

US DISTRICT COURT INDEX SHEET



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3:04-CV-298 PINNOCK V. HAPPY TEAM

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SOUTHERN DISTRICT OF CALIFORNIA  
BY:  DEPUTY

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

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

Case No. **04 CV 0298** H(LSP)

CIVIL COMPLAINT:  
DISCRIMINATORY PRACTICES IN  
PUBLIC ACCOMMODATIONS

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

Plaintiffs,

NEGLIGENCE

[CIVIL CODE 1714(a), 2338,  
3333; EVIDENCE CODE 669(a)]

v.

DEMAND FOR JURY TRIAL

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

HAPPY TEAM, INC. d.b.a.  
RAMADA LIMITED a.k.a. RAMADA  
LIMITED - POWAY; HAPPY TEAM,  
INC.; HAPPY NARINDER SIKAND;  
RENU SIKAND; and DOES 1  
THROUGH 10, Inclusive

Defendants.

INTRODUCTION

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



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

16  
17 **JURISDICTION AND VENUE**

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

26 **SUPPLEMENTAL JURISDICTION**

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

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

18  
19 **NAMED DEFENDANTS AND NAMED PLAINTIFFS**

20 3. Defendants are, and, at all times mentioned herein, were, a  
21 business or corporation or franchise organized and existing and/or  
22 doing business under the laws of the State of California. The  
23 property that is the subject of this complaint is located at 12448  
24 Poway Road, Poway, California 92064. Plaintiffs are informed and  
25 believe and thereon allege that Defendant HAPPY TEAM, INC., is the  
26 owner, operator, and/or doing business as RAMADA LIMITED a.k.a.  
27 RAMADA LIMITED - POWAY. Defendant HAPPY TEAM, INC. is located at  
28 2449 Nalin Drive, Los Angeles, California 90077. Plaintiffs are

1 informed and believe and thereon allege that Defendants HAPPY  
2 NARINDER SIKAND and RENU SIKAND are the owners, operators, and/or  
3 lessors of the property located at 12448 Poway Road, Poway,  
4 California 92064, Assessor Parcel Number 317-540-72 and/or  
5 Assessor Parcel Number 317-540-13. Defendants HAPPY NARINDER  
6 SIKAND and RENU SIKAND are located at 2449 Nalin Drive, Los  
7 Angeles, California 90077. The words "Plaintiffs" and "Plaintiff's  
8 Member" as used herein specifically include the organization  
9 MANTIC ASHANTI'S CAUSE, its Members, its member Theodore A.  
10 Pinnock and persons associated with its Members who accompanied  
11 Members to Defendants' facilities, as well as THEODORE A. PINNOCK,  
12 An Individual.

13 4. Defendants Does 1 through 10, were at all times relevant  
14 herein subsidiaries, employers, employees, agents, of HAPPY TEAM,  
15 INC. d.b.a. RAMADA LIMITED a.k.a. RAMADA LIMITED - POWAY; HAPPY  
16 TEAM, INC.; HAPPY NARINDER SIKAND; and RENU SIKAND. Plaintiffs  
17 are ignorant of the true names and capacities of Defendants sued  
18 herein as Does 1 through 10, inclusive, and therefore sues these  
19 Defendants by such fictitious names. Plaintiffs will pray leave  
20 of the court to amend this complaint to allege the true names and  
21 capacities of the Does when ascertained.

22 5. Plaintiffs are informed and believe, and thereon allege, that  
23 Defendants and each of them herein were, at all times relevant to  
24 the action, the owner, lessor, lessee, franchiser, franchisee,  
25 general partner, limited partner, agent, employee, representing  
26 partner, or joint venturer of the remaining Defendants and were  
27 acting within the course and scope of that relationship.  
28

1 Plaintiffs are further informed and believe, and thereon allege,  
2 that each of the Defendants herein gave consent to, ratified,  
3 and/or authorized the acts alleged herein to each of the remaining  
4 Defendants.

5 CONCISE SET OF FACTS

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

13 7. On July 21, 2003, Plaintiff's member THEODORE A. PINNOCK went  
14 to HAPPY TEAM, INC. d.b.a. RAMADA LIMITED a.k.a. RAMADA LIMITED -  
15 POWAY facilities to utilize their goods and/or services. When  
16 Plaintiff's member patronized Defendants' HAPPY TEAM, INC. d.b.a.  
17 RAMADA LIMITED a.k.a. RAMADA LIMITED - POWAY facilities, he was  
18 unable to use and/or had difficulty using the public  
19 accommodations' disabled parking, exterior path of travel from the  
20 parking lot to the entrance, entrance, front desk/registration  
21 counter, exterior path of travel from lobby to guestroom,  
22 guestroom, guestroom entrance, and guestroom bathroom facilities  
23 at Defendants' business establishment because they failed to  
24 comply with ADA Access Guidelines For Buildings and Facilities  
25 (hereafter referred to as "ADAAG") and/or California's Title 24  
26 Building Code Requirements. Defendants failed to remove access  
27 barriers within the disabled parking, exterior path of travel from  
28

1 the parking lot to the entrance, entrance, front desk/registration  
2 counter, exterior path of travel from lobby to guestroom,  
3 guestroom, guestroom entrance, and guestroom bathroom facilities  
4 of Defendants' HAPPY TEAM, INC. d.b.a. RAMADA LIMITED a.k.a.  
5 RAMADA LIMITED - POWAY establishment.

6 8. Plaintiff's member personally experienced difficulty with  
7 said access barriers at Defendants' HAPPY TEAM, INC. d.b.a. RAMADA  
8 LIMITED a.k.a. RAMADA LIMITED - POWAY facilities. For example,  
9 the parking lot has a total of fifty-five (55) parking spaces,  
10 with two (2) disabled parking spaces. It is required that there  
11 is at least one (1) compliant "van accessible" parking space, and  
12 two (2) complaint "regular" disabled parking spaces. This parking  
13 lot fails to have the required "van accessible" disabled parking  
14 space. The two (2) existing disabled parking spaces are  
15 inaccessible as the colored markings that distinguish the disabled  
16 parking stall and the access aisle, are badly faded. The parking  
17 spaces have a slope of five percent (5%), and the access aisle is  
18 on the left-hand side. In order for these two (2) existing parking  
19 spaces to be compliant they must have the access aisles on the  
20 right-hand side, a slope no greater than two percent (2%), and the  
21 must also be properly striped.

22 9. The exterior path of travel is inaccessible. The path of  
23 travel from the public sidewalk/parking lot to the entrance fails  
24 to be accessible as members of the disability community are forced  
25 to maneuver through vehicular traffic with out the benefit of a  
26 marked path of travel.

27 10. The office located inside the Defendants' establishment is  
28

1 inaccessible. The front entrance door of the office fails to have  
2 the required smooth and uninterrupted surface on the bottom ten-  
3 inches (10") of the door that allows the door to be opened with a  
4 wheelchair footrest without creating a trap condition. The  
5 doorknob located on the office entrance door is not compliant, as  
6 it requires tight grasping and/or twisting of the wrist to  
7 operate. The front entrance door fails to have the required  
8 disability signage.

9 11. The front desk/registration counter is inaccessible, as it is  
10 forty inches (40") high when it is required to be no higher than  
11 thirty-four inches (34") high or have a three-foot (3') section  
12 that is thirty-four inches (34") high.

13 12. The Defendants' establishment has forty-seven (47) rooms with  
14 two (2) designated "accessible rooms". If a hotel has between  
15 twenty-six and fifty (26 and 50) guestrooms, the hotel shall  
16 provide two (2) accessible guestrooms. If a hotel has between  
17 twenty-six and fifty (26 and 50) guestrooms, the hotel shall  
18 provide two (2) accessible guestrooms for the hearing impaired.  
19 The accessible guestrooms must be dispersed among the various  
20 classes of sleeping accommodations, providing a range of options  
21 applicable to room sizes, costs, amenities provided, and the  
22 number of beds provided. Defendants' motel fails to have the  
23 required two (2) fully accessible guestrooms.

24 13. The guestroom that Plaintiff's member and Plaintiff Theodore  
25 A. Pinnock was given is inaccessible. For example, the exterior  
26 path of travel from the lobby to the guestroom is inaccessible, as  
27 the slope is too steep. The entrance to the guestroom is  
28

1 inaccessible, as the threshold has a one-inch (1") step that is  
2 not beveled. The entrance door to the guestroom is inaccessible,  
3 as the cardkey mechanism is not accessible. The bathroom located  
4 inside the guestroom is also inaccessible. The bathroom fails to  
5 have any of the required grab bars around the commode.

6 14. In addition to the violations not personally experienced by  
7 Plaintiff's member and Plaintiff Theodore A. Pinnock, additional  
8 violations of federal and state disability laws exist at  
9 Defendants' HAPPY TEAM, INC. d.b.a. RAMADA LIMITED a.k.a. RAMADA  
10 LIMITED - POWAY establishment. For example, the pool area and  
11 pool are inaccessible. The entrance door to the pool area does  
12 not have the required smooth and uninterrupted surface on the  
13 bottom ten-inches (10") of the door that allows the door to be  
14 opened with a wheelchair footrest without creating a trap  
15 condition. The width of the exterior walkway around the pool is  
16 as narrow as thirty inches (30"), when it should be at least  
17 forty-eight inches (48") in width. The pool does not have an  
18 assistive lifting device for disabled patrons to get in and out of  
19 the water. The path of travel from the guestrooms to the entrance  
20 door of the pool area fails to be accessible, as disabled patrons  
21 are forced to maneuver through vehicular traffic without the  
22 benefit of a marked path of travel.

23 15. The public seating located in the lobby of the Defendants'  
24 establishment is inaccessible. There are eight (8) seats by the  
25 lobby with a knee clearance depth of only five inches (5"). The  
26 requirement is that five percent (5%) of all seats (or at least  
27 one (1) in this case) must have a knee clearance depth of nineteen  
28

1 inches (19"), a width of thirty inches (30"), and a height of  
2 twenty-seven inches (37") minimum. There are twelve (12) seats by  
3 the pool with a knee clearance depth of a mere two inches (2").  
4 The requirement is that five percent (5%) of all seats (or at  
5 least one (1) in this case) must have a knee clearance depth of  
6 nineteen inches (19"), a width of thirty inches (30"), and a  
7 height of twenty-seven inches (37") minimum.

8 16. Guestroom 115, a designated "accessible" room, located in the  
9 Defendants' motel is inaccessible. The height of the threshold at  
10 the room entrance door is one inch (1") and does not have the  
11 required bevel. The entrance door to guestroom 115 does not have  
12 the required smooth and uninterrupted surface on the bottom ten-  
13 inches (10") of the door that allows the door to be opened with a  
14 wheelchair footrest without creating a trap condition. The round  
15 locking mechanism on the room entrance door fails to be  
16 accessible, as it requires grasping or twisting by the wrist to  
17 operate. The small round lamp-switches and the control switches  
18 on the climate control unit are non compliant as they too require  
19 grasping or twisting by the wrist to operate. The height of the  
20 shelf in the closet is seventy inches (70") high, which exceeds  
21 the maximum requirement of forty-eight inches (48"). The height  
22 of the clothes bar in the closet is sixty-eight inches (68") high,  
23 which exceeds the maximum requirement of forty-eight inches (48").

24 The height of the iron bracket is mounted at fifty-eight inches  
25 (58") from the floor surface, which exceeds the maximum  
26 requirement of forty-eight inches (48"). The distance between the  
27 two beds is too narrow, as it is an impermissible thirty inches  
28

1 (30"). The path of travel from the front entrance door of the  
2 guestroom to the bathroom is a mere twenty-five inches (25") wide,  
3 when it should be at least thirty-six inches (36"). The guestroom  
4 fails to have the required audible and visual alarm system.

5 17. The bathroom inside guestroom 115 is inaccessible. The  
6 bathroom doorknob fails to be compliant, as it requires tight  
7 grasping and/or twisting of the wrist to operate. The commode is  
8 inaccessible, as there fails to be any of the required grab bars.

9 The distance from the side edge of the commode to the far wall is  
10 only sixteen inches (16") when it should be at least thirty-two  
11 inches (32"). The distance from the front edge of the commode to  
12 the front wall is only thirty-three inches (33") when it should be  
13 at least forty-eight inches (48"). The toilet dispenser is  
14 located an impermissible twenty-three inches (23") from the front  
15 edge of the commode, when it is required to be no more than twelve  
16 inches (12"). The clear floor space in front of the bathtub is  
17 only thirty-three inches by forty inches (33"X40"). There should  
18 be at least thirty inches by sixty inches (30"X60") for side  
19 entry, and forty-eight inches by sixty inches (48"X60") for front  
20 entry. The bathtub does not have the required seat. The bathtub  
21 is completely inaccessible, as there are no grab bars. With a  
22 seat-in-tub design there should be a twenty-four inch (24")  
23 minimum grab bar mounted at the foot of the tub at thirty-three to  
24 thirty-six inches (33"-36") in height from the floor surface.  
25 There should be a twelve-inch (12") minimum grab bar mounted at  
26 the head of the tub at thirty-three to thirty-six inches (33"-36")  
27 in height from the floor surface. The back wall of the bathtub  
28

1 area should have two (2) twenty-four inch (24") minimum length  
2 grab bars, a top grab bar and a bottom grab bar. The top grab bar  
3 should be mounted between thirty-three to thirty-six inches (33"-  
4 36") in height from the floor surface and the bottom grab bar  
5 should be mounted at nine inches (9") from the rim of the tub.

6 The round mixing valve in the bathtub fails to be compliant, as it  
7 requires grasping or twisting of the wrist to operate. The height  
8 of the storage rack for towels is fifty-eight inches (58") when  
9 they should be no more than forty inches (40"). The height of the  
10 hair dryer bracket is mounted at fifty-six inches (56") from the  
11 floor, when it should be no higher than forty-eight inches (48").

12 The height of the area beneath the lavatory is only twenty-five  
13 inches (25"), when there should be a twenty-nine inch (29")  
14 clearance from the bottom of the apron to the floor. Knee  
15 clearance under the lavatory should be a minimum of twenty-seven  
16 inches (27") high, thirty inches (30") wide, and extend a minimum  
17 of eight inches (8") in depth from the front of the lavatory. The  
18 toe clearance under the lavatory should be nine inches (9") high  
19 and extend a minimum of seventeen inches (17") in depth from the  
20 front of the lavatory. The guestroom bathroom fails to have the  
21 required audible and visual alarm system.

22  
23 18. Pursuant to federal and state law, Defendants are required to  
24 remove barriers to their existing facilities. Further, Defendants  
25 had actual knowledge of their barrier removal duties under the  
26 Americans with Disabilities Act and the Civil Code before January  
27 26, 1992. Also, Defendants should have known that individuals  
28 with disabilities are not required to give notice to a

1 governmental agency before filing suit alleging Defendants failed  
2 to remove architectural barriers.

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

19 20. Based on these facts, Plaintiffs allege Plaintiff's Member  
20 and Plaintiff Theodore A. Pinnock was discriminated against each  
21 time he patronized Defendants' establishments. Plaintiff's Member  
22 and Plaintiff Theodore A. Pinnock was extremely upset due to  
23 Defendants' conduct. Further, Plaintiff's Member and Plaintiff  
24 THEODORE A. PINNOCK experienced pain in his legs, back, arms,  
25 shoulders and wrists when he attempted to enter, use, and exit  
26 Defendants' HAPPY TEAM, INC. d.b.a. RAMADA LIMITED a.k.a. RAMADA  
27 LIMITED - POWAY establishment.  
28

1 WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED DEFENDANT

2  
3 21. HAPPY TEAM, INC. d.b.a. RAMADA LIMITED a.k.a. RAMADA LIMITED  
4 - POWAY; HAPPY TEAM, INC.; HAPPY NARINDER SIKAND; RENU SIKAND; and  
5 Does 1 through 10 will be referred to collectively hereinafter as  
6 "Defendants."

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

9 DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS

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

12 CLAIM I AGAINST ALL DEFENDANTS: Denial Of Full And Equal  
13 Access

14 23. Based on the facts plead at ¶¶ 6-20 above and elsewhere in  
15 this complaint, Plaintiff's Member was denied full and equal  
16 access to Defendants' goods, services, facilities, privileges,  
17 advantages, or accommodations. Plaintiffs allege Defendants are a  
18 public accommodation owned, leased and/or operated by Defendants.  
19 Defendants' existing facilities and/or services failed to provide  
20 full and equal access to Defendants' facility as required by 42  
21 U.S.C. § 12182(a). Thus, Plaintiff's Member was subjected to  
22 discrimination in violation of 42 United States Code

23 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's  
24 Member was denied equal access to Defendants' existing facilities.

25 24. Plaintiff's member Theodore A. Pinnock has physical  
26 impairments as alleged in ¶ 6 above because his conditions affect  
27 one or more of the following body systems: neurological,  
28 musculoskeletal, special sense organs, and/or cardiovascular.

1 Further, Plaintiff's member Theodore A. Pinnock's said physical  
2 impairments substantially limits one or more of the following  
3 major life activities: walking. In addition, Plaintiff's member  
4 Theodore A. Pinnock cannot perform one or more of the said major  
5 life activities in the manner, speed, and duration when compared  
6 to the average person. Moreover, Plaintiff's member Theodore A.  
7 Pinnock has a history of or has been classified as having a  
8 physical impairment as required by 42 U.S.C. § 12102(2)(A).  
9

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

13 25. Based on the facts plead at ¶¶ 6-20 above and elsewhere in  
14 this complaint, Plaintiff's Member Theodore A. Pinnock was denied  
15 full and equal access to Defendants' goods, services, facilities,  
16 privileges, advantages, or accommodations within a public  
17 accommodation owned, leased, and/or operated by Defendants.  
18 Defendants altered their facility in a manner that affects or  
19 could affect the usability of the facility or a part of the  
20 facility after January 26, 1992. In performing the alteration,  
21 Defendants failed to make the alteration in such a manner that, to  
22 the maximum extent feasible, the altered portions of the facility  
23 are readily accessible to and usable by individuals with  
24 disabilities, including individuals who use wheelchairs, in  
25 violation of 42 U.S.C. §12183(a)(2).

26 26. Additionally, the Defendants undertook an alteration that  
27 affects or could affect the usability of or access to an area of  
28 the facility containing a primary function after January 26, 1992.  
Defendants further failed to make the alterations in such a manner

1 that, to the maximum extent feasible, the path of travel to the  
2 altered area and the bathrooms, telephones, and drinking fountains  
3 serving the altered area, are readily accessible to and usable by  
4 individuals with disabilities in violation 42 U.S.C. §12183(a)(2).

5 27. Pursuant to 42 U.S.C. §12183(a), this failure to make the  
6 alterations in a manner that, to the maximum extent feasible, are  
7 readily accessible to and usable by individuals with disabilities  
8 constitutes discrimination for purposes of 42 U.S.C. §12183(a).

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

11 28. Thus, Plaintiff's Member Theodore A. Pinnock was subjected to  
12 discrimination in violation of 42 U.S.C. § 12183(a), 42 U.S.C.  
13 §12182(a) and 42 U.S.C. §12188 because said Member Theodore A.  
14 Pinnock was denied equal access to Defendants' existing  
15 facilities.  
16

17 CLAIM III AGAINST ALL DEFENDANTS: Failure To Remove  
18 Architectural Barriers

19 29. Based on the facts plead at ¶¶ 6-20 above and elsewhere in  
20 this complaint, Plaintiff's Member was denied full and equal  
21 access to Defendants' goods, services, facilities, privileges,  
22 advantages, or accommodations within a public accommodation owned,  
23 leased, and/or operated by Defendants. Defendants failed to  
24 remove barriers as required by 42 U.S.C. § 12182(a). Plaintiffs  
25 are informed, believe, and thus allege that architectural barriers  
26 which are structural in nature exist within the following physical  
27 elements of Defendants' facilities: Space Allowance and Reach  
28 Ranges, Accessible Route, Protruding Objects, Ground and Floor

1 Surfaces, Parking and Passenger Loading Zones, Curb Ramps, Ramps,  
2 Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows,  
3 Doors, Entrances, Drinking Fountains and Water Coolers, Water  
4 Closets, Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks,  
5 Storage, Handrails, Grab Bars, and Controls and Operating  
6 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.  
7 Title III requires places of public accommodation to remove  
8 architectural barriers that are structural in nature to existing  
9 facilities. [See, 42 United States Code 12182(b)(2)(A)(iv).]  
10 Failure to remove such barriers and disparate treatment against a  
11 person who has a known association with a person with a disability  
12 are forms of discrimination. [See 42 United States Code  
13 12182(b)(2)(A)(iv).] Thus, Plaintiff's 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

18 CLAIM IV AGAINST ALL DEFENDANTS: **Failure To Modify Practices,**  
19 **Policies And Procedures**

20 30. Based on the facts plead at ¶¶ 6-20 above and elsewhere in  
21 this complaint, Defendants failed and refused to provide a  
22 reasonable alternative by modifying its practices, policies and  
23 procedures in that they failed to have a scheme, plan, or design  
24 to assist Plaintiff's Member and/or others similarly situated in  
25 entering and utilizing Defendants' services, as required by 42  
26 U.S.C. § 12188(a). Thus, said Member was subjected to  
27 discrimination in violation of 42 United States Code  
28 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was

1 denied equal access to Defendants' existing facilities.

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

19 32. WHEREFORE, Plaintiffs pray for judgment and relief as  
20 hereinafter set forth.  
21

22 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER**  
23 **CALIFORNIA ACCESSIBILITY LAWS**

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

25 33. Based on the facts plead at ¶¶ 6-20 above and elsewhere in  
26 this complaint, Plaintiff's Member was denied full and equal  
27 access to Defendants' goods, services, facilities, privileges,  
28 advantages, or accommodations within a public accommodation owned,

1 leased, and/or operated by Defendants as required by Civil Code  
2 Sections 54 and 54.1. Defendants' facility violated California's  
3 Title 24 Accessible Building Code by failing to provide access to  
4 Defendants' facilities due to violations pertaining to the Space  
5 Allowance and Reach Ranges, Accessible Route, Protruding Objects,  
6 Ground and Floor Surfaces, Parking and Passenger Loading Zones,  
7 Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair  
8 Lifts), Windows, Doors, Entrances, Drinking Fountains and Water  
9 Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and  
10 Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and  
11 Operating Mechanisms, Alarms, Detectable Warnings, Signage, and  
12 Telephones.

13 34. These violations denied Plaintiff's Member full and equal  
14 access to Defendants' facility. Thus, said Member was subjected  
15 to discrimination pursuant to Civil Code §§ 51, 52, and 54.1  
16 because Plaintiff's Member was denied full, equal and safe access  
17 to Defendants' facility, causing severe emotional distress.

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

20 35. Based on the facts plead at ¶¶ 6-20 above and elsewhere  
21 herein this complaint, Defendants failed and refused to provide a  
22 reasonable alternative by modifying its practices, policies, and  
23 procedures in that they failed to have a scheme, plan, or design  
24 to assist Plaintiff's Member and/or others similarly situated in  
25 entering and utilizing Defendants' services as required by Civil  
26 Code § 54.1. Thus, said Member was subjected to discrimination in  
27 violation of Civil Code § 54.1.  
28

1 CLAIM III: Violation Of The Unruh Act

2 36. Based on the facts plead at ¶¶ 6-20 above and elsewhere  
3 herein this complaint and because Defendants violated the Civil  
4 Code § 51 by failing to comply with 42 United States Code §  
5 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and  
6 continue to discriminate against Plaintiff's Member and persons  
7 similarly situated in violation of Civil Code §§ 51, 52, and 54.1.

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

25 38. Wherefore, Plaintiffs pray for damages and relief as  
26 hereinafter stated.

27  
28 ///

1  
2 Treble Damages Pursuant To Claims I, II, III Under The California  
3 Accessibility Laws

4 39. Defendants, each of them respectively, at times prior to and  
5 including, the month of July, 2003, and continuing to the present  
6 time, knew that persons with physical disabilities were denied  
7 their rights of equal access to all portions of this public  
8 facility. Despite such knowledge, Defendants, and each of them,  
9 failed and refused to take steps to comply with the applicable  
10 access statutes; and despite knowledge of the resulting problems  
11 and denial of civil rights thereby suffered by Plaintiff's Member  
12 THEODORE A. PINNOCK and other similarly situated persons with  
13 disabilities. Defendants, and each of them, have failed and  
14 refused to take action to grant full and equal access to persons  
15 with physical disabilities in the respects complained of  
16 hereinabove. Defendants, and each of them, have carried out a  
17 course of conduct of refusing to respond to, or correct complaints  
18 about, denial of disabled access and have refused to comply with  
19 their legal obligations to make Defendants' HAPPY TEAM, INC.  
20 d.b.a. RAMADA LIMITED a.k.a. RAMADA LIMITED - POWAY facilities  
21 accessible pursuant to the Americans With Disability Act Access  
22 Guidelines (ADAAG) and Title 24 of the California Code of  
23 Regulations (also known as the California Building Code). Such  
24 actions and continuing course of conduct by Defendants, and each  
25 of them, evidence despicable conduct in conscious disregard of the  
26 rights and/or safety of Plaintiff's Member and of other similarly  
27 situated persons, justifying an award of treble damages pursuant  
28 to sections 52(a) and 54.3(a) of the California Civil Code.

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

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

22 42. Wherefore, Plaintiffs pray for damages and relief as  
23 hereinafter stated.  
24

25  
26 PLAINTIFF THEODORE A. PINNOCK'S THIRD CAUSE OF ACTION AGAINST ALL  
27 DEFENDANTS- Negligence as to Plaintiff THEODORE A. PINNOCK only

28 43. Based on the facts plead at ¶¶ 6-20 above and elsewhere in

1 this complaint, Defendants owed Plaintiff Theodore A. Pinnock a  
2 statutory duty to make their facility accessible and owed  
3 Plaintiff Theodore A. Pinnock a duty to keep Plaintiff Theodore A.  
4 Pinnock reasonably safe from known dangers and risks of harm.  
5 This said duty arises by virtue of legal duties proscribed by  
6 various federal and state statutes including, but not limited to,  
7 ADA, ADAAG, Civil Code 51, 52, 54, 54.1 and Title 24 of the  
8 California Administrative Code and applicable 1982 Uniform  
9 Building Code standards as amended.

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

18 45. Therefore, Defendants engaged in discriminatory conduct in  
19 that they failed to comply with known duties under the ADA, ADAAG,  
20 Civil Code 51, 52, 54, 54.1, ADAAG, and Title 24, and knew or  
21 should have known that their acts of nonfeasance would cause  
22 Plaintiff Theodore A. Pinnock emotional, bodily and personal  
23 injury. Plaintiff THEODORE A. PINNOCK alleges that there was  
24 bodily injury in this matter because when Plaintiff THEODORE A.  
25 PINNOCK attempted to enter, use, and exit Defendants'  
26 establishment, Plaintiff THEODORE A. PINNOCK experienced pain in  
27 his legs, back, arms, shoulders, and wrists. Plaintiffs further  
28

1 allege that such conduct was done in reckless disregard of the  
2 probability of said conduct causing Plaintiff Theodore A. Pinnock  
3 to suffer bodily or personal injury, anger, embarrassment,  
4 depression, anxiety, mortification, humiliation, distress, and  
5 fear of physical injury. Plaintiff THEODORE A. PINNOCK, An  
6 Individual, alleges that such conduct caused THEODORE A. PINNOCK,  
7 An Individual, to suffer the injuries of mental and emotional  
8 distress, including, but not limited to, anger, embarrassment,  
9 depression, anxiety, mortification, humiliation, distress, and  
10 fear of physical injury. Plaintiff THEODORE A. PINNOCK, An  
11 Individual, additionally alleges that such conduct caused THEODORE  
12 A. PINNOCK, An Individual, to suffer damages as a result of these  
13 injuries.

14 46. Wherefore, Plaintiffs pray for damages and relief as  
15 hereinafter stated.

16 DEMAND FOR JUDGMENT FOR RELIEF:

17 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3,  
18 3281, and 3333;

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

22 C. In the alternative to the damages pursuant to Cal. Civil  
23 Code § 52 in Paragraph B above, for \$1,000 in damages pursuant to  
24 Cal. Civil Code § 54.3 for each and every offense of Civil Code §  
25 54.1, Title 24 of the California Building Code, ADA, and ADA  
26 Accessibility Guidelines;

27 D. For injunctive relief pursuant to 42 U.S.C. § 12188(a) and  
28 Cal. Civil Code § 55. Plaintiffs request this Court enjoin

1 Defendants to remove all architectural barriers in, at, or on  
2 their facilities related to the following: Space Allowance and  
3 Reach Ranges, Accessible Route, Protruding Objects, Ground and  
4 Floor Surfaces, Parking and Passenger Loading Zones, Curb Ramps,  
5 Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts),  
6 Windows, Doors, Entrances, Drinking Fountains and Water Coolers,  
7 Water Closets, Toilet Stalls, Urinals, Lavatories and Mirrors,  
8 Sinks, Storage, Handrails, Grab Bars, and Controls and Operating  
9 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.

10 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C.  
11 § 12205, and Cal. Civil Code § 55;

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


14 G. A Jury Trial and;

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

16 Respectfully submitted:

**PINNOCK & WAKEFIELD**

17  
18 Dated: February 11, 2004

19 BY:   
MICHELLE L. WAKEFIELD, ESQ.  
Attorneys for Plaintiffs

