

1 **CHAVEZ & GERTLER LLP**
MARK A. CHAVEZ (Bar No. 90858)
2 NANCE F. BECKER (Bar No. 99292)
42 Miller Avenue
3 Mill Valley, California 94941
Telephone: (415) 381-5599
4 Facsimile: (415) 381-5572
Email: mark@chavezgertler.com
5 nance@chavezgertler.com

**ENDORSED
FILED
ALAMEDA COUNTY**

MAY 22 2007

CLERK OF THE SUPERIOR COURT
By Tasha Perry, Deputy

6 **DISABILITY RIGHTS ADVOCATES**
SIDNEY WOLINSKY (Bar No. 33716)
7 KEVIN KNESTRICK (Bar No. 229620)
2001 Center Street, Third Floor
8 Berkeley, California 94704-1204
Telephone: (510) 665-8644
9 Facsimile: (510) 665-8511
Email: swolinsky@dralegal.org

10 **PUBLIC JUSTICE, P.C.**
11 VICTORIA W. NI (Bar No. 212443)
LESLIE BAILEY (Bar No. 232690)
12 555 Twelfth Street, Suite 1620
Oakland, California 94607-3616
13 Telephone: (510) 622-8150
Facsimile: (510) 622-8155
14 Email: vni@publicjustice.net
lbailey@publicjustice.net

15 Attorneys for Plaintiffs

16
17 **IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
18 **IN AND FOR THE COUNTY OF ALAMEDA**

19 JUDITH SMITH, BONNIE LEWKOWICZ,
20 and AXIS DANCE COMPANY, on behalf of
themselves and all others similarly situated,

21 Plaintiffs,

22 v.

23 HOTELS.COM L.P. and Does 1-20,

24 Defendants.
25
26
27
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Case No.: **RG 07327029**

CLASS ACTION

**COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF**

1 **INTRODUCTION**

2 1. Plaintiffs bring this action to remedy ongoing discrimination against persons
3 with mobility disabilities who desire to, but cannot, use hotels.com's worldwide reservation
4 network to make reservations for hotel rooms. Although hotels.com represents on its website
5 that it offers the lowest rates available as well as "the information travelers need to book the
6 perfect trip," a traveler with a mobility disability, in fact, cannot use hotels.com's travel
7 reservation services. Hotels.com does not provide information about accessibility features,
8 and it will not guarantee reservations for accessible rooms.

9 2. Hotels.com describes itself as one of the five largest online travel agencies in
10 the world, reporting \$2.3 billion in gross bookings in 2006. It is one of the nation's leading
11 providers of hotel, bed and breakfast and other lodging accommodations (collectively, "hotel
12 rooms"), offering hotel rooms to consumers through its Internet website and telephone
13 customer service representatives.

14 3. The website allows consumers without disabilities to engage in efficient
15 comparison-shopping and to make hotel reservations with the guarantee that reservations
16 booked through hotels.com will be at the lowest available rates.

17 4. Although consumers can easily reserve certain types of hotel rooms, such as
18 suites, hotels.com does not allow consumers with mobility disabilities to reserve a hotel room
19 that is usable by them. In addition, hotels.com will not guarantee an accessible room even if
20 the consumer takes the extra step of calling one of the company's "customer care"
21 representatives. Thus, if an individual who depends on a wheelchair or other assistive device
22 makes a reservation through hotels.com, she runs a real risk that – despite having prepaid for
23 the room and made the reservation well in advance – she will literally not be able to enter or
24 use the room once she arrives at the hotel.

25 5. Hotels.com's practices deny individuals with mobility disabilities equal access
26 to the services and accommodations it provides, and prevent them from obtaining the benefits
27 of the low-price guarantees that hotels.com offers.

1 6. Such conduct directly violates the Unruh Civil Rights Act, Civil Code §51 *et*
2 *seq.*, which is California's principal bulwark against all forms of discrimination including
3 discrimination on the basis of a disability, and the Disabled Persons Act, Civil Code §54, *et*
4 *seq.*, which guarantees individuals with disabilities the same access as other members of the
5 public to all advantages and privileges of public facilities, including hotels and lodgings.
6 Violations of these laws constitute unfair competition within the meaning of the Unfair
7 Competition Law, Business & Professions Code §17200.

8 7. Plaintiffs seek injunctive and declaratory relief to redress hotels.com's
9 violations of California law. Because Defendants' practices adversely impact thousands of
10 disabled Californians, Plaintiffs ask the Court to certify their claims for class treatment and to
11 order relief that will benefit all members of the Class.

12 PARTIES

13 8. Plaintiff AXIS Dance Company ("AXIS") is a not-for-profit performing arts
14 organization with offices in Oakland, California. AXIS's mission "is to create and perform
15 high quality contemporary dance that is developed through the collaboration of dancers with
16 and without disabilities." (<http://www.axisdance.org>.) AXIS performers include dancers who
17 have mobility impairments and who require and perform in wheelchairs.

18 9. AXIS dancers travel extensively to performance locations throughout
19 California and the United States. For example, for the remainder of 2007 and 2008
20 performances are planned in San Francisco, Chico, Cerritos, and Palmdale, California, as well
21 as in seven other states. AXIS dancers, including plaintiffs Judith Smith and Bonnie
22 Lewkowicz and other dancers with mobility disabilities, have previously traveled to and
23 stayed at hotels in Redding, Chico, Sacramento, Davis, Pleasanton, Dixon, Monterey, Santa
24 Barbara, Los Angeles, Cerritos, Riverside, San Luis Obispo, San Jose, Long Beach, Pacific
25 Grove, Ukiah, Santa Rosa, Merced, Roseville, and San Diego, California.

26 10. AXIS pays all of its dancers' travel expenses, including the costs of their hotel
27 accommodations, and the managing director of AXIS generally makes all necessary airline,
28 hotel, and other travel reservations. It is often a challenge for her to identify and make

1 reservations for multiple wheelchair-accessible rooms in the same hotel. AXIS has attempted
2 to locate and reserve accessible rooms suitable for its mobility-impaired dancers through
3 hotels.com, but it has never made such reservations because hotels.com will only allow it to
4 request, but not to make guaranteed reservations for, accessible rooms.

5 11. AXIS is a tax-exempt organization pursuant to I.R.C. §501(c)(3). All of its
6 income is derived from contributions and grants. AXIS has suffered, and it continues to
7 suffer, direct economic harm due to its inability to obtain the discounted hotel rooms, special
8 air and hotel travel packages, and low-price guarantees offered by hotels.com.

9 12. Plaintiff Judith Smith is an individual who is a resident of Alameda County,
10 California. Ms. Smith became physically disabled at the age of 17 as the result of an
11 automobile accident. She depends on a wheelchair for mobility and is disabled as defined
12 under applicable law. Because of her disability, Ms. Smith requires accessible
13 accommodations whenever she travels.

14 13. Ms. Smith is one of the founders and, since 1997, the Artistic Director of
15 AXIS. She travels to and performs with AXIS at an average of 26-30 cities outside the San
16 Francisco Bay Area each year, including in other California cities.

17 14. In addition to her professional trips, Ms. Smith travels about four to six times a
18 year for personal reasons, and she plans to continue such travel in the future. The availability
19 of an accessible room and the price of the room are important factors and limitations on Ms.
20 Smith's personal travel. Ms. Smith desires to use but, due to her inability to obtain a
21 guaranteed reservation for an accessible room, has been deterred from using hotels.com to
22 book hotel rooms for her travels. Ms. Smith has suffered, and she continues to suffer, direct
23 economic harm due to her inability to obtain the discounted hotel rooms, special air and hotel
24 travel packages, and low-price guarantees offered by hotels.com.

25 15. Plaintiff Bonnie Lewkowicz is an individual who is a resident of Alameda
26 County, California. She became physically disabled at age 15 as a result of an All-Terrain-
27 Vehicle accident. Ms. Lewkowicz depends on a wheelchair for mobility and is disabled as
28

1 defined under applicable law. Because of her disability, Ms. Lewkowicz requires accessible
2 hotel rooms when she travels.

3 16. Ms. Lewkowicz is also a founding member of and performer with AXIS. She
4 often travels out of town with AXIS and stays in hotels in other California cities where the
5 company performs. In addition, she travels out of town for personal reasons approximately
6 four to six times each year.

7 17. Ms. Lewkowicz plans to continue to be an active traveler and she will continue
8 to need accessible hotel rooms. The availability of an accessible room and the price are
9 important factors and limitations on Ms. Lewkowicz's professional and personal travel. Ms.
10 Lewkowicz desires to use but, due to her inability to obtain a guaranteed reservation for an
11 accessible room, has been deterred from using hotels.com to book hotel rooms for her travels.
12 Ms. Lewkowicz has suffered, and she continues to suffer, direct economic harm due to her
13 inability to obtain the discounted hotel rooms, special air and hotel travel packages, and low-
14 price guarantees offered by hotels.com.

15 18. AXIS, Ms. Smith and Ms. Lewkowicz are each ready, willing and able to act as
16 class representatives and to vigorously prosecute this action on behalf of the proposed
17 Plaintiff Class.

18 19. Defendant hotels.com, L.P. is a Texas limited partnership with its principal
19 office in Dallas, Texas. Hotels.com does business through its interactive website and
20 contracts with hotels throughout the United States, including hundreds of hotels in the State of
21 California. Hotels.com actively solicits business in California and advertises its goods and
22 services to California consumers on local radio stations and other media. It is also registered
23 as a seller of travel services in California.

24 20. Defendants Does 1 through 20 are persons or entities whose true names and
25 capacities are unknown to Plaintiffs, who therefore sue them by such fictitious names.
26 Plaintiffs are informed and believe, and on that basis allege, that each of the fictitiously
27 named Defendants perpetrated or is responsible for some or all of the wrongful acts and
28 omissions alleged herein. Plaintiffs will seek leave of court to amend this complaint to state

1 the true names and capacities of such fictitiously named Defendants if and when they are
2 ascertained.

3 21. At all times mentioned herein, each Doe Defendant was the agent or employee
4 of the other Defendants and was acting within the course and scope of such agency or
5 employment. The Defendants are jointly and severally liable.

6 **VENUE**

7 22. Venue is proper in this Court and in this County pursuant to Code of Civil
8 Procedure §§395 and 395.5, because Defendant does business in this County, the business
9 practices at issue were conducted throughout California, including in this County, liability
10 arose in this County, and events and conduct giving rise to the violations of law asserted
11 herein occurred in this County. In particular, Plaintiffs Smith and Lewkowicz reside in this
12 County, and they have suffered discrimination on the basis of their disabilities and been
13 deterred from taking advantage of the benefits and services offered by hotels.com in this
14 County. AXIS also has its principal place of business in this County, and has likewise
15 suffered injury here.

16 **CLASS ACTION ALLEGATIONS**

17 23. Pursuant to Code of Civil Procedure §382, Plaintiffs bring this action on behalf
18 of themselves and all other persons similarly situated. The Class consists of all individuals in
19 California who are disabled because of a mobility impairment and therefore require an
20 accessible room when they travel, and who have been and continue to be deterred from using
21 hotels.com to make room reservations for accommodations in California because of
22 hotels.com's refusal to guarantee reservations for accessible hotel rooms. Excluded from the
23 Class is any individual who has previously made travel reservations through hotels.com, and
24 hotels.com's officers and employees.

25 24. Plaintiffs are unable to state the precise number of potential members of the
26 proposed Class. The Class numbers in the thousands, and members of the Class are
27 sufficiently numerous and geographically diverse that joinder of all members is impracticable.
28 A 2005 survey by Harris Interactive conducted for Open Doors Organization (ODO) reported

1 that 69% of adults with disabilities – over 21 million people – traveled for business and/or
2 pleasure between 2003 and 2005, with about 20% traveling 6 or more times within those two
3 years. About 52% of those travelers – 16 million individuals – stayed in hotels, motels and
4 inns. Internet bookings now account for over half of all U.S. travel bookings, and two out of
5 five travelers with disabilities use the Internet to support their travel needs. Even if only 1%
6 of those individuals has been deterred from using hotels.com, this lawsuit will benefit
7 thousands of individuals.

8 25. There is a community of interest among the members of the proposed Class in
9 that there are questions of law and fact common to all of their claims. Those common issues
10 include, but are not limited to: whether hotels.com will guarantee a reservation for an
11 accessible hotel room; whether hotels.com has the ability to provide the services Plaintiffs
12 need; and whether hotels.com's practices violate the Unruh Act, violate the Disabled Persons
13 Act, constitute unfair competition, or violate other provisions of California law.

14 26. Plaintiffs' claims are typical of, and not antagonistic to, the claims of all other
15 members of the Class because hotels.com conducted and continues to conduct its business in
16 a manner which caused, continues to cause, and will in future cause all Class members to
17 suffer the same or similar injury. Plaintiffs, by advancing their claims, will also advance the
18 claims of all other similarly-situated individuals.

19 27. Plaintiffs and their counsel will fairly and adequately protect the interests of
20 absent Class members. There are no material conflicts between Plaintiffs' claims and those of
21 absent Class members that would make class certification inappropriate. Plaintiffs' counsel
22 are experienced in consumer, disability rights, and class action litigation, and will vigorously
23 assert Plaintiffs' claims and the claims of all Class members.

24 28. A class action is superior to other potential methods for achieving a fair and
25 efficient adjudication of this controversy. Whatever difficulties may exist in the management
26 of this case as a class action will be greatly outweighed by the benefits of the class action
27 procedure, including but not limited to providing Class members with a method for the
28 redress and prevention of their injuries and claims that could not, given the complexity of the

1 issues and the nature of the requested relief, be pursued in individual litigation. Further, the
2 prosecution of separate actions by the individual Class members, even if possible, would
3 create a risk of inconsistent or varying adjudications and incompatible standards of conduct
4 for the Defendant.

5 GENERAL ALLEGATIONS

6 29. Individuals with mobility disabilities make up a significant percentage of hotel
7 travelers. The Internet is an essential, and growing, resource for these individuals. According
8 to statistics provided by the Travel Industry Association of America, reliance on the Internet
9 by adults with disabilities for planning and booking trips exceeds that of the general public.

10 30. Hotels.com is one of the nation's largest and most popular providers of hotel
11 and lodging accommodations, representing that it offers accommodations at more than 70,000
12 properties worldwide including hundreds of properties in California. Hotels.com offers
13 rooms at hotels and other lodgings and various travel packages at a discounted price.

14 31. Hotels.com owns and operates an interactive website which enables California
15 consumers who are searching for a hotel room to obtain information about pricing, room
16 amenities, and room availability for those properties, to comparison shop for the best
17 available price, to arrange and purchase discounted "package deals" including rooms, rental
18 cars and airfare, and to make guaranteed reservations for hotel rooms.

19 32. Potential customers may make hotel reservations online, or by calling a
20 hotels.com Customer Care Representative at a toll-free telephone number.

21 33. Hotels.com bills itself as a "one stop shopping source for hotel prices,
22 amenities and availability" and claims that it specializes in providing travelers with
23 accommodations during sold-out periods. In addition to "offer[ing] the information travelers
24 need to book the perfect trip," hotels.com advertises that it offers the "Lowest Rates –
25 Guaranteed," and that "prepaid hotel and vacation rental reservations booked through
26 hotels.com are guaranteed to be the lowest rate you can find." If a traveler books a hotel
27 room through hotels.com and later discovers a cheaper rate, hotels.com will, subject to
28 specified conditions, make up the difference in price.

1 34. To take advantage of the discount rates offered by hotels.com, a customer must
2 (a) make and secure his or her reservation directly through hotels.com and not through the
3 hotel itself; (b) pay hotels.com in advance for the room; and (c) contact hotels.com – and not
4 the hotel – concerning any changes to the reservation.

5 35. The hotels.com website allows potential customers to search for various types
6 of amenities, but it does not allow an individual to search for accessible rooms, does not
7 define what qualifies a room as accessible, and does not uniformly report on the accessibility
8 features that may or may not be offered. Nor are the Customer Care Representatives able to
9 provide that information.

10 36. More important, if an individual with a mobility disability is able to figure out
11 through other means that a hotel does in fact offer accessible rooms, hotels.com allows him or
12 her to request such a room but *will not guarantee that an accessible room will in fact be*
13 *available*. Instead, hotels.com considers features such as accessibility to be optional
14 “amenities” – just like a king-size bed or a kitchenette – and will not guarantee that a room
15 with such amenities will be available when the customer arrives at the hotel. Thus, although
16 hotels.com advertises and offers guaranteed reservations for standard rooms and for suites, an
17 individual who requires an accessible room cannot reserve such a room through hotels.com.
18 She or he cannot find out until arrival and check-in at the hotel whether or not an accessible
19 room is in fact available.

20 37. Plaintiffs are informed and believe, and on that basis allege, that hotels.com has
21 the ability to provide Plaintiffs and the Class with the search features and the ability to secure
22 guaranteed reservations that they need. For example, hotels.com allows a traveler to reserve
23 specific types of accommodations, including suites, through its website.

24 38. Features such as a doorway large enough to permit a wheelchair to enter,
25 hallways wide enough to allow a wheelchair to maneuver, and grab bars and roll-in showers
26 are not “amenities” but absolute necessities for individuals with mobility impairments such as
27 the Plaintiffs and members of the Class herein. Without such features, the Plaintiffs and Class
28 members cannot stay in a hotel room.

1 39. It would be impractical and dangerous for Plaintiffs and the Class to rely on a
2 room reservation unless accessibility is absolutely guaranteed. Because of their inability to
3 reserve an accessible room, Plaintiffs have never booked any type of reservation through
4 hotels.com.

5 40. Plaintiffs have given written notice to hotels.com about their inability to use its
6 room reservation services and asked hotels.com to take action to remedy its violations of
7 California law. Hotels.com has declined to take any corrective action. Plaintiffs will
8 continue to be prevented and deterred from making hotel reservations through hotels.com
9 unless and until hotels.com changes its practices to enable them to make guaranteed
10 reservations for accessible rooms. Plaintiffs would reserve hotel rooms through hotels.com if
11 they could make reservations guaranteeing them accessible rooms.

12 41. Hotels.com's practices have a substantial impact on those who wish to travel
13 within California. According to the website, three of the twelve "most popular cities" that
14 users of hotels.com travel to are in California, and San Francisco, Los Angeles and San Diego
15 are among the top five most frequently visited destinations.

16 42. Plaintiffs seek no monetary relief (apart from attorneys' fees and costs) in this
17 action. The amount in controversy does not exceed \$5,000,000 in the aggregate or \$74,999
18 for any Plaintiff or for any member of the proposed Class.

19 **FIRST CAUSE OF ACTION**

20 **(Discrimination Prohibited by the Unruh Act)**

21 43. Plaintiffs incorporate by reference as if set forth in full herein each and every
22 allegation of paragraphs 1 through 42, inclusive.

23 44. The Unruh Civil Rights Act, Civil Code §51 *et seq.* provides that all persons
24 within California, "no matter what their sex, race, color, religion, ancestry, national origin,
25 disability, ... [or] medical condition are entitled to the full and equal accommodations,
26 advantages, facilities, privileges, or services in all business establishments of every kind
27 whatsoever."
28

1 45. Plaintiffs and all members of the proposed Class are “persons” protected by the
2 Unruh Act.

3 46. Hotels.com is a “business establishment” which provides services, advantages
4 and accommodations to the public.

5 47. Hotels.com’s failure to allow Plaintiffs and the Class to guarantee accessible
6 hotel rooms violates the Unruh Act by, among other things, denying Plaintiffs and the Class
7 physical accommodations; preventing Plaintiffs and the Class from taking advantage of the
8 reservation services hotels.com provides; and preventing Plaintiffs and the Class from
9 benefiting from hotels.com’s guaranteed low prices.

10 48. Hotels.com’s violations of the Unruh Act are continuing and ongoing. Unless
11 and until this Court intervenes, declares hotels.com to be in violation of the law, and issues an
12 appropriate injunction, hotels.com will continue to harm Plaintiffs and the Class.

13 49. Plaintiffs are entitled to an award of attorneys’ fees, costs and expenses under
14 Civil Code §52.

15 WHEREFORE, Plaintiffs pray for the relief set forth below.

16 **SECOND CAUSE OF ACTION**

17 **(Unfair Competition)**

18 50. Plaintiffs incorporate by reference as if set forth in full herein each and every
19 allegation of paragraphs 1 through 42 and 44 through 48, inclusive.

20 51. California Business and Professions Code §17200 *et seq.*, the Unfair
21 Competition Law (“UCL”), defines unfair competition to include any unlawful, unfair, or
22 fraudulent business act or practice. The UCL authorizes any person who has suffered injury
23 in fact and who has lost money or property as a result of such unfair competition to bring an
24 action for relief under the statute. The UCL authorizes the courts to enjoin acts of unfair
25 competition and to issue declaratory and other equitable relief.

26 52. The business acts and practices of hotels.com as described herein constitute
27 unlawful business practices in violation of the UCL in that:
28

1 a. Hotels.com's conduct violates the Unruh Act as alleged in the First
2 Cause of Action, above.

3 b. Hotels.com's conduct violates California's Disabled Persons Act
4 ("CDPA"), Civil Code §54 *et seq.* The CDPA guarantees individuals with
5 disabilities "the same right as the general public to the full and free use" of all
6 public facilities and full and equal access to the accommodations, advantages,
7 and facilities of hotels and places of lodging. The failure of hotels.com to
8 allow Plaintiffs and the Class to guarantee accessible hotel rooms denies
9 Plaintiffs and the Class physical accommodations and interferes with their
10 rights to enjoy equal access to the rooms, goods, and services of the hotels
11 which hotels.com represents and with which it contracts.

12 53. The business acts and practices of hotels.com as described herein constitute
13 unfair and deceptive business practices in violation of the UCL in that hotels.com's website
14 and other advertising is misleading to consumers. The website represents that consumers can
15 find all the information they need and guarantee a stay at a hotel by using hotel.com's
16 services, but those promises do not hold true for travelers who require accessible
17 accommodations.

18 54. The unlawful, unfair acts and practices of hotels.com have injured, and
19 continue to injure, the Plaintiffs and the Class insofar as they have been deprived of the
20 opportunity to reserve rooms and stay at hotels which contract reservation services to
21 hotels.com, have had to expend significantly more time identifying potential accommodations
22 and making reservations than they would have had to spend had they been able to use
23 hotels.com's online reservation system, and have incurred higher costs for hotel rooms than
24 they would have had to pay if they had been able to book rooms through hotels.com.
25 Plaintiffs and the Class have lost money as a result of hotels.com's acts of unfair competition.

26 55. Hotels.com's violations of the UCL are continuing and ongoing. Unless and
27 until this Court intervenes, declares hotels.com to be in violation of the law, and issues an
28 appropriate injunction, hotels.com will continue to harm Plaintiffs and the Class.

1 56. Plaintiffs are entitled to an award of attorneys' fees, costs and expenses
2 incurred in the filing and prosecution of this action pursuant to Code of Civil Procedure
3 §1021.5.

4 WHEREFORE, Plaintiffs pray for relief as set forth below.

5 **PRAYER FOR RELIEF**

6 Based on the foregoing, Plaintiffs respectfully pray for relief as follows:

7 1. For an order certifying this case as a class action, and appointing Plaintiffs as
8 the representatives of the Class;

9 2. For an order finding and declaring that the acts and practices of hotels.com as
10 set forth herein are unlawful and unfair;

11 3. For an order permanently enjoining hotels.com from continuing to engage in
12 such acts and practices and from failing to adopt reasonable procedures by which mobility-
13 impaired individuals who require accessible hotel rooms can search for appropriate rooms and
14 make a reservation guaranteeing that an accessible room will be available to them;

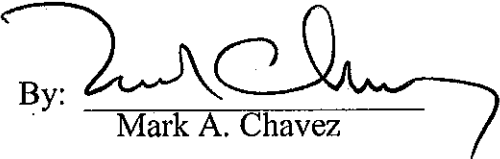
15 4. For an award of attorneys' fees, costs and expenses incurred in the filing and
16 prosecution of this action; and

17 5. For such other and further relief as the Court may deem just and proper.
18

19 Dated: May 22, 2007

Respectfully submitted,

20 CHAVEZ & GERTLER LLP
21 DISABILITY RIGHTS ADVOCATES
22 PUBLIC JUSTICE, P.C.

23
24 By: 
25 Mark A. Chavez
26 Attorneys for Plaintiffs