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05 OCT -4 AM 9:15
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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
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12 LAWRENCE CELANO,
RICHARD THESING and the
13 PROPOSED PLAINTIFF CLASS

14 **IN THE UNITED STATES DISTRICT COURT**
15 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
16 **SAN FRANCISCO OAKLAND DIVISION**

JCS

C 05 4004

18 LAWRENCE CELANO and RICHARD
19 THESING, individually and on behalf of all
others similarly situated,

20 Plaintiffs,

21 v.

22 MARRIOTT INTERNATIONAL, INC., a
23 Delaware corporation; HOST MARRIOTT
CORPORATION, a Maryland corporation;
24 OCEAN COLONY PARTNERS, L.L.C., a
California limited liability company,

25 Defendants.

Case No. :

CLASS ACTION

COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF FOR
VIOLATIONS OF THE AMERICANS
WITH DISABILITIES ACT, 42 U.S.C.
§ 12101, CAL. CIV. CODE § 54, AND
THE UNRUH CIVIL RIGHTS ACT,
CAL. CIV. CODE § 51

1 **INTRODUCTION**

2 1. Plaintiffs Lawrence Celano and Richard Thesing (collectively referred to herein
3 as "Plaintiffs") bring this civil rights action to remedy the ongoing violations of the
4 Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, *et seq.*, California Civil Code §
5 54, *et seq.* and the Unruh Civil Rights Act, California Civil Code § 51, *et seq.* by defendants
6 Marriott International, Inc., Host Marriott Corporation and Ocean Colony Partners, L.L.C.
7 (collectively referred to herein as "Defendants"). Defendants have violated and are
8 continuing to violate the civil rights of Plaintiffs and individuals similarly situated by denying
9 individuals with mobility disabilities full and equal enjoyment of the golf courses that
10 Defendants own, operate and/or contract for usage.

11 2. Plaintiff Celano, a decorated combat veteran, sustained a spinal cord injury
12 from gunshot wounds while serving in the United States Army during the invasion of
13 Panama. Due to his spinal cord injury, Plaintiff Celano cannot walk and must use a
14 wheelchair. As a result of a diving accident at the age of 18, Plaintiff Thesing suffers from a
15 mobility disability, cannot walk, and must use a wheelchair. Nonetheless, both enjoy and
16 play golf. Plaintiffs and those who are similarly situated are able to play golf by using an
17 accessible golf cart. An accessible golf cart is a well-developed, currently available and
18 economically feasible technology that allows a mobility-impaired individual to operate the
19 golf cart with hand controls. Accessible golf carts contain seats that rotate and/or tilt to allow
20 mobility-impaired individuals to swing and strike a golf ball off the tee, in the fairway or on
21 the green, while remaining seated or in a semi-standing position. Accessible golf carts allow
22 individuals with mobility disabilities to obtain equal access to golf courses. Under the law,
23 golf courses cannot exclude individuals with mobility disabilities by failing to provide the
24 auxiliary aides necessary to play golf.

25 3. Defendants provide standard golf carts to individuals who do not have
26 disabilities. They have discriminated and continue to discriminate against individuals with
27 mobility disabilities by failing to provide them accessible golf carts at golf courses that they
28 own, operate and/or contract for usage, even though such carts exist, are available on the

1 market, and are necessary to ensure that individuals with disabilities are not excluded, denied
2 services or otherwise treated differently.

3 4. In the Americans with Disabilities Act of 1990, Congress found that:
4 “historically, society has tended to isolate and segregate individuals with disabilities, and
5 despite some improvements, such forms of discrimination against individuals with disabilities
6 continue to be a serious and pervasive social problem.” 42 U.S.C. § 12101(a)(2). Such
7 discrimination persists unnecessarily at golf courses throughout this country today.

8 5. Over 25 million people play golf in the United States. Increasingly, it is a
9 major form of recreational and commercial activity for people in all strata of our society.
10 Golf is one of the few recreational activities that both individuals with mobility disabilities
11 and non-disabled individuals can experience together. In addition, there is a deep, abiding
12 and long-standing association between golf and commerce in our nation. Many business
13 deals are made and many professional and social relationships are formed, nurtured, and
14 perpetuated on golf courses.

15 6. To be denied access to golf and golf courses is not only to be denied access to a
16 major sporting activity, but also to be denied access to the unique and significant recreational,
17 social and professional benefits of golf. There are millions of individuals with mobility
18 disabilities in the United States. Defendants have discriminated and are continuing to
19 discriminate against these individuals and will continue to do so unless and until this Court
20 intervenes and grants the relief requested in this action.

21 **PARTIES**

22 7. Plaintiffs Celano and Thesing are individuals with disabilities under the
23 Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.* Plaintiff Thesing is an individual
24 with disabilities under California Civil Code § 54, *et seq.* and the Unruh Civil Rights Act,
25 California Civil Code § 51, *et seq.*

26 8. Plaintiff Celano is, and at all relevant times has been, a resident of Maricopa
27 County, Arizona.

1 9. Plaintiff Thesing is, and at all relevant times has been, a resident of San Mateo
2 County, California. He is the Managing Director of Mobility Golf. Mobility Golf is a non-
3 profit corporation with the mission to make golf more accessible to individuals with mobility
4 disabilities.

5 10. Defendant Marriott International, Inc. is incorporated in the state of Delaware
6 and has corporate headquarters in Washington, D.C., and Defendant Host Marriott
7 Corporation is incorporated in the state of Maryland and has corporate headquarters in
8 Bethesda, Maryland. (Collectively and individually these two affiliated corporate entities are
9 referred to herein as "Defendant Marriott"). Defendant Marriott owns several subsidiaries,
10 including the Ritz-Carlton Half Moon Bay, located at One Miramontes Point Road, Half
11 Moon Bay, California, and the JW Marriott Desert Ridge, located at 5350 East Marriott
12 Drive, Phoenix Arizona.

13 11. Defendant Ocean Colony Partners, L.L.C. (hereinafter "Ocean Colony") is a
14 California limited liability company with its principal place of business located in Half Moon
15 Bay, San Mateo County, California. Defendant Ocean Colony owns and operates Half Moon
16 Bay Golf Links, in conjunction with Marriott. It is sued herein to the extent that Plaintiffs'
17 claims relate to Half Moon Bay Golf Links.

18 12. Defendant Marriott, through itself and/or its subsidiaries, including the Ritz-
19 Carlton Half Moon Bay, and the JW Marriott Desert Ridge, owns, operates and/or contracts
20 for usage golf courses around the country. As used herein, "contracts for usage" means
21 entering into a contractual arrangement or relationship between Defendant Marriott and third
22 party golf course owners and/or operators for the purpose, among other things, of facilitating
23 and encouraging the use of such golf courses by Defendant Marriott's guests. Through the
24 Ritz-Carlton Half Moon Bay, Defendant Marriott operates and/or contracts for usage of the
25 Half Moon Bay Golf Links located at Two Miramontes Point Road, Half Moon Bay,
26 California, and owned by Defendant Ocean Colony. Through the JW Marriott Desert Ridge,
27 Defendant Marriott owns, operates and/or contracts for usage the Wildfire Golf Club, located
28 at 5350 East Marriott Drive, Phoenix, Arizona.

1 **JURISDICTION**

2 13. Pursuant to 28 U.S.C. § 1331, this Court has subject matter jurisdiction over
3 claims asserted herein arising under the Americans with Disabilities Act of 1990, 42 U.S.C.
4 §§ 12101, *et seq.*

5 14. This Court has jurisdiction to grant a declaratory judgment pursuant to 28
6 U.S.C. §§ 2201 and 2202.

7 15. Under the doctrine of pendant and supplemental jurisdiction, this Court has
8 jurisdiction over state law claims arising under California law that are alleged herein. 42
9 U.S.C. § 1367, *et seq.*

10 **VENUE**

11 16. Pursuant to 28 U.S.C. § 1391, venue is proper in this Court because
12 Defendants' acts and/or omissions, which give rise to the claims alleged herein, occurred in
13 this District, and the principal place of business of Defendant Ocean Colony is located in this
14 District.

15 **CLASS ALLEGATIONS**

16 17. Pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure, Plaintiffs
17 bring this action on their own behalf and on the behalf of the following **Class** for the claim
18 brought in this case under the Americans with Disabilities Act:

19 All people with mobility disabilities throughout the United States who
20 require an accessible golf cart to secure full and equal access to the
21 golf courses that are owned, operated and/or contracted for usage by
22 Defendants.

23 18. Pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure, Plaintiff
24 Thesing also brings this action on his own behalf and on behalf of the following **Subclass** for
25 the claims brought in this case under California law:

26 All people with mobility disabilities in California who require an
27 accessible golf cart to secure full and equal access to the golf courses
28 that are owned, operated and/or contracted for usage by Defendants.

1 golf courses at or adjacent to these hotels. Defendant Marriott owns, operates, or contracts
2 for usage these golf courses. On information and belief, Plaintiffs allege that Defendant
3 Marriott, through the Ritz-Carlton Half Moon Bay, contracts with Defendant Ocean Colony
4 to encourage and facilitate use of the Half Moon Bay Golf Links by Defendant Marriott's
5 guests.

6 26. In late summer of 2004, Plaintiff Celano sent an email to Defendant Marriott's
7 Wildfire Golf Club requesting to reserve a tee time and an accessible golf cart because of his
8 mobility disability. Defendant Marriott never responded to Plaintiff Celano's request.

9 27. Also, in late summer of 2004, Plaintiff Thesing contacted Defendant Marriott's
10 Ritz-Carlton Half Moon Bay to reserve tee times for himself and a friend to play golf on
11 September 13, and 14, 2004, at the Half Moon Bay Golf Links.

12 28. After reserving the tee times, Plaintiff Thesing advised Defendant Marriott that
13 he had a mobility disability and requested an accessible golf cart. Defendant Marriott
14 informed Plaintiff Thesing that accessible golf carts were not provided at the Half Moon Bay
15 Golf Links. Plaintiff Thesing could not play the Half Moon Bay Golf Links and cancelled his
16 reservations.

17 29. On January 14, 2005 and on March 11, 2005, Plaintiff Thesing wrote to
18 Defendant Marriott requesting that Defendant Marriott agree to provide accessible golf carts
19 at golf courses owned, operated and/or contracted for usage by Defendant Marriott. To date,
20 Defendant Marriott has failed and refused to do so. As a result, Defendant Marriott has
21 discriminated and is continuing to discriminate against Plaintiffs and all others similarly
22 situated on the basis of disability.

23 30. Defendant Marriott also advised Plaintiff Thesing to direct his request for an
24 accessible golf cart at the Half Moon Bay Golf Links to Defendant Ocean Colony. In a letter
25 dated August 24, 2005, Plaintiff requested that Defendant Ocean Colony provide accessible
26 golf carts at both the Half Moon Bay Golf Links' Old Course and its newer Ocean Course.
27 To date, Defendant Ocean Colony has failed and refused to do so. As a result, Defendant
28 Ocean Colony has discriminated and is continuing to discriminate against Plaintiffs and

1 others similarly situated on the basis of disability.

2 31. The 80 golf courses owned, operated and/or contracted for usage by Defendants
3 are considered to be some of the most desirable in the country. Defendants provide standard
4 golf carts to anyone wishing to use golf carts at these golf courses. The Defendants' golf
5 courses attract tournaments, business conferences, corporate retreats and corporate
6 memberships. Many individuals who golf at these courses do so with business or professional
7 colleagues, clients or contacts, and for the purpose, in part, of promoting, nurturing, and/or
8 perpetuating business or professional relationships.

9 32. Defendants' refusal to provide accessible golf carts at courses owned, operated
10 and/or contracted for usage by them, has the effect of excluding individuals with mobility
11 disabilities from access to such courses. Thus, individuals with mobility disabilities do not
12 have the opportunity to enjoy the recreational, social and professional benefits of golf, which
13 serves to perpetuate the marginalization of individuals with disabilities.

14 33. Accessible golf carts exist and are readily available for purchase or lease by
15 willing owners and operators of golf courses. Plaintiffs are informed and believe and on that
16 basis allege that accessible golf carts may be purchased or leased by golf courses at
17 reasonable costs, and that the cost of such purchase or lease may be recouped through rental
18 charges passed on to consumers. Moreover, accessible golf carts can be used by the non-
19 disabled, and could be rented by Defendants to non-disabled golfers when not reserved by a
20 disabled golfer, and in that manner, the cost of the purchase or lease of such accessible golf
21 carts could be recouped by Defendants in the same manner as for all other golf carts provided
22 by Defendants.

23 34. Plaintiff and other members of the proposed Class and Subclass have been
24 denied equal access to golf courses that are owned, operated and/or contracted for usage by
25 Defendants because Defendants fail to provide accessible golf carts even though throughout
26 the United States they provide standard golf carts to persons without mobility disabilities.

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FIRST CAUSE OF ACTION
Violation of the Americans with Disabilities Act
(On behalf of the Plaintiffs and the Class)

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3 35. Plaintiffs incorporate by reference herein the allegations in paragraphs 1-34,
4 inclusive.

5 36. Defendants' acts and omissions alleged herein violate the Americans with
6 Disabilities Act ("ADA"), 42 U.S.C. § 12101, *et seq.*, and the regulations promulgated under
7 28 C.F.R. Part 36.

8 37. The golf courses that are owned, operated and/or contracted for usage by
9 Defendants are public accommodations covered by Title III of the ADA.

10 38. Defendants have discriminated against Plaintiffs and members of the Class by
11 denying them the opportunity for the full and equal enjoyment of the good, services, facilities,
12 privileges, advantages or accommodations of the golf courses owned, operated and/or
13 contracted for usage by Defendants. Defendants have afforded Plaintiffs and members of the
14 Class with opportunities that are less than and not equal to the opportunities afforded to those
15 without a disability.

16 39. Defendants have failed to provide necessary auxiliary aids and services at golf
17 courses where provision of such auxiliary aids and services does not pose an undue burden.

18 40. Defendants have discriminated and continue to discriminate against Plaintiffs
19 and members of the Class by failing to modify their policies, procedures and practices in a
20 reasonable manner, when such modifications are necessary to ensure equal access for
21 individuals with mobility disabilities.

22 41. Defendants' conduct constitutes ongoing and continuing violations of the ADA,
23 and unless restrained from doing so, Defendants will continue to violate the ADA. This
24 conduct, unless enjoined, will continue to inflict injuries for which Plaintiffs and the Class
25 have no adequate remedy at law. Consequently, pursuant to section 308 of the ADA (42
26 U.S.C. § 12188), Plaintiffs and members of the Class are entitled to injunctive relief.

27 42. Plaintiffs and members of the Class are entitled to reasonable attorneys' fees
28 and costs pursuant to 42 U.S.C. § 12205.

THIRD CAUSE OF ACTION
Violation of Cal. Civ. Code § 51, et seq.
(On behalf of the Plaintiff Thesing and the Subclass)

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3 49. Plaintiff Thesing incorporates by reference herein the allegations in paragraphs
4 1-48, inclusive.

5 50. Defendants and the golf courses that they own, operate and/or contract for
6 usage are business establishments within the meaning of the Unruh Civil Rights Act,
7 California Civil Code § 51, *et seq.*

8 51. Defendants have violated and are continuing to violate the rights of Plaintiff
9 Thesing and members of the Subclass under the Unruh Civil Rights Act, California Civil
10 Code § 51, *et seq.* by denying them full and equal access to programs, services and facilities
11 at the golf courses owned, operated and/or contracted for usage by Defendants.

12 52. Defendants also have violated and are continuing to violate the Unruh Civil
13 Rights Act, California Civil Code § 54, *et seq.*, in that the conduct alleged herein constitutes
14 violations of the ADA, 42 U.S.C. § 12101, *et seq.*

15 53. Defendants' conduct constitutes ongoing and continuing violations of the
16 Unruh Civil Rights Act, California Civil Code § 51, *et seq.*, and unless restrained from doing
17 so, Defendants will continue to violate the Unruh Civil Rights Act, California Civil Code §
18 51, *et seq.* This conduct, unless enjoined, will continue to inflict injuries for which Plaintiff
19 Thesing and the Subclass have no adequate remedy at law. Consequently, pursuant to
20 California Civil Code § 52, Plaintiff Thesing and members of the Subclass are entitled to
21 injunctive relief.

22 54. Plaintiff Thesing and members of the Subclass are also entitled to reasonable
23 attorneys' fees and costs pursuant to California Civil Code § 52.

24 WHEREFORE, Plaintiff Thesing, on behalf of himself and members of the Subclass,
25 requests relief as set forth below.

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1 **FOURTH CAUSE OF ACTION**
2 **Declaratory Relief**

3 55. Plaintiffs incorporate by reference herein the allegations in paragraphs 1-54,
4 inclusive.

5 56. An actual controversy has arisen between Plaintiffs and members of the
6 proposed Class and Subclass, on the one hand and Defendants, on the other hand, as to the
7 parties' respective rights and obligations under the law and with respect to the legality of
8 Defendants' policies and practices. Specifically, Plaintiffs contend that the policies and
9 practices of Defendants as alleged hereinabove are unlawful, and Defendants contend to the
10 contrary.

11 57. The Court can and should resolve this controversy by providing Plaintiffs, the
12 Class, and Subclass with declaratory relief.

13 WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated,
14 request relief as set forth below.

15 **RELIEF REQUESTED**

16 Plaintiffs, on behalf of themselves and members of the Class and Subclass, pray for
17 relief as follows:

18 1. That this matter be certified as a class action with the Class and Subclass
19 defined as set forth above, that Plaintiffs be appointed Class Representatives, Plaintiff
20 Thesing be appointed the Subclass Representative, and their attorneys be appointed Class and
21 Subclass counsel;

22 2. That Defendants be enjoined from violating the ADA, 42 U.S.C. § 12101, *et*
23 *seq.*, California Civil Code § 54, *et seq.* and California Civil Code § 51, *et seq.* as described
24 above and be ordered as part of such injunction, to provide accessible golf carts at every
25 course owned, operated and/or contracted for usage by Defendants;

26 3. For an order finding and declaring that Defendants' acts, omissions, policies
27 and practices as challenged herein are unlawful;

28 4. For Plaintiffs' reasonable attorneys' fees and costs; and

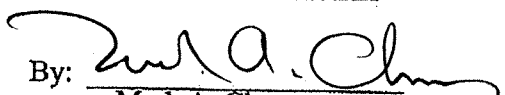
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5. For such other relief that the Court may deem just and proper.

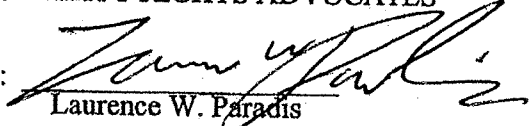
Dated: October 4, 2005

Respectfully submitted,

CHAVEZ & GERTLER LLP

By: 
Mark A. Chavez

DISABILITY RIGHTS ADVOCATES

By: 
Laurence W. Paradis

Attorneys for Plaintiff
LAWRENCE CELANO,
RICHARD THESING and the
PROPOSED PLAINTIFF CLASS

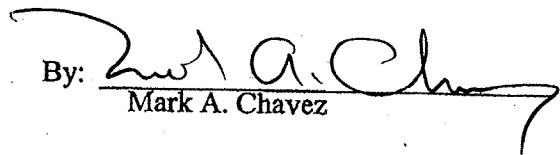
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CERTIFICATION OF INTERESTED ENTITIES OR PERSONS

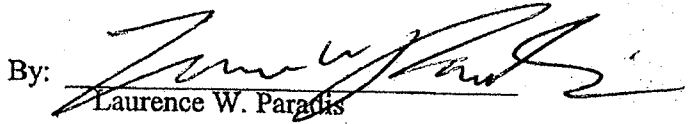
Pursuant to Civil Local Rule 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

Dated: October 4, 2005

Respectfully submitted,
CHAVEZ & GERTLER LLP

By: 
Mark A. Chavez

DISABILITY RIGHTS ADVOCATES

By: 
Laurence W. Paradis

Attorneys for Plaintiffs
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RICHARD THESING and the
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