that advocates on
26 the behalf of its members with disabilities when their civil rights and liberties have
27 been violated. Plaintiff’s member THEODORE A. PINNOCK is a member of
28

1 Plaintiff Organization and has a physical impairment in that he has Cerebral Palsy
2 and due to this impairment he has learned to successfully operate a wheelchair.
3 Plaintiff THEODORE A. PINNOCK said physical impairment substantially limits
4 one or more of the following major life activities: walking.

5 9. On December 8, 2004 through December 9, 2004, Plaintiff's Member
6 THEODORE A. PINNOCK went to Defendants' MOSSER HOTEL facilities to
7 utilize their goods and/or services. Plaintiff's Member and Plaintiff THEODORE A.
8 PINNOCK had made reservations over the Internet for an accessible guestroom in
9 the MOSSER HOTEL. Plaintiff's Member and Plaintiff THEODORE A.
10 PINNOCK's confirmation number was 62986079. Plaintiff's Member and Plaintiff
11 THEODORE A. PINNOCK's specifically requested an accessible guestroom over
12 the phone and was assured that an accessible guestroom would be provided. When
13 Plaintiff's Member and Plaintiff THEODORE A, PINNOCK patronized Defendants'
14 MOSSER HOTEL facilities, he was unable to use and/or had difficulty using the
15 public accommodations' lobby registration counter, elevator, guestroom entrance,
16 guestroom entry door, guestroom, guestroom interior path of travel, guestroom
17 restroom, guestroom lamps, guestroom closet, and guestroom windows at
18 Defendants' business establishment because they failed to comply with ADA Access
19 Guidelines For Buildings and Facilities (hereafter referred to as "ADAAG") and/or
20 California's Title 24 Building Code Requirements. Defendants failed to remove
21 access barriers within the public accommodations' lobby registration counter,
22 elevator, guestroom entrance, guestroom entry door, guestroom, guestroom interior
23 path of travel, guestroom restroom, guestroom lamp, guestroom closet, and
24 guestroom windows of Defendants' MOSSER HOTEL establishment. Plaintiffs
25 intend to return to Defendants' facilities in the immediate future.

26
27 10. Plaintiff's Member and Plaintiff THEODORE A. PINNOCK personally
28 experienced difficulty with said access barriers at Defendants' MOSSER HOTEL

1 facility. Plaintiff's Member and Plaintiff THEODORE A. PINNOCK personally
2 experienced the access barriers in paragraph 8 through paragraph 19.

3 11. Defendants' hotel has one hundred sixty-four (164) guestrooms, and fails to
4 have any of the required accessible guestrooms. If a hotel has between one hundred
5 fifty-one (151) and two hundred (200) guestrooms, the hotel shall provide Eight (8)
6 accessible guestrooms with two (2) of the designated accessible guestrooms to
7 provide roll-in showers. Defendants' hotel fails to provide any accessible
8 guestrooms. In addition the lobby registration counter was too high to be accessible
9 and the elevator was not accessible due to the lack of Braille signage.

10 12. When Plaintiff's member and Plaintiff Theodore A. Pinnock attempted to stay
11 at Defendants' MOSSER HOTEL, he was shown a guestroom that the hotel staff
12 stated was the only designated accessible guestroom. The designated accessible
13 guestroom was not accessible. The opening width of guestroom entry doorway fails
14 to be accessible, as it is too narrow and does not provide the required door width of
15 thirty-two inches (32"). The entry door operating hardware is not accessible since it
16 requires tight grasping and turning of the wrist to operate.

17 13. The interior path of travel within the designated accessible guestroom as it is
18 too narrow in width.

19 14. The guestroom bathroom within the designated guestroom also fails to be
20 accessible. The bathroom doorknob is not compliant, as it requires tight grasping
21 and/or twisting of the wrist to operate. The clear opening width of the guestroom
22 bathroom doorway fails to be compliant as it is significantly less in width than the
23 required thirty-two inches (32") wide. The clear floor space inside the guestroom
24 bathroom fails to be compliant since it is too small and thereby inhibiting wheelchair
25 turnaround space. There fails to be any of the required grab bars around the
26 commode. The faucet handles are not accessible, as they require tight grasping
27 and/or twisting of the wrist to operate.
28

1 15. The operable controls of the lamps and windows within the designated
2 guestroom fail to be accessible since the operable controls for the lamps and the
3 windows require tight grasping and/or twisting of the wrist to operate. The height of
4 the clothes rack in the guestroom closet is too high to be accessible.

5 16. Plaintiff's member and Plaintiff Theodore A. Pinnock was shown to many
6 other guestrooms by the hotel staff in addition to the purported designated accessible
7 guestroom but none were accessible. Plaintiff's member and Plaintiff Theodore A.
8 Pinnock was not able to stay in the guestrooms for which he had reserved and paid
9 the room charge for in advance. Defendants did not reimburse the room charge.

10 17. Defendants made substantial alterations to their hotel facilities in a multi-
11 million dollar renovation that completed in the year 2003.

12 18. Plaintiffs' Member and Plaintiff Theodore A. Pinnock is presently deterred
13 from returning due to his knowledge of the barriers to access that exist at
14 Defendants' facilities.

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

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

1 Stalls, Urinals, Lavatories and Mirrors, Sinks, Storage, Handrails, Grab Bars, and
2 Controls and Operating Mechanisms, Alarms, Detectable Warnings, Signage, and
3 Telephones. Accordingly, Plaintiffs allege Defendants are required to remove all
4 architectural barriers, known or unknown. Also, Plaintiffs allege Defendants are
5 required to utilize the ADA checklist for Readily Achievable Barrier Removal
6 approved by the United States Department of Justice and created by Adaptive
7 Environments.

8 21. Based on these facts, Plaintiffs allege Plaintiff's Member and Plaintiff
9 Theodore A. Pinnock was discriminated against each time he patronized Defendants'
10 establishment. Plaintiff's Member and Plaintiff Theodore A. Pinnock was extremely
11 upset due to Defendants' conduct. Further, Plaintiff's Member and Plaintiff
12 THEODORE A. PINNOCK experienced pain in his legs, back, arms, shoulders and
13 wrists when he attempted to enter, use, and exit Defendants' establishment.
14

15 **WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED**
16 **DEFENDANT**

17
18 22. THE MOSSER HOTEL aka MOSSER VICTORIAN HOTEL OF ARTS &
19 MUSIC; CHARLES W. MOSSER; and Does 1 through 10 will be referred to
20 collectively hereinafter as "Defendants."

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

24 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**
25 **FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS- Claims Under The**
26 **Americans With Disabilities Act Of 1990**

27
28 CLAIM I AGAINST ALL DEFENDANTS: **Denial Of Full And Equal**

1 **Access**

2 24. Based on the facts plead at ¶¶ 8-21 above and elsewhere in this complaint,
3 Plaintiff's Member was denied full and equal access to Defendants' goods, services,
4 facilities, privileges, advantages, or accommodations. Plaintiffs allege Defendants
5 are a public accommodation owned, leased and/or operated by Defendants.

6 Defendants' existing facilities and/or services failed to provide full and equal access
7 to Defendants' facility as required by 42 U.S.C. § 12182(a). Thus, Plaintiff's
8 Member was subjected to discrimination in violation of 42 United States Code
9 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's Member was denied
10 equal access to Defendants' existing facilities.

11 25. Plaintiff's member Theodore A. Pinnock has physical impairments as alleged
12 in ¶ 8 above because his conditions affect one or more of the following body
13 systems: neurological, musculoskeletal, special sense organs, and/or cardiovascular.

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

21
22 **CLAIM II AGAINST ALL DEFENDANTS: Failure To Make Alterations In Such**
23 **A Manner That The Altered Portions Of The Facility Are Readily Accessible**
24 **And Usable By Individuals With Disabilities**

25 26. Based on the facts plead at ¶¶ 8-21 above and elsewhere in this complaint,
26 Plaintiff's Member Theodore A. Pinnock was denied full and equal access to
27 Defendants' goods, services, facilities, privileges, advantages, or accommodations
28 within a public accommodation owned, leased, and/or operated by Defendants.

1 Defendants altered their facility in a manner that affects or could affect the usability
2 of the facility or a part of the facility after January 26, 1992. In performing the
3 alteration, Defendants failed to make the alteration in such a manner that, to the
4 maximum extent feasible, the altered portions of the facility are readily accessible to
5 and usable by individuals with disabilities, including individuals who use
6 wheelchairs, in violation of 42 U.S.C. §12183(a)(2).

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

14 28. Pursuant to 42 U.S.C. §12183(a), this failure to make the alterations in a
15 manner that, to the maximum extent feasible, are readily accessible to and usable by
16 individuals with disabilities constitutes discrimination for purposes of 42 U.S.C.
17 §12183(a). Therefore, Defendants discriminated against Plaintiff's Member
18 Theodore A. Pinnock in violation of 42 U.S.C. § 12182(a).

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

23
24
25 **CLAIM III AGAINST ALL DEFENDANTS: Failure To Remove**
Architectural Barriers

26 30. Based on the facts plead at ¶¶ 8-21 above and elsewhere in this complaint,
27 Plaintiff's Member was denied full and equal access to Defendants' goods, services,
28 facilities, privileges, advantages, or accommodations within a public

1 accommodation owned, leased, and/or operated by Defendants. Defendants failed to
2 remove barriers as required by 42 U.S.C. § 12182(a). Plaintiffs are informed,
3 believe, and thus allege that architectural barriers which are structural in nature exist
4 within the following physical elements of Defendants' facilities: Space Allowance
5 and Reach Ranges, Accessible Route, Protruding Objects, Ground and Floor
6 Surfaces, Parking and Passenger Loading Zones, Curb Ramps, Ramps, Stairs,
7 Elevators, Platform Lifts (Wheelchair Lifts), Windows, Doors, Entrances, Drinking
8 Fountains and Water Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and
9 Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and Operating
10 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones. Title III
11 requires places of public accommodation to remove architectural barriers that are
12 structural in nature to existing facilities. [See, 42 United States Code
13 12182(b)(2)(A)(iv).] Failure to remove such barriers and disparate treatment against
14 a person who has a known association with a person with a disability are forms of
15 discrimination. [See 42 United States Code 12182(b)(2)(A)(iv).] Thus, Plaintiff's
16 Member was subjected to discrimination in violation of 42 United States Code
17 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was denied equal
18 access to Defendants' existing facilities.
19

20 CLAIM IV AGAINST ALL DEFENDANTS: **Failure To Modify Practices,**
21 **Policies And Procedures**

22 31. Based on the facts plead at ¶¶ 8-21 above and elsewhere in this complaint,
23 Defendants failed and refused to provide a reasonable alternative by modifying its
24 practices, policies and procedures in that they failed to have a scheme, plan, or
25 design to assist Plaintiff's Member and/or others similarly situated in entering and
26 utilizing Defendants' services, as required by 42 U.S.C. § 12188(a). Thus, said
27 Member was subjected to discrimination in violation of 42 United States Code
28 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was denied equal

1 access to Defendants' existing facilities.

2 32. Based on the facts plead at ¶¶ 8-21 above, Claims I, II, and III of Plaintiffs'
3 First Cause Of Action above, and the facts elsewhere herein this complaint,
4 Plaintiffs will suffer irreparable harm unless Defendants are ordered to remove
5 architectural, non-architectural, and communication barriers at Defendants' public
6 accommodation. Plaintiffs allege that Defendants' discriminatory conduct is
7 capable of repetition, and this discriminatory repetition adversely impacts Plaintiffs
8 and a substantial segment of the disability community. Plaintiffs allege there is a
9 national public interest in requiring accessibility in places of public accommodation.
10 Plaintiffs have no adequate remedy at law to redress the discriminatory conduct of
11 Defendants. Plaintiff's Member desires to return to Defendants' places of business
12 in the immediate future. Accordingly, the Plaintiffs allege that a structural or
13 mandatory injunction is 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 hereinafter set
16 forth.

17
18 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS**
19 **UNDER CALIFORNIA ACCESSIBILITY LAWS**

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

21 34. Based on the facts plead at ¶¶ 8-21 above and elsewhere in this complaint,
22 Plaintiff's Member was denied full and equal access to Defendants' goods, services,
23 facilities, privileges, advantages, or accommodations within a public
24 accommodation owned, leased, and/or operated by Defendants as required by Civil
25 Code Sections 54 and 54.1. Defendants' facility violated California's Title 24
26 Accessible Building Code by failing to provide access to
27 Defendants' facilities due to violations pertaining to the Space Allowance and
28 Reach Ranges, Accessible Route, Protruding Objects, Ground and Floor Surfaces,

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

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

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

11 36. Based on the facts plead at ¶¶ 8-21 above and elsewhere herein this
12 complaint, Defendants failed and refused to provide a reasonable alternative by
13 modifying its practices, policies, and procedures in that they failed to have a scheme,
14 plan, or design to assist Plaintiff's Member and/or others similarly situated in
15 entering and utilizing Defendants' services as required by Civil Code § 54.1. Thus,
16 said Member was subjected to discrimination in violation of Civil Code § 54.1.

17 **CLAIM III: Violation Of The Unruh Act**

18 37. Based on the facts plead at ¶¶ 8-21 above and elsewhere
19 herein this complaint and because Defendants violated the Civil Code § 51 by
20 failing to comply with 42 United States Code § 12182(b)(2)(A)(iv) and 42 U.S.C. §
21 12183(a)(2), Defendants did and continue to discriminate against Plaintiff's Member
22 and persons similarly situated in violation of Civil Code §§ 51, 52, and 54.1.

23 38. Based on the facts plead at ¶¶ 8-21 above, Claims I, II, and III of Plaintiffs'
24 Second Cause Of Action above, and the facts elsewhere herein this complaint,
25 Plaintiffs will suffer irreparable harm unless Defendants are ordered to remove
26 architectural, non-architectural, and communication barriers at Defendants' public
27 accommodation. Plaintiffs allege that Defendants' discriminatory conduct is
28

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

10
11 **Treble Damages Pursuant To Claims I, II, III Under The California**
12 **Accessibility Laws**

13 40. Defendants, each of them respectively, at times prior to and including, the
14 month of December, 2004, and continuing to the present time, knew that persons
15 with physical disabilities were denied their rights of equal access to all portions of
16 this public facility. Despite such knowledge, Defendants, and each of them, failed
17 and refused to take steps to comply with the applicable access statutes; and despite
18 knowledge of the resulting problems and denial of civil rights thereby suffered by
19 Plaintiff's Member THEODORE A. PINNOCK and other similarly situated persons
20 with disabilities. Defendants, and each of them, have failed and refused to take
21 action to grant full and equal access to persons with physical disabilities in the
22 respects complained of hereinabove. Defendants, and each of them, have carried out
23 a course of conduct of refusing to respond to, or correct complaints about, denial of
24 disabled access and have refused to comply with their legal obligations to make
25 Defendants' MOSSER HOTEL facilities accessible pursuant to the Americans With
26 Disability Act Access Guidelines (ADAAG) and Title 24 of the California Code of
27 Regulations (also known as the California Building Code). Such actions and
28 continuing course of conduct by Defendants, and each of them, evidence despicable

1 conduct in conscious disregard of the rights and/or safety of Plaintiff's Member and
2 of other similarly situated persons, justifying an award of treble damages pursuant to
3 sections 52(a) and 54.3(a) of the California Civil Code.

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

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

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

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

24 44. Based on the facts plead at ¶¶ 8-21 above and elsewhere in
25 this complaint, Defendants owed Plaintiff Theodore A. Pinnock a statutory duty to
26 make their facility accessible and owed Plaintiff Theodore A. Pinnock a duty to keep
27 Plaintiff Theodore A. Pinnock reasonably safe from known dangers and risks of
28

1 harm. This said duty arises by virtue of legal duties proscribed by various federal
2 and state statutes including, but not limited to, ADA, ADAAG, Civil Code 51, 52,
3 54, 54.1, 54.3, and Title 24 of the California Administrative Code and applicable
4 1982 Uniform Building Code standards as amended.

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

11 46. Therefore, Defendants engaged in discriminatory conduct in that they failed to
12 comply with known duties under the ADA, ADAAG, Civil Code 51, 52, 54, 54.1,
13 54.3, ADAAG, and Title 24, and knew or should have known that their acts of
14 nonfeasance would cause Plaintiff THEODORE A. PINNOCK emotional, bodily
15 and personal injury. Plaintiff THEODORE A. PINNOCK alleges that there was
16 bodily injury in this matter because when Plaintiff THEODORE A. PINNOCK
17 attempted to enter, use, and exit Defendants' establishment, Plaintiff THEODORE
18 A. PINNOCK experienced pain in his legs, back, arms, shoulders, and wrists.
19 Plaintiffs further allege that such conduct was done in reckless disregard of the
20 probability of said conduct causing Plaintiff THEODORE A. PINNOCK to suffer
21 bodily or personal injury, anger, embarrassment, depression, anxiety, mortification,
22 humiliation, distress, and fear of physical injury. Plaintiff THEODORE A.
23 PINNOCK, An Individual, alleges that such conduct caused THEODORE A.
24 PINNOCK, An Individual, to suffer the injuries of mental and emotional distress,
25 including, but not limited to, anger, embarrassment, depression, anxiety,
26 mortification, humiliation, distress, and fear of physical injury. Plaintiff
27 THEODORE A. PINNOCK, An Individual, additionally alleges that such conduct
28

1 caused THEODORE A. PINNOCK, An Individual, to suffer damages as a result of
2 these injuries.

3 47. Wherefore, Plaintiffs pray for damages and relief as hereinafter stated.
4

5
6 DEMAND FOR JUDGMENT FOR RELIEF:

7 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3, 3281, and
8 3333;

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

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

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

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

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

28 ///

1 G. A Jury Trial and;

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

3
4 Respectfully submitted:

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6
7 Dated: December 7, 2005

PINNOCK & WAKEFIELD, A.P.C

8
9 By: 

10 DAVID C. WAKEFIELD, Esq.

11 MICHELLE L. WAKEFIELD, Esq.

12 Attorneys for Plaintiffs
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United States District Court

NORTHERN DISTRICT OF CALIFORNIA

E-Filing

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

SUMMONS IN A CIVIL CASE

CASE NUMBER:

v.

E-Filing

THE MOSSER HOTEL aka MOSSER
VICTORIAN HOTEL OF ARTS & MUSIC;
CHARLES W. MOSSER;

C O R 5080

FILED BY FAX JL

TO: (Name and address of defendant)

The Mosser Hotel aka Mosser
Victorian Hotel of Arts & Music;
Charles W. Mosser
54 Fourth St. San Francisco California
94103

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

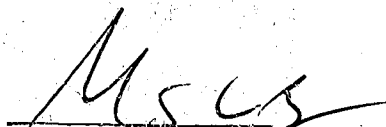
Pinnock & Wakefield, A.P.C.
David C Wakefield, Esq.
Michelle L. Wakefield, Esq.
3033 Fifth ~~St~~ Ave, Suite 410
San Diego, Cal. 92103-5973

an answer to the complaint which is herewith served upon you, within **20** days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgement by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

Richard W. Wiaking

CLERK

DATE DEC - 8 2005


(BY) DEPUTY CLERK

MARY ANN DUCKLEY

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 PAGE TWO.)

I. (a) PLAINTIFFS

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

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

SAN DIEGO

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

DAVID C. WAKEFIELD; PINNOCK & WAKEFIELD, APC
3033 Fifth Avenue, Ste 410, San Diego, CA Tel:619.858.3671

DEFENDANTS

THE MOSSER HOTEL aka MOSSER VICTORIAN HOTEL OF ARTS & MUSIC; CHARLES W. MOSSER

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. SAN FRANCISCO

ATTORNEYS (IF KNOWN)

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)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <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 | <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 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- Original Proceeding
- Removed from State Court
- Remanded from Appellate Court
- Reinstated or Reopened
- Transferred from Another district (specify)
- Multidistrict Litigation
- Appeal to District Judge from Magistrate Judgment

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"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 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 Loans (Excl Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	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 Med Malpractice <input type="checkbox"/> 365 Personal Injury Product Liability <input type="checkbox"/> 366 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"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 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. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 100 <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 (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DMC/DIWW (408(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Arbitrat <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commercial Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 610 Selective Service <input type="checkbox"/> 650 Securities/Commodities Exchange <input type="checkbox"/> 675 Customer Challenge 12 USC 3410 <input type="checkbox"/> 691 Agricultural Acts <input type="checkbox"/> 692 Economic Stabilization Act <input type="checkbox"/> 693 Environmental Matters <input type="checkbox"/> 694 Energy Allocation Act <input type="checkbox"/> 695 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 990 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	FEDERAL TAX SUITS	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Amer w/ disab - Empl <input checked="" type="checkbox"/> 446 Amer w/ disab - Other <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Satellite TV	<input type="checkbox"/> 510 Motion to Vacate Sentence Habemus 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 Prison Condition	<input type="checkbox"/> 870 Taxes (US Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	

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

42 U.S.C. Sections 12181 - 12183 ET. SEQ.

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION DEMAND \$ CHECK YES only if demanded in complaint: UNDER F.R.C.P. 23 JURY DEMAND: YES NO

VIII. RELATED CASE(S) IF ANY PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)

(PLACE AND "X" IN ONE BOX ONLY)

SAN FRANCISCO/OAKLAND

SAN JOSE

DATE 12/7/05

SIGNATURE OF ATTORNEY OF RECORD

David C. Wakefield