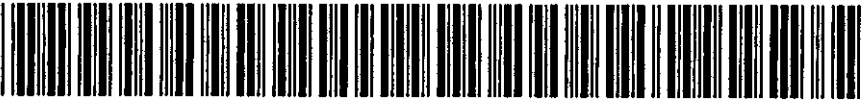


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CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

DEPUTY

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

'04 CV 00586 L (JFS)

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.

PORTLAND HOTELS, LLC d.b.a.  
COMFORT INN LA MESA; PORTLAND  
HOTELS, LLC; CITICORP VENDOR  
FINANCE, INC. a.k.a. LS OF  
CITICORP VENDOR FINANCE,  
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

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

26 **SUPPLEMENTAL JURISDICTION**

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

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  
19 NAMED DEFENDANTS AND NAMED PLAINTIFFS

20 3. Defendants are, and, at all times mentioned herein, were, a  
21 business or corporation or franchise organized and existing and/or  
22 doing business under the laws of the State of California.  
23 Defendant PORTLAND HOTELS, LLC d.b.a. COMFORT INN LA MESA is  
24 located at 8000 Parkway Drive, La Mesa, California, 91942.  
25 Plaintiffs are informed and believe and thereon allege that  
26 Defendant PORTLAND HOTELS, LLC is the owner, operator, and/or  
27 doing business as COMFORT INN LA MESA. Defendant PORTLAND HOTELS,  
28 LLC is located at 7911 University Avenue, La Mesa, California,

1 91941. Plaintiffs are informed and believe and thereon allege  
2 that Defendant PORTLAND HOTELS, LLC and/or Defendant CITICORP  
3 VENDOR FINANCE, INC. a.k.a. LS OF CITICORP VENDOR FINANCE, INC.  
4 are the owners, operators, and/or lessors of the property located  
5 at 8000 Parkway Drive, La Mesa, California, 91942, Assessor Parcel  
6 Number 464-530-35. Defendant PORTLAND HOTELS, LLC is located at  
7 7911 University Avenue, La Mesa, California, 91941. Defendant  
8 CITICORP VENDOR FINANCE, INC. a.k.a. LS OF CITICORP VENDOR  
9 FINANCE, INC. is located at 700 East Gate Drive, Suite 400, Mt.  
10 Laurel, New Jersey 08054. The words "Plaintiffs" and "Plaintiff's  
11 Member" as used herein specifically include the organization  
12 MANTIC ASHANTI'S CAUSE, its Members, its member Theodore A.  
13 Pinnock and persons associated with its Members who accompanied  
14 Members to Defendants' facilities, as well as THEODORE A. PINNOCK,  
15 An Individual.

16 4. Defendants Does 1 through 10, were at all times relevant  
17 herein subsidiaries, employers, employees, agents, of PORTLAND  
18 HOTELS, LLC d.b.a. COMFORT INN LA MESA; PORTLAND HOTELS, LLC;  
19 CITICORP VENDOR FINANCE, INC. a.k.a. LS OF CITICORP VENDOR  
20 FINANCE, INC. Plaintiffs are ignorant of the true names and  
21 capacities of Defendants sued herein as Does 1 through 10,  
22 inclusive, and therefore sues these Defendants by such fictitious  
23 names. Plaintiffs will pray leave of the court to amend this  
24 complaint to allege the true names and capacities of the Does when  
25 ascertained.

26 5. Plaintiffs are informed and believe, and thereon allege, that  
27 Defendants and each of them herein were, at all times relevant to  
28

1 the action, the owner, lessor, lessee, franchiser, franchisee,  
2 general partner, limited partner, agent, employee, representing  
3 partner, or joint venturer of the remaining Defendants and were  
4 acting within the course and scope of that relationship.  
5 Plaintiffs are further informed and believe, and thereon allege,  
6 that each of the Defendants herein gave consent to, ratified,  
7 and/or authorized the acts alleged herein to each of the remaining  
8 Defendants.

9  
10 CONCISE SET OF FACTS

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

18 7. On September 24, 2003, Plaintiff's member THEODORE A. PINNOCK  
19 went to Defendants' PORTLAND HOTELS, LLC d.b.a. COMFORT INN LA  
20 MESA facilities to utilize their goods and/or services. When  
21 Plaintiff's member patronized Defendants' PORTLAND HOTELS, LLC  
22 d.b.a. COMFORT INN LA MESA facilities, he was unable to use and/or  
23 had difficulty using the public accommodations' disabled parking,  
24 office entrance, registration counter, exterior path of travel,  
25 elevator, guestroom, guestroom interior path of travel, guestroom  
26 storage, guestroom lamps, guestroom environmental controls, and  
27 guestroom bathroom facilities at Defendants' business  
28 establishment because they failed to comply with ADA Access

1 Guidelines For Buildings and Facilities (hereafter referred to as  
2 "ADAAG") and/or California's Title 24 Building Code Requirements.  
3 Defendants failed to remove access barriers within the parking,  
4 office entrance, front desk, path of travel, pool entrance, pool,  
5 public seating in the pool area, men's restroom located in the  
6 lobby, elevator, guestroom, guestroom interior path of travel,  
7 guestroom storage, guestroom lamps, guestroom environmental  
8 controls, and guestroom bathroom facilities of Defendants'  
9 PORTLAND HOTELS, LLC d.b.a. COMFORT INN LA MESA establishment.

10 8. Plaintiff's member personally experienced difficulty with  
11 said access barriers at Defendants' PORTLAND HOTELS, LLC d.b.a.  
12 COMFORT INN LA MESA facilities. For example, the parking facility  
13 of Defendants' establishment is inaccessible. The (3) three  
14 entryways into the parking lot all fail to have the required  
15 signage warning motorists that anyone illegally parking in a  
16 disabled parking space would be towed/fined or both. The parking  
17 facility has a total of one hundred and thirty five (135) parking  
18 spaces including six (6) disabled parking spaces, none of which  
19 are compliant. Two (2) of the six (6) disabled spaces are  
20 designated as "van accessible" disabled parking spaces and are a  
21 mere twelve feet (12') long with an impermissible encroachment of  
22 a ramp into their access aisles. The width of the access aisle of  
23 one (1) of the two (2) "van accessible" spaces is a mere five feet  
24 (5'). The other four (4) disabled parking spaces are "regular"  
25 disabled parking spaces that are only twelve feet (12') long with  
26 an impermissible encroachment of a ramp into their access aisles.  
27 Two (2) of the four (4) "regular" disabled parking spaces do not  
28

1 have the required signage. It is required that there is at least  
2 one (1) compliant "van accessible" disabled parking space, that is  
3 at least eighteen feet (18') long, with an eight foot (8') wide  
4 access aisle without an encroachment of a ramp into its access  
5 aisle. There also should be at least four (4) compliant "regular"  
6 parking spaces, that are at least eighteen feet (18') long, have  
7 access aisles that are not encroached upon, and have the proper  
8 signage. The width of all disabled parking spaces must be at  
9 least nine feet (9').

10 9. The entrance to the office located inside the Defendants'  
11 establishment is inaccessible, as it fails to have the required  
12 disability signage.

13 10. The front desk is inaccessible because it is an impermissible  
14 forty-four inches (44") high.

15 11. The elevator at the Defendants' establishment is  
16 inaccessible. The elevator does not have the required numbering  
17 on the doorjams, identifying the floor with both raised Arabic  
18 numerals and Braille symbols. The elevator buttons also fail to  
19 have the required Arabic numeral, alphabet, or other standard  
20 characters located immediately to the left of the control button.  
21 The elevator control buttons fail to have the required Braille  
22 symbols.

23 12. The Defendants' establishment has one hundred and forty one  
24 (141) guestrooms with seven (7) designated "accessible rooms" that  
25 are not compliant. If a hotel has between one hundred and one and  
26 one hundred and fifty (101 and 150) guestrooms, the hotel shall  
27 provide five (5) accessible guestrooms, plus two (2) additional  
28



1 accessible guestrooms with a roll-in shower. If a hotel has  
2 between one hundred and one and one hundred and fifty (101 and  
3 150) guestrooms, the hotel shall provide five (5) accessible  
4 guestrooms for members of the disability community who are hearing  
5 impaired. The accessible guestrooms must be dispersed among the  
6 various classes of sleeping accommodations, providing a range of  
7 options applicable to room sizes, costs, amenities provided, and  
8 the number of beds provided. Defendants' hotel fails to have the  
9 required accessible guestrooms.

10 13. When Plaintiff's member Theodore A. Pinnock attempted to  
11 patronize Defendants' establishment, personnel of the hotel  
12 informed Plaintiff's member Theodore A. Pinnock that there were no  
13 guestrooms with roll-in showers. Since the date Plaintiffs'  
14 Member Theodore A. Pinnock attempted to patronize Defendants'  
15 hotel, a telephone inquiry of the hotel staff revealed that  
16 Defendants' hotel has a total of seven (7) designated accessible  
17 guestrooms, one (1) of which may have a roll-in shower. On the  
18 day Plaintiff's member Theodore A. Pinnock patronized Defendants'  
19 hotel, he was initially given guestroom 111, a designated  
20 accessible guestroom. However, this guestroom was inaccessible  
21 and Plaintiff's member Theodore A. Pinnock was forced to request a  
22 different accessible room. The second designated accessible  
23 guestroom, guestroom 233, that Plaintiff's member Theodore A.  
24 Pinnock was also inaccessible.

25  
26 14. The first accessible guestroom given to Plaintiff's member  
27 Theodore A. Pinnock, Guestroom 111, is completely inaccessible.  
28 The interior path of travel is too narrow to be accessible. The

1 bathroom does not have the required space to accommodate a  
2 wheelchair. None of the required grab bars are installed. The  
3 storage racks are mounted too high to be accessible. The lamps  
4 located inside guestroom 111 fail to be accessible, as they  
5 require tight grasping or twisting by the wrist to operate.

6 15. The second accessible guestroom given to Plaintiff's member  
7 Theodore A. Pinnock, guestroom 233, is also inaccessible. The  
8 lamps located in guestroom 233 are inaccessible, as they require  
9 tight grasping or twisting by the wrist to operate. The controls  
10 for the air conditioning are also inaccessible, as they require  
11 tight grasping or twisting by the wrist to operate.

12 16. In addition to the violations personally experienced by  
13 Plaintiff's Member THEODORE A. PINNOCK, additional violations of  
14 federal and state disability laws exist at Defendants' PORTLAND  
15 HOTELS, LLC d.b.a. COMFORT INN LA MESA. For example, Guestroom  
16 234 is designated as an "accessible room", however it remains  
17 inaccessible. The round locking mechanism on the room entrance  
18 door is not compliant. The door should have a lock that does not  
19 require grasping or twisting by the wrist to operate. The strike  
20 clearance of the room door is a mere two inches (2"), when it is  
21 required to be at least eighteen inches (18"). The small round  
22 lamp-switches are not compliant. There should be ones that do not  
23 require grasping or twisting by the wrist to operate. The clear  
24 floor space along one side of the bed is only thirty inches (30"),  
25 when it is required to be at least thirty-six inches (36"). The  
26 round control switches on the air conditioning control are not  
27 compliant, as they require grasping or twisting by the wrist to  
28

1 operate. The pressure that is required to open the window is  
2 eight pounds (8 lbs.), and exceeds the maximum of five pounds (5  
3 lbs.) of pressure. The height of the cloth's bar inside the  
4 closet is sixty-nine inches (69"). The requirement is that it is  
5 no more than forty-eight inches (48") high for the required front  
6 reach. The height of the shelf inside the closet is seventy inches  
7 (70"). The requirement is that it is no more than forty-eight  
8 inches (48") high for the required front reach. The round control  
9 switches on the microwave are not compliant. The microwave should  
10 have control switches that do not require grasping or twisting by  
11 the wrist. The required audible visual alarm system is not  
12 installed.

13 17. The bathroom inside Guestroom 234 is also inaccessible. The  
14 doorknob and the locking mechanism on the bathroom door are not  
15 compliant. The requirement is that they do not require grasping  
16 or twisting by the wrist to operate. The strike clearance of the  
17 restroom door is a mere three inches (3"). The required minimum  
18 strike clearance is eighteen inches (18"). The wheelchair  
19 turnaround space inside the bathroom is only forty-two inches by  
20 twenty inches (42"X20"). The requirement is that it is at least  
21 sixty inches (60") in diameter. The height of the coat hook is  
22 an impermissible seventy inches (70"), when it is required to be  
23 no higher than forty-eight inches (48") high. The required grab  
24 bars around the commode are not installed. The distance from the  
25 side edge of the commode to the far wall is only eight inches  
26 (8"). The requirement is that it is thirty-two inches (32")  
27 minimum. The distance from the front edge of the commode to the  
28

1 front wall is only forty-six inches (46"). The requirement is  
2 that it be at least forty-eight inches (48)". The bathtub does  
3 not have the required grab bars installed. The bathtub does not  
4 have the required seat ("head end" or "in-tub" type). The round  
5 mixing valve in the bathtub is not compliant, as it requires  
6 grasping or twisting by the wrist to operate. The towels are  
7 located too high to be accessible, as they are located fifty-five  
8 inches (55") high. The lavatory fails to be accessible, as the  
9 height of the area beneath it is only twenty-one inches (21").  
10 The hot water and drainpipes under the lavatory fail to have the  
11 required covering and insulation. The hair dryer is mounted too  
12 high to be accessible, as it is mounted at sixty inches (60") from  
13 the floor surface. The required audible/visual alarm system is  
14 not installed.

15 18. In addition to the violations personally experienced by  
16 Plaintiff's Member and Plaintiff THEODORE A. PINNOCK, additional  
17 violations of federal and state disability laws exist at  
18 Defendants' PORTLAND HOTELS, LLC d.b.a. COMFORT INN LA MESA. For  
19 example, the Men's Restroom located in the lobby of Defendants'  
20 establishment is inaccessible. The restroom door does not have  
21 the required disability signage. The pressure that is required to  
22 open the restroom door is an impermissible seven pounds (7 lbs.).  
23 The urinal lip exceeds the maximum height requirement, as it is  
24 twenty inches (20") high. The stall door fails to have the  
25 required handles on both sides of the door. The stall door also  
26 fails to have the self-closing mechanism. The height of the coat  
27 hook is an impermissible sixty-two inches (62") high. The height  
28

1 of the commode seat cover dispenser is fifty-two inches (52"),  
2 when it is required to be mounted no higher than forty inches  
3 (40"). The distance from the front edge of the commode to the  
4 front wall is only twenty-eight inches (28"). The requirement is  
5 that the distance be no less than forty-eight inches (48"). The  
6 hot water drainpipes under the lavatory fail have the required  
7 covering and insulation. The lavatory faucet handles fail to meet  
8 the requirement that they do not require grasping or twisting by  
9 the wrist in order to operate them. The soap dispenser is mounted  
10 at fifty inches (50") high and is inaccessible, as the maximum  
11 height requirement is forty inches (40"). The required audible  
12 visual alarm system is not installed.

13 19. The path of travel from the guestrooms to the pool is  
14 inaccessible, as members of the disability community are forced to  
15 maneuver through vehicular traffic with out the benefit of a  
16 marked path of travel.

17 20. The entrance to the pool is inaccessible, as the pool door  
18 does not have the required level landing. The entrance door to  
19 the pool fails to have the required ten-inch (10") high abrasion  
20 resistant plate affixed on the bottom portion of the door to  
21 prevent a trap condition. The strike clearance of the pool door  
22 is a mere two inches (2"). The minimum required strike clearance  
23 is eighteen inches (18").

24 21. The pool is inaccessible, as it does not have the required  
25 device for assisting disabled patrons in and out of the water.

26 22. The public seating located in the pool area is inaccessible,  
27 as all of the seats fail to meet the minimum required knee  
28

1 clearance depth. There are ten (10) seats by the pool with a knee  
2 clearance depth of only five inches (5").

3 23. Pursuant to federal and state law, Defendants are required to  
4 remove barriers to their existing facilities. Further, Defendants  
5 had actual knowledge of their barrier removal duties under the  
6 Americans with Disabilities Act and the Civil Code before January  
7 26, 1992. Also, Defendants should have known that individuals  
8 with disabilities are not required to give notice to a  
9 governmental agency before filing suit alleging Defendants failed  
10 to remove architectural barriers.

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

27 25. Based on these facts, Plaintiffs allege Plaintiff's Member  
28

1 was discriminated against each time he patronized Defendants'  
2 establishments. Plaintiff's Member Theodore A. Pinnock was  
3 extremely upset due to Defendants' conduct. Further, Plaintiff's  
4 Member THEODORE A. PINNOCK experienced pain in his legs, back,  
5 arms, shoulders and wrists when he attempted to enter, use, and  
6 exit Defendants' PORTLAND HOTELS, LLC d.b.a. COMFORT INN LA MESA  
7 establishment.

8 WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED DEFENDANT

9  
10 26. PORTLAND HOTELS, LLC d.b.a. COMFORT INN LA MESA; PORTLAND  
11 HOTELS, LLC; CITICORP VENDOR FINANCE, INC. a.k.a. LS OF CITICORP  
12 VENDOR FINANCE, INC.; and Does 1 through 10 will be referred to  
13 collectively hereinafter as "Defendants."

14 27. Plaintiffs aver that the Defendants are liable for the  
15 following claims as alleged below:

16 DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS

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

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

21 28. Based on the facts plead at ¶¶ 6-25 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. Plaintiffs allege Defendants are a  
25 public accommodation owned, leased and/or operated by Defendants.  
26 Defendants' existing facilities and/or services failed to provide  
27 full and equal access to Defendants' facility as required by 42  
28 U.S.C. § 12182(a). Thus, Plaintiff's member was subjected to

1 discrimination in violation of 42 United States Code  
2 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's  
3 member was denied equal access to Defendants' existing facilities.

4 29. Plaintiff's member THEODORE A. PINNOCK has physical  
5 impairments as alleged in ¶ 6 above because his conditions affect  
6 one or more of the following body systems: neurological,  
7 musculoskeletal, special sense organs, and/or cardiovascular.  
8 Further, Plaintiff's member THEODORE A. PINNOCK said physical  
9 impairments substantially limits one or more of the following  
10 major life activities: walking. In addition, Plaintiff's member  
11 THEODORE A. PINNOCK cannot perform one or more of the said major  
12 life activities in the manner, speed, and duration when compared  
13 to the average person. Moreover, Plaintiff's member THEODORE A.  
14 PINNOCK has a history of or has been classified as having a  
15 physical impairment as required by 42 U.S.C. § 12102(2)(A).  
16

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

20 30. Based on the facts plead at ¶¶ 6-25 above and elsewhere in  
21 this complaint, Plaintiff's member was denied full and equal  
22 access to Defendants' goods, services, facilities, privileges,  
23 advantages, or accommodations within a public accommodation owned,  
24 leased, and/or operated by Defendants. Defendants altered their  
25 facility in a manner that affects or could affect the usability of  
26 the facility or a part of the facility after January 26, 1992. In  
27 performing the alteration, Defendants failed to make the  
28 alteration in such a manner that, to the maximum extent feasible,  
the altered portions of the facility are readily accessible to and



1 usable by individuals with disabilities, including individuals who  
2 use wheelchairs, in violation of 42 U.S.C. §12183(a)(2).

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

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

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

22 CLAIM III AGAINST ALL DEFENDANTS: Failure To Remove  
23 Architectural Barriers

24 34. Based on the facts plead at ¶¶ 6-25 above and elsewhere in  
25 this complaint, Plaintiff's member was denied full and equal  
26 access to Defendants' goods, services, facilities, privileges,  
27 advantages, or accommodations within a public accommodation owned,  
28 leased, and/or operated by Defendants. Defendants failed to

1 remove barriers as required by 42 U.S.C. § 12182(a). Plaintiffs  
2 are informed, believe, and thus allege that architectural barriers  
3 which are structural in nature exist within the following physical  
4 elements of Defendants' facilities: Space Allowance and Reach  
5 Ranges, Accessible Route, Protruding Objects, Ground and Floor  
6 Surfaces, Parking and Passenger Loading Zones, Curb Ramps, Ramps,  
7 Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows,  
8 Doors, Entrances, Drinking Fountains and Water Coolers, Water  
9 Closets, Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks,  
10 Storage, Handrails, Grab Bars, and Controls and Operating  
11 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.  
12 Title III requires places of public accommodation to remove  
13 architectural barriers that are structural in nature to existing  
14 facilities. [See, 42 United States Code 12182(b)(2)(A)(iv).]  
15 Failure to remove such barriers and disparate treatment against a  
16 person who has a known association with a person with a disability  
17 are forms of discrimination. [See 42 United States Code  
18 12182(b)(2)(A)(iv).] Thus, Plaintiff's member was subjected to  
19 discrimination in violation of 42 United States Code  
20 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was  
21 denied equal access to Defendants' existing facilities.  
22

23 CLAIM IV AGAINST ALL DEFENDANTS: Failure To Modify Practices,  
24 Policies And Procedures

25 35. Based on the facts plead at ¶¶ 6-25 above and elsewhere in  
26 this complaint, Defendants failed and refused to provide a  
27 reasonable alternative by modifying its practices, policies and  
28 procedures in that they failed to have a scheme, plan, or design

1 to assist Plaintiff's member and/or others similarly situated in  
2 entering and utilizing Defendants' services, as required by 42  
3 U.S.C. § 12188(a). Thus, said Member was subjected to  
4 discrimination in violation of 42 United States Code  
5 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was  
6 denied equal access to Defendants' existing facilities.

7 36. Based on the facts plead at ¶¶ 6-25 above, Claims I, II, and  
8 III of Plaintiffs' First Cause Of Action above, and the facts  
9 elsewhere herein this complaint, Plaintiffs will suffer  
10 irreparable harm unless Defendants are ordered to remove  
11 architectural, non-architectural, and communication barriers at  
12 Defendants' public accommodation. Plaintiffs allege that  
13 Defendants' discriminatory conduct is capable of repetition, and  
14 this discriminatory repetition adversely impacts Plaintiffs and a  
15 substantial segment of the disability community. Plaintiffs  
16 allege there is a national public interest in requiring  
17 accessibility in places of public accommodation. Plaintiffs have  
18 no adequate remedy at law to redress the discriminatory conduct of  
19 Defendants. Plaintiff's Member desires to return to Defendants'  
20 places of business in the immediate future. Accordingly, the  
21 Plaintiffs allege that a structural or mandatory injunction is  
22 necessary to enjoin compliance with federal civil rights laws  
23 enacted for the benefit of individuals with disabilities.

24 37. WHEREFORE, Plaintiffs pray for judgment and relief as  
25 hereinafter set forth.

26  
27 ///

28 ///

1 SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER  
2 CALIFORNIA ACCESSIBILITY LAWS

3 CLAIM I: Denial Of Full And Equal Access

4 38. Based on the facts plead at ¶¶ 6-25 above and elsewhere in  
5 this complaint, Plaintiff's member was denied full and equal  
6 access to Defendants' goods, services, facilities, privileges,  
7 advantages, or accommodations within a public accommodation owned,  
8 leased, and/or operated by Defendants as required by Civil Code  
9 Sections 54 and 54.1. Defendants' facility violated California's  
10 Title 24 Accessible Building Code by failing to provide access to  
11 Defendants' facilities due to violations pertaining to the Space  
12 Allowance and Reach Ranges, Accessible Route, Protruding Objects,  
13 Ground and Floor Surfaces, Parking and Passenger Loading Zones,  
14 Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair  
15 Lifts), Windows, Doors, Entrances, Drinking Fountains and Water  
16 Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and  
17 Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and  
18 Operating Mechanisms, Alarms, Detectable Warnings, Signage, and  
19 Telephones.

20 39. These violations denied Plaintiff's member full and equal  
21 access to Defendants' facility. Thus, said Member was subjected  
22 to discrimination pursuant to Civil Code §§ 51, 52, and 54.1  
23 because Plaintiff's Member was denied full, equal and safe access  
24 to Defendants' facility, causing severe emotional distress.

25 CLAIM II: Failure To Modify Practices, Policies And  
26 Procedures

27 40. Based on the facts plead at ¶¶ 6-25 above and elsewhere  
28 herein this complaint, Defendants failed and refused to provide a

1 reasonable alternative by modifying its practices, policies, and  
2 procedures in that they failed to have a scheme, plan, or design  
3 to assist Plaintiff's member and/or others similarly situated in  
4 entering and utilizing Defendants' services as required by Civil  
5 Code § 54.1. Thus, said Member was subjected to discrimination in  
6 violation of Civil Code § 54.1.

7 CLAIM III: Violation Of The Unruh Act

8 41. Based on the facts plead at ¶¶ 6-25 above and elsewhere  
9 herein this complaint and because Defendants violated the Civil  
10 Code § 51 by failing to comply with 42 United States Code §  
11 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and  
12 continue to discriminate against Plaintiff's Member and persons  
13 similarly situated in violation of Civil Code §§ 51, 52, and 54.1.

14 42. Based on the facts plead at ¶¶ 6-25 above, Claims I, II, and  
15 III of Plaintiffs' Second Cause Of Action above, and the facts  
16 elsewhere herein this complaint, Plaintiffs will suffer  
17 irreparable harm unless Defendants are ordered to remove  
18 architectural, non-architectural, and communication barriers at  
19 Defendants' public accommodation. Plaintiffs allege that  
20 Defendants' discriminatory conduct is capable of repetition, and  
21 this discriminatory repetition adversely impacts Plaintiffs and a  
22 substantial segment of the disability community. Plaintiffs  
23 allege there is a state and national public interest in requiring  
24 accessibility in places of public accommodation. Plaintiffs have  
25 no adequate remedy at law to redress the discriminatory conduct of  
26 Defendants. Plaintiff's Member desires to return to Defendants'  
27 places of business in the immediate future. Accordingly, the  
28

1 Plaintiffs allege that a structural or mandatory injunction is  
2 necessary to enjoin compliance with state civil rights laws  
3 enacted for the benefit of individuals with disabilities.

4 43. Wherefore, Plaintiffs pray for damages and relief as  
5 hereinafter stated.  
6

7 Treble Damages Pursuant To Claims I, II, III Under The California  
8 Accessibility Laws

9 44. Defendants, each of them respectively, at times prior to and  
10 including, the month of September, 2003, and continuing to the  
11 present time, knew that persons with physical disabilities were  
12 denied their rights of equal access to all portions of this public  
13 facility. Despite such knowledge, Defendants, and each of them,  
14 failed and refused to take steps to comply with the applicable  
15 access statutes; and despite knowledge of the resulting problems  
16 and denial of civil rights thereby suffered by Plaintiff's Member  
17 THEODORE A. PINNOCK and other similarly situated persons with  
18 disabilities. Defendants, and each of them, have failed and  
19 refused to take action to grant full and equal access to persons  
20 with physical disabilities in the respects complained of  
21 hereinabove. Defendants, and each of them, have carried out a  
22 course of conduct of refusing to respond to, or correct complaints  
23 about, denial of disabled access and have refused to comply with  
24 their legal obligations to make Defendants' PORTLAND HOTELS, LLC  
25 d.b.a. COMFORT INN LA MESA facilities accessible pursuant to the  
26 Americans With Disability Act Access Guidelines (ADAAG) and Title  
27 24 of the California Code of Regulations (also known as the  
28 California Building Code). Such actions and continuing course of

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

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

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

27 47. Wherefore, Plaintiffs pray for damages and relief as  
28

1 hereinafter stated.

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

4 48. Based on the facts plead at ¶¶ 6-25 above and elsewhere in  
5 this complaint, Defendants owed Plaintiff Theodore A. Pinnock a  
6 statutory duty to make their facility accessible and owed  
7 Plaintiff Theodore A. Pinnock a duty to keep Plaintiff Theodore A.  
8 Pinnock reasonably safe from known dangers and risks of harm.  
9 This said duty arises by virtue of legal duties proscribed by  
10 various federal and state statutes including, but not limited to,  
11 ADA, ADAAG, Civil Code 51, 52, 54, 54.1 and Title 24 of the  
12 California Administrative Code and applicable 1982 Uniform  
13 Building Code standards as amended.

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

22 50. Therefore, Defendants engaged in discriminatory conduct in  
23 that they failed to comply with known duties under the ADA, ADAAG,  
24 Civil Code 51, 52, 54, 54.1, ADAAG, and Title 24, and knew or  
25 should have known that their acts of nonfeasance would cause  
26 Plaintiff Theodore A. Pinnock emotional, bodily and personal  
27 injury. Plaintiff THEODORE A. PINNOCK alleges that there was  
28



1 bodily injury in this matter because when Plaintiff THEODORE A.  
2 PINNOCK attempted to enter, use, and exit Defendants'  
3 establishment, Plaintiff THEODORE A. PINNOCK experienced pain in  
4 his legs, back, arms, shoulders, and wrists. Plaintiffs further  
5 allege that such conduct was done in reckless disregard of the  
6 probability of said conduct causing Plaintiff Theodore A. Pinnock  
7 to suffer bodily or personal injury, anger, embarrassment,  
8 depression, anxiety, mortification, humiliation, distress, and  
9 fear of physical injury. Plaintiff THEODORE A. PINNOCK, An  
10 Individual, alleges that such conduct caused THEODORE A. PINNOCK,  
11 An Individual, to suffer the injuries of mental and emotional  
12 distress, including, but not limited to, anger, embarrassment,  
13 depression, anxiety, mortification, humiliation, distress, and  
14 fear of physical injury. Plaintiff THEODORE A. PINNOCK, An  
15 Individual, additionally alleges that such conduct caused THEODORE  
16 A. PINNOCK, An Individual, to  
17 suffer damages as a result of these injuries.

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

20  
21 DEMAND FOR JUDGMENT FOR RELIEF:

22 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3,  
23 3281, and 3333;

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

27 C. In the alternative to the damages pursuant to Cal. Civil  
28 Code § 52 in Paragraph B above, for \$1,000 in damages pursuant to

1 Cal. Civil Code § 54.3 for each and every offense of Civil Code §  
2 54.1, Title 24 of the California Building Code, ADA, and ADA  
3 Accessibility Guidelines;

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

15 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C.  
16 § 12205, and Cal. Civil Code § 55;

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


19 G. A Jury Trial and;

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

21 Respectfully submitted:

**PINNOCK & WAKEFIELD**

22 Dated: March 17, 2004

23 By:   
24 MICHELLE L. WAKEFIELD, ESQ.  
25 DAVID C. WAKEFIELD, ESQ.  
26 Attorneys for Plaintiffs  
27  
28

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
PORTLAND HOTELS, LLC d.b.a. COMFORT INN LA MESA;
PORTLAND HOTELS, LLC; CITICORP VENDOR FINANCE, INC.
a.k.a. LS OF CITICORP VENDOR FINANCE; And DOES 1 THROUGH 10, Inclusive
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
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; 3033 Fifth Avenue, Suite 410
San Diego, CA 92103
Telephone: (619) 858-3671; Facsimile: (619) 858-3646

ATTORNEYS (IF KNOWN)
'04 CV 00586 L (JFS)

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)
FOR PLAINTIFF: 1 Citizen of This State, 2 Citizen of Another State, 3 Citizen or Subject of a Foreign Country
FOR DEFENDANT: 1 Incorporated or Principal Place of Business in This State, 2 Incorporated and Principal Place of Business in Another State, 3 Foreign Nation

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, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES.

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 17, 2004
SIGNATURE OF ATTORNEY OF RECORD
Michelle L. Wakefield
#102052 MS 150-