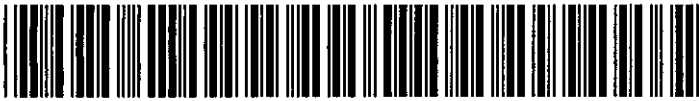
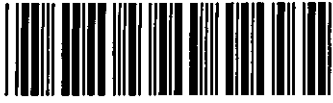


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3:03-CV-01649 DEGROOTE ESTATE V. RANGEL
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SOUTHERN DISTRICT OF CALIFORNIA

BY:

DEPUTY

Attorneys for Plaintiffs

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 ORGANIZATION FOR ACCESSIBLE
11 RIGHTS IN THE NEW MILLENNIUM
12 SUING ON BEHALF OF THE ESTATE
OF WALTER LEE DEGROOTE,
13 DOROTHY DEGROOTE, AND ITS
MEMBERS; THE ESTATE OF WALTER
14 LEE DEGROOTE; and DOROTHY
DEGROOTE, An Individual,
15 Plaintiffs,

v.

16 JOSE A. RANGEL d.b.a.
17 APHRODITA EXCLUSIVE IMAGE
DISTRICT a.k.a. APHRODITA
18 CLOTHING; MARTA O. RANGEL
d.b.a. APHRODITA EXCLUSIVE
19 IMAGE DISTRICT a.k.a.
APHRODITA CLOTHING; PROSPECT
20 SQUARE, LLC, d.b.a. PROSPECT
SQUARE; PROSPECT SQUARE, LLC;
21 ABELARDO RODRIGUEZ TRUST; And
22 DOES 1 THROUGH 10, Inclusive.

Defendants.

Case No. **03 CV 1649 BTM JAH**

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, 3294; EVIDENCE CODE
669(a)]

DEMAND FOR JURY TRIAL

[F.R.Civ.P. rule 38(b); L.R.
38.1

INTRODUCTION

27 Plaintiffs ORGANIZATION FOR ACCESSIBLE RIGHTS IN THE NEW
28 MILLENNIUM SUING ON BEHALF OF THE ESTATE OF WALTER LEE DEGROOTE,

1 DOROTHY DEGROOTE, AND ITS MEMBERS; THE ESTATE OF WALTER LEE
2 DEGROOTE; and DOROTHY DEGROOTE, An Individual, herein complain, by
3 filing this Civil Complaint in accordance with rule 8 of the
4 Federal Rules of Civil Procedure in the Judicial District of the
5 United States District Court of the Southern District of
6 California, that Defendants have in the past, and presently are,
7 engaging in discriminatory practices against individuals with
8 disabilities, specifically including minorities with disabilities.
9 Plaintiffs allege this civil action and others substantial similar
10 thereto are necessary to compel access compliance because
11 empirical research on the effectiveness of Title III of the
12 Americans with Disabilities Act indicates the Title has failed to
13 achieve full and equal access simply by the executive branch of
14 the Federal Government funding and promoting voluntary compliance
15 efforts. Further, empirical research shows when individuals with
16 disabilities give actual notice of potential access problems to
17 places of public accommodation without a federal civil rights
18 civil action, the public accommodations do not remove the access
19 barriers. Therefore, Plaintiffs make the following allegations in
20 this federal civil rights action:
21

22 JURISDICTION AND VENUE

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

1 Judicial District of the United States District Court of the
2 Southern District of California.

3 SUPPLEMENTAL JURISDICTION

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

26 NAMED DEFENDANTS AND NAMED PLAINTIFFS

27 3. Defendants are, and, at all times mentioned herein, were, a
28

1 business or corporation or franchise organized and existing and/or
2 doing business under the laws of the State of California.

3 Defendants JOSE A. RANGEL d.b.a. APHRODITA EXCLUSIVE IMAGE
4 DISTRICT a.k.a. APHRODITA CLOTHING; and MARTA O. RANGEL d.b.a.
5 APHRODITA EXCLUSIVE IMAGE DISTRICT a.k.a. APHRODITA CLOTHING are
6 located at 1025 Prospect Street, suite 140, La Jolla, California,
7 92037-4102. Plaintiffs are informed and believe and thereon
8 allege that Defendants PROSPECT SQUARE, LLC, d.b.a. PROSPECT
9 SQUARE; PROSPECT SQUARE, LLC; and ABELARDO RODRIGUEZ TRUST are the
10 owners, operators, and/or lessors of the property located at 1025
11 Prospect Street, La Jolla, California, 92037-4102, Assessor Parcel
12 Number 350-091-03. Defendants PROSPECT SQUARE, LLC, d.b.a.
13 PROSPECT SQUARE, and PROSPECT SQUARE, LLC, are located at 1901
14 Avenue Of The Stars, Suite 950, Los Angeles, California, 90067.
15 Defendant ABELARDO RODRIGUEZ TRUST is located at 16730 Via De Los
16 Rosales, Rancho Santa Fe, California, 92067.

17
18 4. The words "Plaintiffs" and "Plaintiff" as used herein
19 specifically include the ORGANIZATION FOR ACCESSIBLE RIGHTS IN THE
20 NEW MILLENNIUM; ORGANIZATION FOR ACCESSIBLE RIGHTS IN THE NEW
21 MILLENNIUM SUING ON BEHALF OF THE ESTATE OF WALTER LEE DEGROOTE,
22 DOROTHY DEGROOTE, AND ITS MEMBERS; its Members; THE ESTATE OF
23 WALTER LEE DEGROOTE; DOROTHY DEGROOTE; and persons associated with
24 its Members who accompanied Members to Defendants' facilities.
25 The words "Plaintiff's Members" and "Plaintiff's Member" as used
26 herein specifically include the ORGANIZATION FOR ACCESSIBLE RIGHTS
27 IN THE NEW MILLENNIUM; ORGANIZATION FOR ACCESSIBLE RIGHTS IN THE
28 NEW MILLENNIUM SUING ON BEHALF OF THE ESTATE OF WALTER LEE

1 DEGROOTE, DOROTHY DEGROOTE, AND ITS MEMBERS; its Members; THE
2 ESTATE OF WALTER LEE DEGROOTE; DOROTHY DEGROOTE; and persons
3 associated with its Members who accompanied Members to Defendants'
4 facilities.

5 5. Defendants Does 1 through 10, were at all times relevant
6 herein subsidiaries, employers, employees, and/or agents of JOSE
7 A. RANGEL d.b.a. APHRODITA EXCLUSIVE IMAGE DISTRICT a.k.a.
8 APHRODITA CLOTHING; MARTA O. RANGEL d.b.a. APHRODITA EXCLUSIVE
9 IMAGE DISTRICT a.k.a. APHRODITA CLOTHING; PROSPECT SQUARE, LLC,
10 d.b.a. PROSPECT SQUARE; PROSPECT SQUARE, LLC; and/or ABELARDO
11 RODRIGUEZ TRUST. Plaintiffs are ignorant of the true names and
12 capacities of Defendants sued herein as Does 1 through 10,
13 inclusive, and therefore sues these Defendants by such fictitious
14 names. Plaintiffs will pray leave of the court to amend this
15 complaint to allege the true names and capacities of the Does when
16 ascertained.

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

26
27 **CONCISE SET OF FACTS**

28 7. Deceased Plaintiff's Member WALTER LEE DEGROOTE had a physical

1 impairment and due to this impairment he had learned to
2 successfully operate a wheelchair. Plaintiff's Member and
3 Plaintiff DOROTHY DEGROOTE is the wife of deceased Plaintiff's
4 Member WALTER LEE DEGROOTE and served in the capacity of caregiver
5 to deceased Plaintiff's Member WALTER LEE DEGROOTE.

6 8. On August 18, 2002, deceased Plaintiff's Member WALTER LEE
7 DEGROOTE and Plaintiff's Member and Plaintiff DOROTHY DEGROOTE
8 went to Defendants' JOSE A. RANGEL d.b.a. APHRODITA EXCLUSIVE
9 IMAGE DISTRICT a.k.a. APHRODITA CLOTHING; and MARTA O. RANGEL
10 d.b.a. APHRODITA EXCLUSIVE IMAGE DISTRICT a.k.a. APHRODITA
11 CLOTHING, establishment.

12 9. When deceased Plaintiff's Member WALTER LEE DEGROOTE and
13 Plaintiff's Member and Plaintiff DOROTHY DEGROOTE patronized
14 Defendants' JOSE A. RANGEL d.b.a. APHRODITA EXCLUSIVE IMAGE
15 DISTRICT a.k.a. APHRODITA CLOTHING; and MARTA O. RANGEL d.b.a.
16 APHRODITA EXCLUSIVE IMAGE DISTRICT a.k.a. APHRODITA CLOTHING,
17 establishment, they had difficulty using the entrance, interior
18 path of travel and customer service counter facilities at
19 Defendants' establishment because they failed to comply with ADA
20 Access Guidelines For Buildings and Facilities (hereafter referred
21 to as "ADAAG") and/or California's Title 24 Building Code
22 Requirements. Defendants failed to remove obstructions in the
23 entrance, interior path of travel and customer service counter
24 facilities within Defendants' JOSE A. RANGEL d.b.a. APHRODITA
25 EXCLUSIVE IMAGE DISTRICT a.k.a. APHRODITA CLOTHING; and MARTA O.
26 RANGEL d.b.a. APHRODITA EXCLUSIVE IMAGE DISTRICT a.k.a. APHRODITA
27 CLOTHING, establishment.
28

1 10. Deceased Plaintiff's Member WALTER LEE DEGROOTE and
2 Plaintiff's Member and Plaintiff DOROTHY DEGROOTE personally
3 experienced difficulty with said access barriers within
4 Defendants' JOSE A. RANGEL d.b.a. APHRODITA EXCLUSIVE IMAGE
5 DISTRICT a.k.a. APHRODITA CLOTHING; and MARTA O. RANGEL d.b.a.
6 APHRODITA EXCLUSIVE IMAGE DISTRICT a.k.a. APHRODITA CLOTHING,
7 establishment. For example, the entrance to Defendants'
8 establishment is completely inaccessible. Also, the interior path
9 of travel throughout Defendants' establishment fails to be
10 accessible, as the interior path of travel is less than the
11 required thirty-six inches (36") in width in some areas. Also,
12 the customer service counter is too high to be accessible.

13 11. Based on these facts, Plaintiffs allege deceased Plaintiff's
14 Member WALTER LEE DEGROOTE and Plaintiff's Member and Plaintiff
15 DOROTHY DEGROOTE were discriminated against each time they
16 patronized Defendants' establishment.

17 12. Pursuant to federal and state law, Defendants are required
18 to remove barriers to their existing facilities. Further,
19 Defendants had actual knowledge of their barrier removal duties
20 under the Americans with Disabilities Act and the Civil Code
21 before January 26, 1992. Also, Defendants should have known that
22 individuals with disabilities are not required to give notice to a
23 governmental agency before filing suit alleging Defendants failed
24 to remove architectural barriers. Plaintiffs believes and herein
25 allege Defendants' facilities have access violations not directly
26 experienced by deceased Plaintiff's Member WALTER LEE DEGROOTE and
27 Plaintiff's Member and Plaintiff DOROTHY DEGROOTE which preclude
28

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

15 13. Plaintiffs and Plaintiff's Member and Plaintiff DOROTHY
16 DEGROOTE desire to return to Defendants' place of business in the
17 immediate future.

18 14. Deceased Plaintiff's Member WALTER LEE DEGROOTE and
19 Plaintiff's Member and Plaintiff DOROTHY DEGROOTE WERE extremely
20 upset due to Defendants' conduct. Further, deceased Plaintiff's
21 Member WALTER LEE DEGROOTE experienced pain in his legs, back,
22 arms, shoulders and wrists when he attempted to enter, use, and
23 exit Defendants' establishment.

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

25 15. JOSE A. RANGEL d.b.a. APHRODITA EXCLUSIVE IMAGE DISTRICT
26 a.k.a. APHRODITA CLOTHING; MARTA O. RANGEL d.b.a. APHRODITA
27 EXCLUSIVE IMAGE DISTRICT a.k.a. APHRODITA CLOTHING; PROSPECT
28

1 SQUARE, LLC, d.b.a. PROSPECT SQUARE; PROSPECT SQUARE, LLC;
2 ABELARDO RODRIGUEZ TRUST; and DOES 1 THROUGH 10, Inclusive, are
3 hereinafter referred to as "Defendants."

4 16. Plaintiffs aver that the Defendants are liable for the
5 following claims as alleged below:
6

7 DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS

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

10 CLAIM I: Denial Of Full And Equal Access

11 17. Based on the facts plead at ¶¶ 7 - 14 above and elsewhere
12 in this complaint, deceased Plaintiff's Member WALTER LEE DEGROOTE
13 and Plaintiff's Member and Plaintiff DOROTHY DEGROOTE were denied
14 full and equal access to Defendants' goods, services, facilities,
15 privileges, advantages, or accommodations. Plaintiffs allege
16 Defendants are a public accommodation owned, leased and/or
17 operated by Defendants. Defendants' existing facilities and/or
18 services failed to provide full and equal access to Defendants'
19 facility as required by 42 U.S.C. § 12182(a). Thus, deceased
20 Plaintiff's Member WALTER LEE DEGROOTE and Plaintiff's Member and
21 Plaintiff DOROTHY DEGROOTE were subjected to discrimination in
22 violation of 42 United States Code 12182(b)(2)(A)(iv) and 42
23 U.S.C. § 12188 because Plaintiffs were denied equal access to
24 Defendants' existing facilities.
25

26 18. Deceased Plaintiff's Member WALTER LEE DEGROOTE had physical
27 impairments as alleged in ¶ 7 above because his conditions
28 affected one or more of the following body systems: neurological,

1 musculoskeletal, special sense organs, and/or cardiovascular.
2 Further, his said physical impairments substantially limited one
3 or more of the following major life activities: walking. In
4 addition, deceased Plaintiff's Member WALTER LEE DEGROOTE could
5 not perform one or more of the said major life activities in the
6 manner, speed, and duration when compared to the average person.
7 Moreover, deceased Plaintiff's Member WALTER LEE DEGROOTE had a
8 history of or has been classified as having a physical impairment
9 as required by 42 U.S.C. § 12102(2)(A).

10 CLAIM II: Failure To Make Alterations In Such A Manner That The
11 Altered Portions Of The Facility Are Readily Accessible And Usable
12 By Individuals With Disabilities

13 19. Based on the facts plead at ¶¶ 7 - 14 above and elsewhere in
14 this complaint, deceased Plaintiff's Member WALTER LEE DEGROOTE
15 and Plaintiff's Member and Plaintiff DOROTHY DEGROOTE were denied
16 full and equal access to Defendants' goods, services, facilities,
17 privileges, advantages, or accommodations within a public
18 accommodation owned, leased, and/or operated by Defendants.
19 Defendants altered their facility in a manner that affects or
20 could affect the usability of the facility or a part of the
21 facility after January 26, 1992. In performing the alteration,
22 Defendants failed to make the alteration in such a manner that, to
23 the maximum extent feasible, the altered portions of the facility
24 are readily accessible to and usable by individuals with
25 disabilities, including individuals who use wheelchairs, in
26 violation of 42 U.S.C. §12183(a)(2).

27 20. Additionally, the Defendants undertook an alteration that
28

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

8 21. Pursuant to 42 U.S.C. §12183(a), this failure to make the
9 alterations in a manner that, to the maximum extent feasible, are
10 readily accessible to and usable by individuals with disabilities
11 constitutes discrimination for purposes of 42 U.S.C. §12183(a).
12 Therefore, Defendants discriminated against deceased Plaintiff's
13 Member WALTER LEE DEGROOTE and Plaintiff's Member and Plaintiff
14 DOROTHY DEGROOTE in violation of 42 U.S.C. § 12182(a).

15 22. Thus, deceased Plaintiff's Member WALTER LEE DEGROOTE and
16 Plaintiff's Member and Plaintiff DOROTHY DEGROOTE were subjected
17 to discrimination in violation of 42 U.S.C. § 12183(a), 42 U.S.C.
18 §12182(a) and 42 U.S.C. §12188 because deceased Plaintiff's Member
19 WALTER LEE DEGROOTE and Plaintiff's Member and Plaintiff DOROTHY
20 DEGROOTE were denied equal access to Defendants' existing
21 facilities.

22
23 **CLAIM III: Failure To Remove Architectural Barriers**

24 23. Based on the facts plead at ¶¶ 7 - 14 above and elsewhere in
25 this complaint, deceased Plaintiff's Member WALTER LEE DEGROOTE
26 and Plaintiff's Member and Plaintiff DOROTHY DEGROOTE were denied
27 full and equal access to Defendants' goods, services, facilities,
28 privileges, advantages, or accommodations within a public

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

27 CLAIM IV: Failure To Modify Practices, Policies And Procedures

28 24. Based on the facts plead at ¶¶ 7 - 14 above and elsewhere in

1 this complaint, Defendants failed and refused to provide a
2 reasonable alternative by modifying its practices, policies and
3 procedures in that they failed to have a scheme, plan, or design
4 to assist deceased Plaintiff's Member WALTER LEE DEGROOTE,
5 Plaintiff's Member and Plaintiff DOROTHY DEGROOTE and/or others
6 similarly situated in entering and utilizing Defendants' services,
7 as required by 42 U.S.C. § 12188(a). Thus, deceased Plaintiff's
8 Member WALTER LEE DEGROOTE and Plaintiff's Member and Plaintiff
9 DOROTHY DEGROOTE were subjected to discrimination in violation of
10 42 United States Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188
11 because deceased Plaintiff's Member WALTER LEE DEGROOTE and
12 Plaintiff's Member and Plaintiff DOROTHY DEGROOTE were denied
13 equal access to Defendants' existing facilities.

14 SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER
15 CALIFORNIA ACCESSIBILITY LAWS

16 CLAIM I: Denial Of Full And Equal Access

17 25. Based on the facts plead at ¶¶ 7 - 14 above and elsewhere in
18 this complaint, deceased Plaintiff's Member WALTER LEE DEGROOTE
19 and Plaintiff's Member and Plaintiff DOROTHY DEGROOTE were denied
20 full and equal access to Defendants' goods, services, facilities,
21 privileges, advantages, or accommodations within a public
22 accommodation owned, leased, and/or operated by Defendants as
23 required by Civil Code Sections 54 and 54.1. Defendants' facility
24 violated California's Title 24 Accessible Building Code by failing
25 to provide access to Defendants' facilities due to violations
26 pertaining to the Space Allowance and Reach Ranges, Accessible
27 Route, Protruding Objects, Ground and Floor Surfaces, Parking and
28

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

7 26. These violations denied deceased Plaintiff's Member WALTER
8 LEE DEGROOTE and Plaintiff's Member and Plaintiff DOROTHY DEGROOTE
9 full and equal access to Defendants' facility. Thus, deceased
10 Plaintiff's Member WALTER LEE DEGROOTE and Plaintiff's Member and
11 Plaintiff DOROTHY DEGROOTE were subjected to discrimination
12 pursuant to Civil Code §§ 51, 52, and 54.1 because Plaintiffs were
13 denied full, equal and safe access to Defendants' facility,
14 causing severe emotional distress.

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

16 27. Based on the facts plead at ¶¶ 7 - 14 above and elsewhere
17 herein this complaint, Defendants failed and refused to provide a
18 reasonable alternative by modifying its practices, policies, and
19 procedures in that they failed to have a scheme, plan, or design
20 to assist deceased Plaintiff's Member WALTER LEE DEGROOTE,
21 Plaintiff's Member and Plaintiff DOROTHY DEGROOTE and/or others
22 similarly situated in entering and utilizing Defendants' services
23 as required by Civil Code § 54.1. Thus, deceased Plaintiff's
24 Member WALTER LEE DEGROOTE and Plaintiff's Member and Plaintiff
25 DOROTHY DEGROOTE were subjected to discrimination in violation of
26 Civil Code § 54.1.

27 CLAIM III: Violation Of The Unruh Act
28

1 28. Based on the facts plead at ¶¶ 7 - 14 above and elsewhere
2 herein this complaint and because Defendants violated the Civil
3 Code § 51 by failing to comply with 42 United States Code
4 12182(b)(2)(A)(iv), Defendants did and continue to discriminate
5 against deceased Plaintiff's Member WALTER LEE DEGROOTE,
6 Plaintiff's Member and Plaintiff DOROTHY DEGROOTE and persons
7 similarly situated in violation of Civil Code §§ 51, 52, and 54.1.

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

11 29. Defendants, each of them, at times prior to and including
12 during the month of August, 2002, respectively, and continuing to
13 the present time, knew that persons with physical disabilities
14 were denied their rights of equal access to all portions of this
15 public facility. Despite such knowledge, Defendants, and each of
16 them, failed and refused to take steps to comply with the
17 applicable access statutes; and despite knowledge of the resulting
18 problems and denial of civil rights thereby suffered by deceased
19 Plaintiff's Member WALTER LEE DEGROOTE, Plaintiff's Member and
20 Plaintiff DOROTHY DEGROOTE and other similarly situated persons
21 with disabilities. Defendants, and each of them, have failed and
22 refused to take action to grant full and equal access to persons
23 with physical disabilities in the respects complained of
24 hereinabove. Defendants, and each of them, have carried out a
25 course of conduct of refusing to respond to, or correct complaints
26 about, denial of disabled access and have refused to comply with
27 their legal obligations to make the JOSE A. RANGEL d.b.a.
28 APHRODITA EXCLUSIVE IMAGE DISTRICT a.k.a. APHRODITA CLOTHING; and

1 MARTA O. RANGEL d.b.a. APHRODITA EXCLUSIVE IMAGE DISTRICT a.k.a.
2 APHRODITA CLOTHING, facilities accessible pursuant to the
3 Americans With Disability Act Access Guidelines (ADAAG) and Title
4 24 of the California Code of Regulations (also known as the
5 California Building Code). Such actions and continuing course of
6 conduct by Defendants, and each of them, evidence despicable
7 conduct in conscious disregard of the rights and/or safety of
8 deceased Plaintiff's Member WALTER LEE DEGROOTE, Plaintiff's
9 Member and Plaintiff DOROTHY DEGROOTE and of other similarly
10 situated persons, justifying an award of treble damages pursuant
11 to sections 52(a) and 54.3(a) of the California Civil Code.

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

24
25 31. Plaintiffs pray for an award of treble damages against
26 Defendants, and each of them, pursuant to California Civil Code
27 sections 52(a) and 54.3(a), in an amount sufficient to make a more
28 profound example of Defendants and encourage owners and operators

1 of other public facilities from willful disregard of the rights of
2 persons with disabilities. Plaintiffs do not know the financial
3 worth of Defendants, or the amount of treble damages sufficient to
4 accomplish the public purposes of section 52(a) of the California
5 Civil Code and section 54.3 of the California Civil Code.

6 32. Wherefore, Plaintiffs pray for damages and relief as
7 hereinafter stated.

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

10 33. Plaintiffs incorporate by reference herein the facts plead
11 at ¶¶ 7 - 14 above and elsewhere in this complaint.

12 34. Defendants failed to remove obstructions in the entrance,
13 interior path of travel and customer service counter facilities
14 within Defendants' JOSE A. RANGEL d.b.a. APHRODITA EXCLUSIVE IMAGE
15 DISTRICT a.k.a. APHRODITA CLOTHING; and MARTA O. RANGEL d.b.a.
16 APHRODITA EXCLUSIVE IMAGE DISTRICT a.k.a. APHRODITA CLOTHING,
17 establishment.

18 35. Pursuant to federal law, Defendants are required to remove
19 barriers to their existing facilities. Title III of the Americans
20 With Disabilities Act requires places of public accommodation to
21 remove architectural barriers that are structural in nature to
22 existing facilities. [42 United States Code 12182(b)(2)(A)(iv).]
23 Failure to remove such barriers and disparate treatment against a
24 person who has a known association with a person with a disability
25 are forms of discrimination. [See 42 United States Code
26 12182(b)(2)(A)(iv).] Thus, deceased Plaintiff's Member WALTER LEE
27 DEGROOTE and Plaintiff's Member and Plaintiff DOROTHY DEGROOTE
28

1 were subjected to discrimination in violation of 42 United States
2 Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because deceased
3 Plaintiff's Member WALTER LEE DEGROOTE and Plaintiff's Member and
4 Plaintiff DOROTHY DEGROOTE were denied equal access to Defendants'
5 existing facilities. Also, Defendants' facilities failed to
6 provide full and equal access to Defendants' facility as required
7 by 42 U.S.C. § 12182(a). Thus, deceased Plaintiff's Member WALTER
8 LEE DEGROOTE and Plaintiff's Member and Plaintiff DOROTHY DEGROOTE
9 were subjected to discrimination in violation of 42 United States
10 Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because deceased
11 Plaintiff's Member WALTER LEE DEGROOTE and Plaintiff's Member and
12 Plaintiff DOROTHY DEGROOTE were denied equal access to Defendants'
13 existing facilities. Additionally, as a result of said access
14 barriers, Defendants failed and refused to provide a reasonable
15 alternative by modifying its practices, policies and procedures in
16 that they failed to have a scheme, plan, or design to assist
17 deceased Plaintiff's Member WALTER LEE DEGROOTE, Plaintiff's
18 Member and Plaintiff DOROTHY DEGROOTE and/or others similarly
19 situated in entering and utilizing Defendants' services, as
20 required by 42 U.S.C. § 12188(a). Thus, deceased Plaintiff's
21 Member WALTER LEE DEGROOTE and Plaintiff's Member and Plaintiff
22 DOROTHY DEGROOTE were subjected to discrimination in violation of
23 42 United States Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188
24 because deceased Plaintiff's Member WALTER LEE DEGROOTE and
25 Plaintiff's Member and Plaintiff DOROTHY DEGROOTE were denied
26 equal access to Defendants' existing facilities.

27
28 36. Pursuant to state law, Defendants are also required to remove

1 barriers to their existing facilities. These violations denied
2 deceased Plaintiff's Member WALTER LEE DEGROOTE and Plaintiff's
3 Member and Plaintiff DOROTHY DEGROOTE full and equal access to
4 Defendants' facilities. Thus, deceased Plaintiff's Member WALTER
5 LEE DEGROOTE and Plaintiff's Member and Plaintiff DOROTHY DEGROOTE
6 were subjected to discrimination pursuant to Civil Code §§ 51, 52,
7 and 54.1 because deceased Plaintiff's Member WALTER LEE DEGROOTE
8 and Plaintiff's Member and Plaintiff DOROTHY DEGROOTE were denied
9 full, equal and safe access to Defendants' facility. Further,
10 Defendants' facility, and other goods, services, and/or facilities
11 provided to the public by Defendants are not accessible to and
12 usable by persons with disabilities as required by Health and
13 Safety Code § 19955 which requires private entities to make their
14 facility accessible before and after remodeling, and to remove
15 architectural barriers on and after AB 1077 went into effect.
16 Additionally, Defendants failed and refused to provide a
17 reasonable alternative by modifying its practices, policies, and
18 procedures in that they failed to have a scheme, plan, or design
19 to assist deceased Plaintiff's Member WALTER LEE DEGROOTE,
20 Plaintiff's Member and Plaintiff DOROTHY DEGROOTE and/or others
21 similarly situated in entering and utilizing Defendants' services
22 as required by Civil Code § 54.1. Thus, deceased Plaintiff's
23 Member WALTER LEE DEGROOTE and Plaintiff's Member and Plaintiff
24 DOROTHY DEGROOTE were subjected to discrimination in violation of
25 Civil Code § 54.1. Also, under the Unruh Act, Defendants violated
26 the Civil Code § 51 by failing to comply with 42 United States
27 Code 12182(b)(2)(A)(iv), Defendants did and continue to
28

1 discriminate against deceased Plaintiff's Member WALTER LEE
2 DEGROOTE, Plaintiff's Member and Plaintiff DOROTHY DEGROOTE and
3 persons similarly situated in violation of Civil Code §§ 51, 52,
4 and 54.1. Further, Defendants had actual knowledge of their
5 barrier removal duties under the Americans with Disabilities Act,
6 the California Civil Code, and the California Health & Safety Code
7 before January 26, 1992.

8 37. Business and Professions Code section 17200 defines "unfair
9 competition" and prohibited activities as, ". . . **any unlawful,**
10 **unfair or fraudulent business act or practice** and unfair,
11 deceptive, untrue or misleading advertising and any act prohibited
12 by Chapter 1 (commencing with Section 17500) of Part 3 of Division
13 7 of the Business and Professions Code." (emphasis added).

14 Defendants' acts and omissions alleged herein are violations of
15 the above-enumerated federal and state statutory requirements and
16 public policy and therefore constitute unfair competition and/or
17 prohibited activities as such violations are *unlawful, unfair or*
18 *fraudulent business acts or practices*. Defendants' alleged
19 unlawful, unfair, or fraudulent business acts or practices are
20 specifically prohibited by the specific introductory language of
21 B&P section 17200 that is stated in the conjunctive.
22

23 Consequently, Plaintiffs allege that Defendants' acts and
24 omissions constitute a violation specifically of this section
25 17200 of the Business and Professions Code.

26 38. Plaintiffs seek injunctive relief requiring Defendants to
27 remedy the disabled access violations present at the Defendants'
28 facilities. Ancillary to this injunctive relief, Plaintiffs also

1 request restitution for amounts paid by deceased Plaintiff's
2 Member WALTER LEE DEGROOTE and Plaintiff's Member and Plaintiff
3 DOROTHY DEGROOTE who attempted to visit and patronize Defendants'
4 facilities during the time period that the subject premises have
5 been in violation of the disabled access laws of the State of
6 California.

7
8 39. Plaintiffs seek, on behalf of the general public, injunctive
9 relief requiring Defendants to comply with the disabled access
10 laws of the State of California at facilities throughout the State
11 of California built, owned, operated, and/or controlled by
12 Defendants.

13 40. WHEREFORE, Plaintiffs pray for judgment as hereinafter set
14 forth.

15 FOURTH CAUSE OF ACTION AGAINST ALL DEFENDANTS- Negligence

16 41. Based on the facts plead at ¶¶ 7 - 14 above and elsewhere in
17 this complaint, Defendants owed deceased Plaintiff's Member WALTER
18 LEE DEGROOTE and Plaintiff's Member and Plaintiff DOROTHY DEGROOTE
19 a statutory duty to make their facility accessible and owed
20 deceased Plaintiff's Member WALTER LEE DEGROOTE and Plaintiff's
21 Member and Plaintiff DOROTHY DEGROOTE a duty to keep deceased
22 Plaintiff's Member WALTER LEE DEGROOTE and Plaintiff's Member and
23 Plaintiff DOROTHY DEGROOTE reasonably safe from known dangers and
24 risks of harm. This said duty arises by virtue of legal duties
25 proscribed by various federal and state statutes including, but
26 not limited to, ADA, ADAAG, Civil Code 51, 52, 54, 54.1 and Title
27 24 of the California Administrative Code and applicable 1982
28 Uniform Building Code standards as amended.

1 42. Title III of the ADA mandates removal of architectural
2 barriers and prohibits disability discrimination. As well,
3 Defendants' facility, and other goods, services, and/or facilities
4 provided to the public by Defendants are not accessible to and
5 usable by persons with disabilities as required by Health and
6 Safety Code § 19955 which requires private entities to make their
7 facility accessible before and after remodeling, and to remove
8 architectural barriers on and after AB 1077 went into effect.

9 43. Therefore, Defendants engaged in discriminatory conduct in
10 that they failed to comply with known duties under the ADA, ADAAG,
11 Civil Code 51, 52, 54, 54.1, ADAAG, and Title 24, and knew or
12 should have known that their acts of nonfeasance would cause
13 deceased Plaintiff's Member WALTER LEE DEGROOTE and Plaintiff's
14 Member and Plaintiff DOROTHY DEGROOTE emotional, bodily and
15 personal injury. Plaintiffs allege that there was bodily injury
16 in this matter because when deceased Plaintiff's Member WALTER LEE
17 DEGROOTE attempted to enter, use, and exit Defendants'
18 establishment, deceased Plaintiff's Member WALTER LEE DEGROOTE
19 experienced pain in his legs, back, arms, shoulders, and wrists.
20 Plaintiffs further allege that such conduct was done in reckless
21 disregard of the probability of said conduct causing deceased
22 Plaintiff's Member WALTER LEE DEGROOTE and Plaintiff's Member and
23 Plaintiff DOROTHY DEGROOTE to suffer bodily or personal injury,
24 anger, embarrassment, depression, anxiety, mortification,
25 humiliation and/or distress. Plaintiffs allege that such conduct
26 caused deceased Plaintiff's Member WALTER LEE DEGROOTE and
27 Plaintiff's Member and Plaintiff DOROTHY DEGROOTE to suffer the
28

1 injuries of mental and emotional distress, including, but not
2 limited to, anger, embarrassment, depression, anxiety,
3 mortification, humiliation, distress, and fear of physical injury.
4 Plaintiffs additionally allege that such conduct caused deceased
5 Plaintiff's Member WALTER LEE DEGROOTE and Plaintiff's Member and
6 Plaintiff DOROTHY DEGROOTE to suffer damages as a result of these
7 injuries.
8

9 DEMAND FOR JUDGMENT FOR RELIEF:

10 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3,
11 3281, and 3333;

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

15 C. In the alternative to the damages pursuant to Cal. Civil
16 Code § 52 in Paragraph B above, for \$1,000 in damages pursuant to
17 Cal. Civil Code § 54.3 for each and every offense of Civil Code §
18 54.1, Title 24 of the California Building Code, ADA, and ADA
19 Accessibility Guidelines;
20

21 D. For injunctive relief pursuant to 42 U.S.C. § 12188(a) and
22 Cal. Civil Code § 55. Plaintiffs request this Court enjoin
23 Defendants to remove all architectural barriers in, at, or on
24 their facilities related to the following: Space Allowance and
25 Reach Ranges, Accessible Route, Protruding Objects, Ground and
26 Floor Surfaces, Parking and Passenger Loading Zones, Curb Ramps,
27 Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts),
28

1 Windows, Doors, Entrances, Drinking Fountains and Water Coolers,
2 Water Closets, Toilet Stalls, Urinals, Lavatories and Mirrors,
3 Sinks, Storage, Handrails, Grab Bars, and Controls and Operating
4 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.

5 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C.
6 § 12205, and Cal. Civil Code § 55;

7
8 F. For treble damages pursuant to Cal. Civil Code §§ 52(a),
9 and 54.3(a);

10 G. For Restitution pursuant to Business and Professions section
11 17200;

12 H. A Jury Trial and;

13 I. For such other further relief as the court deems proper.

14
15 Respectfully submitted:

16
17 PINNOCK & WAKEFIELD

18 Dated: August 15, 2003

19 By: _____

20 THEODORE A. PINNOCK, ESQ.
21 DAVID C. WAKEFIELD, ESQ.
22 MICHELLE L. WAKEFIELD, ESQ.
23 Attorneys for Plaintiffs
24
25
26
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. PLAINTIFFS ORGANIZATION FOR ACCESSIBLE RIGHTS IN THE NEW MILLENNIUM SUING ON BEHALF OF THE ESTATE OF WALTER LEE DEGROOTE, DOROTHY DEGROOTE, AND ITS MEMBERS; THE ESTATE OF WALTER LEE DEGROOTE; and DOROTHY DEGROOTE, An Individual

DEFENDANTS JOSE A. RANGEL d.b.a. APHRODITA EXCLUSIVE IMAGE DISTRICT a.k.a. APHRODITA CLOTHING; MARTA O. RANGEL d.b.a. APHRODITA EXCLUSIVE IMAGE DISTRICT a.k.a. APHRODITA CLOTHING; PROSPECT SQUARE, LLC, d.b.a. PROSPECT SQUARE, PROSPECT SQUARE, LLC; ABELARDO RODRIGUEZ TRUST; 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 San Diego (EXCEPT IN PLAINTIFF CASES ONLY)

BY:

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

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) Theodore A. Pinnock, Esq. SBN: 153434 Michelle L. Wakefield, Esq. SBN 200424 Pinnock & Wakefield 3033 Fifth Avenue, Suite 410 San Diego, California 92103 Telephone: (619) 858-3671; Facsimile: (619) 858-3646

ATTORNEYS (IF KNOWN)

'03 CV 1649 BTM JAH

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 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like 110 Insurance, 310 Airplane, 362 Personal Injury-Medical Malpractice, 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 August 15, 2003

SIGNATURE OF ATTORNEY OF RECORD

Handwritten signature and case number: CR #096534 \$150,000.00

Handwritten signature of the attorney of record.