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3:03-CV-00361 MANTIC ASHANTIS V. TOM RANGLAS INC

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CMP.

1 **PINNOCK & WAKEFIELD**

2 Michelle L. Wakefield, Esq.
3 David C. Wakefield, Esq.
4 7966 Arjons Drive, Suite 119
5 San Diego, CA 92126
6 Telephone: (858) 689-1750
7 Facsimile: (858) 689-1950

8 Attorneys for Plaintiffs

Bar #: 200424

Bar #: 185736
03 FEB 21 PM 3:00

FILED
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
[Signature]
CLERK

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

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

16 Plaintiffs,

17 v.

18 TOM RANGLAS, INC., d.b.a. THE
19 DEL MAR MOTEL a.k.a. DEL MAR
20 MOTEL ON THE BEACH; TOM
21 RANGLAS, INC.; POSEIDON,
22 LTD., A California Limited
23 Partnership; And
24 DOES 1 THROUGH 10, Inclusive

25 Defendants.

Case No.:

'03 CV 0361K

LSP

CIVIL COMPLAINT:

DISCRIMINATORY PRACTICES IN
PUBLIC ACCOMMODATIONS

[42 U.S.C. 12182(a) ET. SEQ;
CIVIL CODE 51, 52, 54, 54.1;
HEALTH & SAFETY CODE 19995;
BUSINESS & PROFESSIONS CODE
17200 et. seq.]

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]

26 INTRODUCTION

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

1 presently are, engaging in discriminatory practices against
2 individuals with disabilities, specifically including minorities
3 with disabilities. Plaintiffs allege this civil action and others
4 substantial similar thereto are necessary to compel access
5 compliance because empirical research on the effectiveness of
6 Title III of the Americans with Disabilities Act indicates this
7 Title has failed to achieve full and equal access simply by the
8 executive branch of the Federal Government funding and promoting
9 voluntary compliance efforts. Further, empirical research shows
10 when individuals with disabilities give actual notice of potential
11 access problems to places of public accommodation without a
12 federal civil rights action, the public accommodations do not
13 remove the access barriers. Therefore, Plaintiffs make the
14 following allegations in this federal civil rights action:
15

16 **JURISDICTION AND VENUE**

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

25 **SUPPLEMENTAL JURISDICTION**

26 2. The Judicial District of the United States District Court of
27 the Southern District of California has supplemental jurisdiction
28 over the state claims as alleged in this Complaint pursuant to 28

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

17
18 **NAMED DEFENDANTS AND NAMED PLAINTIFFS**

19 3. Defendants are, and, at all times mentioned herein, were, a
20 business or corporation or franchise organized and existing and/or
21 doing business under the laws of the State of California.

22 Defendant TOM RANGLAS, INC., d.b.a. THE DEL MAR MOTEL a.k.a. DEL
23 MAR MOTEL ON THE BEACH is located at 1702 Coast Boulevard, Del
24 Mar, California, 92014. Plaintiffs are informed and believe and
25 thereon allege that Defendant TOM RANGLAS, INC., is the owner,
26 operator, and/or lessor of TOM RANGLAS, INC., d.b.a. THE DEL MAR
27 MOTEL a.k.a. DEL MAR MOTEL ON THE BEACH. Further, Plaintiffs are
28 informed and believe and thereon allege that defendant TOM

1 RANGLAS, INC., is a General Partner of POSEIDON, LTD., A
2 California Limited Partnership. Defendant TOM RANGLAS, INC., is
3 located at 1670 Coast Boulevard, Del Mar, California, 92014.

4 4. Plaintiffs are informed and believe and thereon allege that
5 Defendants POSEIDON, LTD., A California Limited Partnership, and
6 TOM RANGLAS, INC., are the owners, operators, and/or lessors of
7 the property located at 1702 Coast Boulevard, Del Mar, California,
8 92014, Assessor Parcel Number 299-232-07-00. Defendant POSEIDON,
9 LTD., A California Limited Partnership, is located at 1670 Coast
10 Boulevard, Del Mar, California, 92014.

11 5. The words "Plaintiffs" and "Plaintiff's Member" as used herein
12 specifically include the organization MANTIC ASHANTI'S CAUSE, its
13 Members, its member Theodore A. Pinnock and persons associated
14 with its Members who accompanied Members to Defendants'
15 facilities, as well as THEODORE A. PINNOCK, An Individual.

16 6. Defendants Does 1 through 10, were at all times relevant
17 herein subsidiaries, employers, employees, agents, of TOM RANGLAS,
18 INC., d.b.a. THE DEL MAR MOTEL a.k.a. DEL MAR MOTEL ON THE BEACH;
19 TOM RANGLAS, INC.; and/or POSEIDON, LTD., A California Limited
20 Partnership. 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 7. Plaintiffs are informed and believe, and thereon allege, that
27 Defendants and each of them herein were, at all times relevant to
28 the action, the owner, lessor, lessee, franchiser, franchisee,

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

8
9 CONCISE SET OF FACTS

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

17 9. From February 29, 2002, through March 1, 2002, Plaintiff's
18 member THEODORE A. PINNOCK went to Defendants' TOM RANGLAS, INC.,
19 d.b.a. THE DEL MAR MOTEL a.k.a. DEL MAR MOTEL ON THE BEACH
20 facilities to utilize their goods and/or services. When
21 Plaintiff's member patronized Defendants' TOM RANGLAS, INC.,
22 d.b.a. THE DEL MAR MOTEL a.k.a. DEL MAR MOTEL ON THE BEACH
23 facilities, he was unable to use and/or had difficulty using the
24 public accommodations' disabled parking, exterior path of travel,
25 access ramp, office entrance door, registration counter,
26 guestroom, guestroom entrance, guestroom interior path of travel,
27 guestroom table, guestroom lamp, guestroom environmental controls,
28 guestroom storage, guestroom operable controls, and guestroom

1 bathroom facilities at Defendants' business establishment because
2 they failed to comply with ADA Access Guidelines For Buildings and
3 Facilities (hereafter referred to as "ADAAG") and/or California's
4 Title 24 Building Code Requirements. Defendants failed to remove
5 access barriers within the disabled parking, exterior path of
6 travel, access ramp, office entrance door, registration counter,
7 guestroom, guestroom entrance, guestroom interior path of travel,
8 guestroom table, guestroom lamp, guestroom environmental controls,
9 guestroom storage, guestroom operable controls, and guestroom
10 bathroom facilities of Defendants' TOM RANGLAS, INC., d.b.a. THE
11 DEL MAR MOTEL a.k.a. DEL MAR MOTEL ON THE BEACH establishment.

12 10. Plaintiff's member personally experienced difficulty with
13 said access barriers at Defendants' TOM RANGLAS, INC., d.b.a. THE
14 DEL MAR MOTEL a.k.a. DEL MAR MOTEL ON THE BEACH facilities. For
15 example, the entrance to the parking lot fails to have the
16 required disability signage informing patrons they may be fined or
17 their vehicle may be towed if they unlawfully park in a disabled
18 parking space. There fails to be sufficient disability signage to
19 inform disabled patrons of the location of the accessible exterior
20 path of travel leading from the parking area to the motel office
21 on the other side of the building. The access ramp at the motel
22 office entrance door is too steep to be accessible, as the slope
23 of the ramp is twenty percent (20%). The motel entrance door
24 fails to have the required disability signage. The registration
25 customer service counter in the motel office is too high to be
26 accessible, as the counter is forty inches (40") high.

27 11. Defendants' motel has a total of forty-four (44) rooms, one
28

1 (1) of which is designated as an accessible guestroom. The one
2 (1) designated accessible guestroom fails to be accessible. The
3 access ramp at the front entrance door to the designated
4 accessible guestroom is too steep to be accessible, as the slope
5 of the ramp is twenty percent (20%). The hardware and locking
6 mechanism on the allegedly accessible guestroom's entrance door
7 fails to be accessible, as the hardware and locking mechanism
8 require tight grasping and/or twisting of the wrist to operate.
9 The interior path of travel within the allegedly accessible
10 guestroom is too narrow to be accessible. The interior path of
11 travel from the bedroom leading to the bathroom is a mere twenty-
12 six inches (26") in width and the interior path of travel leading
13 from the front entrance door to the closet is only twenty-five
14 inches (25") in width. There is a clear width of twenty-four
15 inches (24") of maneuvering space between the two (2) beds in the
16 guestroom, when there should be a minimum clear width of thirty-
17 six inches (36"). The interior path of travel leading from the
18 front door of the guestroom to the refrigerator/bar and to the air
19 conditioner is only twelve inches (12") wide.
20

21 12. The table in the allegedly accessible guestroom is
22 inaccessible, as the knee clearance of the table is only twenty-
23 seven inches (27") high with a depth of only two inches (2"). The
24 other table in the guestroom also has insufficient knee clearance,
25 as the knee clearance height is a mere twenty-four inches (24").
26 The guestroom fails to have the required audible and visual alarm
27 system. The three (3) lamps in the allegedly accessible guestroom
28 fail to be accessible, as the lamp switches are small, round, and

1 require tight grasping and/or twisting of the wrist to operate.
2 The environmental operable controls on the air conditioner, the
3 light switch, the fan switch, the closet bar, and the closet shelf
4 are too high to be accessible to a member of the disability
5 community who uses a wheelchair for mobility. The environmental
6 operable controls for the air conditioner are mounted seventy-five
7 inches (75") high. The light switch and fan switch are mounted
8 eighty inches (80") above the floor. The closet rod is mounted
9 sixty-three inches (63") high and the closet shelf is mounted
10 sixty-five inches (65") high.

11 13. The guestroom bathroom in the allegedly accessible guestroom
12 also fails to be accessible. The guestroom bathroom entrance door
13 is a mere twenty-eight inches (28") in width. The distance from
14 the front edge of the commode to the front wall is a mere thirty-
15 inches (30") when it should be a minimum of forty-eight inches
16 (48'). Also, the distance from the front edge of the commode to
17 the lavatory is only nine inches (9") when it should be a minimum
18 of twenty-eight inches (28"). The shower compartment is too small
19 to be accessible, as the compartment is only thirty-five inches by
20 forty inches (35" x 40"). The compartment should be a minimum of
21 thirty inches by sixty inches (30" x 60"). Also, the shower seat
22 in the shower compartment is only eighteen inches by thirteen
23 inches (18" x 13"), when it should extend the full depth of the
24 shower stall. The shower sprayer is mounted too high to be
25 accessible, as the sprayer is seventy-seven inches (77") high and
26 the shower sprayer fails to have the required sixty inch (60")
27 hose. The shower compartment grab bar is insufficient, as the
28

1 grab bar is only twenty-six inches (26") long. The lavatory sink
2 is inaccessible, as the depth of the knee clearance under the
3 lavatory sink is a mere eight inches (8"). The towel rack is also
4 inaccessible, as the rack is mounted fifty-six inches (56") high.
5 The guestroom bathroom fails to have the required audible and
6 visual alarm system.

7
8 14. Pursuant to federal and state law, Defendants are required to
9 remove barriers to their existing facilities. Further, Defendants
10 had actual knowledge of their barrier removal duties under the
11 Americans with Disabilities Act and the Civil Code before January
12 26, 1992. Also, Defendants should have known that individuals
13 with disabilities are not required to give notice to a
14 governmental agency before filing suit alleging Defendants failed
15 to remove architectural barriers.

16 15. Plaintiffs believe and herein allege Defendants' facilities
17 have access violations not directly experienced by Plaintiff's
18 Member which preclude or limit access by others with disabilities,
19 including, but not limited to, Space Allowance and Reach Ranges,
20 Accessible Route, Protruding Objects, Ground and Floor Surfaces,
21 Parking and Passenger Loading Zones, Curb Ramps, Ramps, Stairs,
22 Elevators, Platform Lifts (Wheelchair Lifts), Windows, Doors,
23 Entrances, Drinking Fountains and Water Coolers, Water Closets,
24 Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks, Storage,
25 Handrails, Grab Bars, and Controls and Operating Mechanisms,
26 Alarms, Detectable Warnings, Signage, and Telephones. Accordingly,
27 Plaintiffs allege Defendants are required to remove all
28 architectural barriers, known or unknown. Also, Plaintiffs allege

1 Defendants are required to utilize the ADA checklist for Readily
2 Achievable Barrier Removal approved by the United States
3 Department of Justice and created by Adaptive Environments.

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

12 **WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED DEFENDANT**

13
14 17. TOM RANGLAS, INC., d.b.a. THE DEL MAR MOTEL a.k.a. DEL MAR
15 MOTEL ON THE BEACH; TOM RANGLAS, INC.; POSEIDON, LTD., A
16 California Limited Partnership; and Does 1 through 10 will be
17 referred to collectively hereinafter as "Defendants."

18 18. Plaintiffs aver that the Defendants are liable for the
19 following claims as alleged below:

20
21 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

22 FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS- **Claims Under The**
23 **Americans With Disabilities Act Of 1990**

24
25 CLAIM I AGAINST ALL DEFENDANTS: **Denial Of Full And Equal**
26 **Access**

27 19. Based on the facts plead at ¶¶ 8 - 16 above and elsewhere in
28 this complaint, Plaintiff's Member was denied full and equal

1 access to Defendants' goods, services, facilities, privileges,
2 advantages, or accommodations. Plaintiffs allege Defendants are a
3 public accommodation owned, leased and/or operated by Defendants.
4 Defendants' existing facilities and/or services failed to provide
5 full and equal access to Defendants' facility as required by 42
6 U.S.C. § 12182(a). Thus, Plaintiff's Member was subjected to
7 discrimination in violation of 42 United States Code
8 12182(b) (2) (A) (iv) and 42 U.S.C. § 12188 because Plaintiff's
9 Member was denied equal access to Defendants' existing facilities.
10 20. Plaintiff's member Theodore A. Pinnock has physical
11 impairments as alleged in ¶ 8 above because his conditions affect
12 one or more of the following body systems: neurological,
13 musculoskeletal, special sense organs, and/or cardiovascular.
14 Further, Plaintiff's member Theodore A. Pinnock's said physical
15 impairments substantially limits one or more of the following
16 major life activities: walking. In addition, Plaintiff's member
17 Theodore A. Pinnock cannot perform one or more of the said major
18 life activities in the manner, speed, and duration when compared
19 to the average person. Moreover, Plaintiff's member Theodore A.
20 Pinnock has a history of or has been classified as having a
21 physical impairment as required by 42 U.S.C. § 12102(2) (A).
22

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

26 21. Based on the facts plead at ¶¶ 8 - 16 above and elsewhere in
27 this complaint, Plaintiff's Member and Plaintiff Theodore A.
28 Pinnock was denied full and equal access to Defendants' goods,

1 services, facilities, privileges, advantages, or accommodations
2 within a public accommodation owned, leased, and/or operated by
3 Defendants. Defendants altered their facility in a manner that
4 affects or could affect the usability of the facility or a part of
5 the facility after January 26, 1992. In performing the alteration,
6 Defendants failed to make the alteration in such a manner that, to
7 the maximum extent feasible, the altered portions of the facility
8 are readily accessible to and usable by individuals with
9 disabilities, including individuals who use wheelchairs, in
10 violation of 42 U.S.C. §12183(a)(2).

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

19 23. Pursuant to 42 U.S.C. §12183(a), this failure to make the
20 alterations in a manner that, to the maximum extent feasible, are
21 readily accessible to and usable by individuals with disabilities
22 constitutes discrimination for purposes of 42 U.S.C. §12183(a).

23 Therefore, Defendants discriminated against Plaintiff's Member and
24 Plaintiff Theodore A. Pinnock in violation of 42 U.S.C. §
25 12182(a).

26 24. Thus, Plaintiff's Member Theodore A. Pinnock was subjected to
27 discrimination in violation of 42 U.S.C. § 12183(a), 42 U.S.C.
28

1 §12182(a) and 42 U.S.C. §12188 because said Member and Plaintiff
2 Theodore A. Pinnock was denied equal access to Defendants'
3 existing facilities.
4

5 CLAIM III AGAINST ALL DEFENDANTS: Failure To Remove
6 Architectural Barriers

7 25. Based on the facts plead at ¶¶ 8 - 16 above and elsewhere in
8 this complaint, Plaintiff's Member was denied full and equal
9 access to Defendants' goods, services, facilities, privileges,
10 advantages, or accommodations within a public accommodation owned,
11 leased, and/or operated by Defendants. Defendants failed to
12 remove barriers as required by 42 U.S.C. § 12182(a). Plaintiffs
13 are informed, believe, and thus allege that architectural barriers
14 which are structural in nature exist within the following physical
15 elements of Defendants' facilities: Space Allowance and Reach
16 Ranges, Accessible Route, Protruding Objects, Ground and Floor
17 Surfaces, Parking and Passenger Loading Zones, Curb Ramps, Ramps,
18 Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows,
19 Doors, Entrances, Drinking Fountains and Water Coolers, Water
20 Closets, Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks,
21 Storage, Handrails, Grab Bars, and Controls and Operating
22 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.
23 Title III requires places of public accommodation to remove
24 architectural barriers that are structural in nature to existing
25 facilities. [See, 42 United States Code 12182(b)(2)(A)(iv).]
26 Failure to remove such barriers and disparate treatment against a
27 person who has a known association with a person with a disability
28 are forms of discrimination. [See 42 United States Code

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

5
6 CLAIM IV AGAINST ALL DEFENDANTS: Failure To Modify Practices,
Policies And Procedures

7 26. Based on the facts plead at ¶¶ 8 - 16 above and elsewhere in
8 this complaint, Defendants failed and refused to provide a
9 reasonable alternative by modifying its practices, policies and
10 procedures in that they failed to have a scheme, plan, or design
11 to assist Plaintiff's Member and/or others similarly situated in
12 entering and utilizing Defendants' services, as required by 42
13 U.S.C. § 12188(a). Thus, said Member was subjected to
14 discrimination in violation of 42 United States Code
15 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was
16 denied equal access to Defendants' existing facilities.

17 27. Based on the facts plead at ¶¶ 8 - 16 above, Claims I, II,
18 and III of Plaintiffs' First Cause Of Action above, and the facts
19 elsewhere herein this complaint, Plaintiffs will suffer
20 irreparable harm unless Defendants are ordered to remove
21 architectural, non-architectural, and communication barriers at
22 Defendants' public accommodation. Plaintiffs allege that
23 Defendants' discriminatory conduct is capable of repetition, and
24 this discriminatory repetition adversely impacts Plaintiffs and a
25 substantial segment of the disability community. Plaintiffs
26 allege there is a national public interest in requiring
27 accessibility in places of public accommodation. Plaintiffs have
28

1 no adequate remedy at law to redress the discriminatory conduct of
2 Defendants. Plaintiff's Member desires to return to Defendants'
3 places of business in the immediate future. Accordingly, the
4 Plaintiffs allege that a structural or mandatory injunction is
5 necessary to enjoin compliance with federal civil rights laws
6 enacted for the benefit of individuals with disabilities.

7 28. WHEREFORE, Plaintiffs pray for judgment and relief as
8 hereinafter set forth.
9

10 SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER
11 CALIFORNIA ACCESSIBILITY LAWS

12 CLAIM I: Denial Of Full And Equal Access

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

1 30. These violations denied Plaintiff's Member full and equal
2 access to Defendants' facility. Thus, said Member was subjected
3 to discrimination pursuant to Civil Code §§ 51, 52, and 54.1
4 because Plaintiff's Member was denied full, equal and safe access
5 to Defendants' facility, causing severe emotional distress.

6 CLAIM II: Failure To Modify Practices, Policies And Procedures

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

15 CLAIM III: Violation Of The Unruh Act

16 32. Based on the facts plead at ¶¶ 8 - 16 above and elsewhere
17 herein this complaint and because Defendants violated the Civil
18 Code § 51 by failing to comply with 42 United States Code §
19 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and
20 continue to discriminate against Plaintiff's Member and persons
21 similarly situated in violation of Civil Code §§ 51, 52, and 54.1.

22 33. Based on the facts plead at ¶¶ 8 - 16 above, Claims I, II,
23 and III of Plaintiffs' Second Cause Of Action above, and the facts
24 elsewhere herein this complaint, Plaintiffs will suffer
25 irreparable harm unless Defendants are ordered to remove
26 architectural, non-architectural, and communication barriers at
27 Defendants' public accommodation. Plaintiffs allege that
28

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

12 34. Wherefore, Plaintiffs pray for damages and relief as
13 hereinafter stated.
14

15 **Treble Damages Pursuant To Claims I, II, III Under The California**
16 **Accessibility Laws**

17 35. Defendants, each of them respectively, at times prior to and
18 including, the months of February and March, 2002, and continuing
19 to the present time, knew that persons with physical disabilities
20 were denied their rights of equal access to all portions of this
21 public facility. Despite such knowledge, Defendants, and each of
22 them, failed and refused to take steps to comply with the
23 applicable access statutes; and despite knowledge of the resulting
24 problems and denial of civil rights thereby suffered by
25 Plaintiff's Member and Plaintiff THEODORE A. PINNOCK and other
26 similarly situated persons with disabilities. Defendants, and
27 each of them, have failed and refused to take action to grant full
28 and equal access to persons with physical disabilities in the

1 respects complained of hereinabove. Defendants, and each of them,
2 have carried out a course of conduct of refusing to respond to, or
3 correct complaints about, denial of disabled access and have
4 refused to comply with their legal obligations to make Defendants'
5 TOM RANGLAS, INC., d.b.a. THE DEL MAR MOTEL a.k.a. DEL MAR MOTEL
6 ON THE BEACH facilities accessible pursuant to the Americans With
7 Disability Act Access Guidelines (ADAAG) and Title 24 of the
8 California Code of Regulations (also known as the California
9 Building Code). Such actions and continuing course of conduct by
10 Defendants, and each of them, evidence despicable conduct in
11 conscious disregard of the rights and/or safety of Plaintiff's
12 Member and of other similarly situated persons, justifying an
13 award of treble damages pursuant to sections 52(a) and 54.3(a) of
14 the California Civil Code.

15
16 36. Defendants', and each of their, actions have also been
17 oppressive to persons with physical disabilities and of other
18 members of the public, and have evidenced actual or implied
19 malicious intent toward those members of the public, such as
20 Plaintiff's Member and other persons with physical disabilities
21 who have been denied the proper access to which they are entitled
22 by law. Further, Defendants', and each of their, refusals on a
23 day-to-day basis to correct these problems evidence despicable
24 conduct in conscious disregard for the rights of Plaintiff's
25 Member THEODORE A. PINNOCK and other members of the public with
26 physical disabilities.

27 37. Plaintiffs pray for an award of treble damages against
28 Defendants, and each of them, pursuant to California Civil Code

1 sections 52(a) and 54.3(a), in an amount sufficient to make a more
2 profound example of Defendants and encourage owners, lessors, and
3 operators of other public facilities from willful disregard of the
4 rights of persons with disabilities. Plaintiffs do not know the
5 financial worth of Defendants, or the amount of damages sufficient
6 to accomplish the public purposes of section 52(a) of the
7 California Civil Code and section 54.3 of the California Civil
8 Code.

9
10 38. Wherefore, Plaintiffs pray for damages and relief as
11 hereinafter stated.

12 **THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS - Violation of**
13 **Business and Professions Code section 17200 et seq.**

14 39. Plaintiffs incorporate by reference herein the facts plead
15 at ¶¶ 8 - 16 above and elsewhere in this complaint.

16 40. Defendants failed to remove access barriers within the
17 disabled parking, exterior path of travel, access ramp, office
18 entrance door, registration counter, guestroom, guestroom
19 entrance, guestroom interior path of travel, guestroom table,
20 guestroom lamp, guestroom environmental controls, guestroom
21 storage, guestroom operable controls, and guestroom bathroom
22 facilities of Defendants' TOM RANGLAS, INC., d.b.a. THE DEL MAR
23 MOTEL a.k.a. DEL MAR MOTEL ON THE BEACH establishment. Business
24 and Professions Code section 17200 defines "unfair competition"
25 and prohibited activities as, ". . . any unlawful, unfair or
26 fraudulent business act or practice and unfair, deceptive, untrue
27 or misleading advertising and any act prohibited by Chapter 1
28 (commencing with Section 17500) of Part 3 of Division 7 of the

1 Business and Professions Code." Defendants' acts and omissions
2 alleged herein are violations of the below-enumerated federal and
3 state statutory requirements and public policy and therefore
4 constitute unfair competition and/or prohibited activities as such
5 violations are *unlawful, unfair or fraudulent business acts or*
6 *practices.*

7 41. Pursuant to federal law, Defendants are required to remove
8 barriers to their existing facilities. Title III of the Americans
9 With Disabilities Act requires places of public accommodation to
10 remove architectural barriers that are structural in nature to
11 existing facilities. [42 United States Code 12182(b)(2)(A)(iv).]
12 Failure to remove such barriers and disparate treatment against a
13 person who has a known association with a person with a disability
14 are forms of discrimination. [See 42 United States Code
15 12182(b)(2)(A)(iv)]. Defendants failed to remove obstructions in
16 the disabled parking, paths of travel, and restroom facilities
17 from Defendants' establishment. Thus, Plaintiffs were subjected
18 to discrimination in violation of 42 United States Code
19 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's
20 Member was denied equal access to Defendants' existing facilities.
21 Also, Defendants' facilities failed to provide full and equal
22 access to Defendants' facility as required by 42 U.S.C. §
23 12182(a). Thus, Plaintiffs were subjected to discrimination in
24 violation of 42 United States Code 12182(b)(2)(A)(iv) and 42
25 U.S.C. § 12188 because Plaintiff's Member was denied equal access
26 to Defendants' existing facilities. Additionally, as a result of
27 said access barriers, Defendants failed and refused to provide a
28

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 42
5 U.S.C. § 12188(a). Thus, Plaintiffs were subjected to
6 discrimination in violation of 42 United States Code
7 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's
8 Member was denied equal access to Defendants' existing facilities.
9
10 42. Pursuant to California state law, Defendants are also
11 required to remove barriers to their existing facilities.
12 Defendants' failure to remove barriers to their existing
13 facilities denied Plaintiff's Member full and equal access to
14 Defendants' facilities. Thus, Plaintiffs were subjected to
15 discrimination pursuant to Civil Code §§ 51, 52, and 54.1 because
16 Plaintiff's Member was denied full, equal and safe access to
17 Defendants' facility. Further, Defendants' facility, and other
18 goods, services, and/or facilities provided to the public by
19 Defendants are not accessible to and usable by persons with
20 disabilities as required by Health and Safety Code § 19955 which
21 requires private entities to make their facility accessible before
22 and after remodeling, and to remove architectural barriers.
23 Additionally, Defendants failed and refused to provide a
24 reasonable alternative by modifying its practices, policies, and
25 procedures in that they failed to have a scheme, plan, or design
26 to assist Plaintiff's Member and/or others similarly situated in
27 entering and utilizing Defendants' services as required by Civil
28 Code § 54.1. Thus, Plaintiffs were subjected to discrimination in

1 violation of Civil Code § 54.1. Also, under the Unruh Act,
2 Defendants violated Civil Code § 51 by failing to comply with 42
3 United States Code 12182(b)(2)(A)(iv), Defendants did and continue
4 to discriminate against Plaintiffs and persons similarly situated
5 in violation of Civil Code §§ 51, 52, and 54.1. Further,
6 Defendants had actual knowledge of their barrier removal duties
7 under the Americans with Disabilities Act, the California Civil
8 Code, and the California Health & Safety Code before January 26,
9 1992.

10
11 43. Defendants' alleged unlawful, unfair, or fraudulent business
12 acts or practices are specifically prohibited by the specific
13 introductory language of B&P section 17200 that is stated in the
14 conjunctive. Consequently, Plaintiffs allege that Defendants'
15 acts and omissions constitute a violation specifically of this
16 section 17200 of the Business and Professions Code.

17 44. Plaintiffs seek injunctive relief requiring Defendants to
18 remedy the disabled access violations present at the Defendants'
19 facilities. Ancillary to this injunctive relief, Plaintiffs also
20 request restitution for amounts paid by Plaintiff's Member who
21 attempted to visit and patronize Defendants' facilities during the
22 time period that the subject premises have been in violation of
23 the disabled access laws of the State of California.

24 45. Plaintiffs seek, on behalf of the general public, injunctive
25 relief requiring Defendants to comply with the disabled access
26 laws of the State of California at facilities throughout the State
27 of California built, owned, operated, and/or controlled by
28 Defendants.

1 46. WHEREFORE, Plaintiffs pray for judgment and relief as
2 hereinafter set forth.
3

4 PLAINTIFF THEODORE A. PINNOCK'S FOURTH CAUSE OF ACTION AGAINST ALL
5 DEFENDANTS - Negligence as to Plaintiff THEODORE A. PINNOCK only
6

7 47. Based on the facts plead at ¶¶ 8 - 16 above and elsewhere in
8 this complaint, Defendants owed Plaintiff Theodore A. Pinnock a
9 statutory duty to make their facility accessible and owed
10 Plaintiff Theodore A. Pinnock a duty to keep Plaintiff Theodore A.
11 Pinnock reasonably safe from known dangers and risks of harm.
12 This said duty arises by virtue of legal duties proscribed by
13 various federal and state statutes including, but not limited to,
14 ADA, ADAAG, Civil Code 51, 52, 54, 54.1 and Title 24 of the
15 California Administrative Code and applicable 1982 Uniform
16 Building Code standards as amended.

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

25 49. Therefore, Defendants engaged in discriminatory conduct in
26 that they failed to comply with known duties under the ADA, ADAAG,
27 Civil Code 51, 52, 54, 54.1, ADAAG, and Title 24, and knew or
28 should have known that their acts of nonfeasance would cause

1 Plaintiff Theodore A. Pinnock emotional, bodily and personal
2 injury. Plaintiffs allege that there was bodily injury in this
3 matter because when Plaintiff's Member and Plaintiff THEODORE A.
4 PINNOCK attempted to enter, use, and exit Defendants'
5 establishment, Plaintiff's Member and Plaintiff THEODORE A.
6 PINNOCK experienced pain in his legs, back, arms, shoulders, and
7 wrists. Plaintiffs further allege that such conduct was done in
8 reckless disregard of the probability of said conduct causing
9 Plaintiff Theodore A. Pinnock to suffer bodily or personal injury,
10 anger, embarrassment, depression, anxiety, mortification,
11 humiliation, distress, and fear of physical injury. Plaintiff
12 THEODORE A. PINNOCK, An Individual, alleges that such conduct
13 caused THEODORE A. PINNOCK, An Individual, to suffer the injuries
14 of mental and emotional distress, including, but not limited to,
15 anger, embarrassment, depression, anxiety, mortification,
16 humiliation, distress, and fear of physical injury. Plaintiff
17 THEODORE A. PINNOCK, An Individual, additionally alleges that such
18 conduct caused THEODORE A. PINNOCK, An Individual, to
19 suffer damages as a result of these injuries.
20

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

23
24 DEMAND FOR JUDGMENT FOR RELIEF:

- 25 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3,
26 3281, and 3333;
27 B. For \$4,000 in damages pursuant to Cal. Civil Code § 52 for
28 each and every offense of Civil Code § 51, Title 24 of the

1 California Building Code, ADA, and ADA Accessibility Guidelines;

2 C. In the alternative to the damages pursuant to Cal. Civil
3 Code § 52 in Paragraph B above, for \$1,000 in damages pursuant to
4 Cal. Civil Code § 54.3 for each and every offense of Civil Code §
5 54.1, Title 24 of the California Building Code, ADA, and ADA
6 Accessibility Guidelines;

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

19
20 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C.
21 § 12205, and Cal. Civil Code § 55;

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

24 ///

25 ///

26 ///

27 ///

28

- 1 G. For Restitution pursuant to Business and Professions section
- 2 17200;
- 3 H. A Jury Trial and;
- 4 I. For such other further relief as the court deems proper.

5
6 Respectfully submitted:

PINNOCK & WAKEFIELD

7
8
9
10 Dated: February 19, 2003

By: Michelle L. Wakefield
MICHELLE L. WAKEFIELD, ESQ.
DAVID C. WAKEFIELD, ESQ.
Attorneys for Plaintiffs

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

DEFENDANTS

TOM RANGLAS, INC., d.b.a. THE DEL MAR MOTEL a.k.a. DEL MAR MOTEL ON THE BEACH; TOM RANGLAS, INC.; POSEIDON, LTD., A California Limited Partnership; And DOES 1 THROUGH 10, Inclusive.

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

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY) 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; 7966 Arjons Drive, Suite 119
San Diego, CA 92126
Telephone: (858) 689-1750; Facsimile: (858) 689-1950

ATTORNEYS (IF KNOWN)

03 CV 0361 R LSP

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 Diversity Cases Only)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PT DEF 1 Incorporated or Principal Place of Business in This State
PT DEF 2 Incorporated and Principal Place of Business in Another State
PT DEF 3 Foreign Nation
PT DEF 4
PT DEF 5
PT DEF 6

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

42 U.S.C. Sections 12101-12102, 12181-12183, and 12201, Et. Seq.

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

Table with columns: CONTRACT, REAL PROPERTY, PERSONAL INJURY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes checkboxes for various legal categories like 110 Insurance, 210 Land Condemnation, 310 Airplane, 441 Voting, 610 Agriculture, 710 Fair Labor Standards Act, 810 Selective Service, etc.

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 f.r.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 February 19, 2003

SIGNATURE OF ATTORNEY OF RECORD

Handwritten notes: Pd \$150.00 2/21/03 #91618 VB

Handwritten signature: Michelle L. Wakefield