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CIVIL BUSINESS CENTER

2002 MAR

FILED  
STEPHEN THUNBERG  
Clerk of the Superior Court

MAR 11 2002

By G. FIGUEROA, Deputy  
3498 01 07 GIC784559 03/12/02 12:03  
02 001 New Civil \$199.00

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6 Attorney for Plaintiff, CHRIS LANGER,  
7

ORIGINAL

8 ✓ IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9  
10 IN AND FOR THE COUNTY OF SAN DIEGO

11  
12 ✓ CHRIS LANGER, )  
13 ) Case No.: GIC784559  
14 Plaintiff, )  
15 ) COMPLAINT FOR DAMAGES AND  
16 ) INJUNCTIVE RELIEF FOR VIOLATIONS  
17 ) OF: UNRUH CIVIL RIGHTS ACT;  
18 ) CALIFORNIA'S DISABLED PERSON ACT;  
19 ) NEGLIGENCE; CALIFORNIA'S UNFAIR  
20 ) BUSINESS PRACTICE ACT.  
21 )  
22 ) DEMAND FOR JURY  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )

29 Plaintiff CHRIS LANGER, (hereinafter referred to as  
30 "Plaintiff") complains of SAM DIMENSTEIN; SANDRA DIMENSTEIN; EMERY  
31 BURKE, and DOES 1 through 10, inclusive, (hereinafter referred to as  
32 "Defendants") and alleges as follows:  
33

34 INTRODUCTION:

35 1. This is a Civil Rights action for discrimination against  
36 persons with physical disabilities, of which Plaintiff is a member  
37 of said class, for failure to remove architectural barriers  
38

ACCOUNTING

1 structural in nature at Defendants' place of business, located at  
2 3050 Clairemont Drive, San Diego, California, a place of public  
3 accommodation; and for failure to modify practices and or policies  
4 in order to accommodate, thereby discriminatorily denying Plaintiff  
5 and the class of other similarly situated persons with physical  
6 disabilities access to, the full and equal enjoyment of, opportunity  
7 to participate in, and benefit from, the goods, facilities,  
8 services, and accommodations thereof.

9 2. Plaintiff seeks injunctive relief and damages for  
10 violations of civil rights and for damages flowing from such  
11 violations.

12 **PARTIES:**

13 3. Plaintiff is a California resident with physical  
14 disabilities who uses a wheelchair to travel about in public.

15 4. Defendants, SAM DIMENSTEIN; SANDRA DIMENSTEIN; EMERY BURKE,  
16 and DOES 1 through 10, inclusive (hereinafter alternatively referred  
17 to collectively as "Defendants"), are the owners and operators,  
18 lessors and/or lessees, or agents of the owners, lessors and/or  
19 lessees, and/or alter egos, franchisers and/or franchisees, of the  
20 building and/or buildings which constitute a public facility in and  
21 of itself, occupied by the above described defendants, and subject  
22 to the requirements of federal and state law requiring full and  
23 equal access to public accommodations and facilities.

24 5. Plaintiff does not know the true names of Defendants, their  
25 business capacities, their ownership connection to the property and  
26 business, or their relative responsibilities in causing the access  
27 violations herein complained of, and alleges a joint venture and  
28 common enterprise by all such Defendants. Plaintiff is informed and

1 believes that each of the Defendants herein, including DOES 1  
2 through 10, inclusive, is responsible in some capacity for the  
3 events herein alleged, or is a necessary party for obtaining  
4 appropriate relief. Plaintiff will seek leave to amend when the true  
5 names, capacities, connections, and responsibilities of the  
6 Defendants and DOES 1 through 10, inclusive, are ascertained.

7 **PRELIMINARY FACTUAL ALLEGATIONS:**

8         6. Defendants are or were at the time of the incident the  
9 owners and operators, lessors and lessees of the public facility,  
10 located at 3050 Clairemont Drive, San Diego, California. The public  
11 accommodation, its path of travel, parking, restrooms and its other  
12 facilities are each a "public accommodation or facility" subject to  
13 the requirements of state and federal law. On information and  
14 belief, each such facility has, since July 1, 1970, undergone  
15 "alterations, structural repairs and additions," each of which has  
16 subjected the public accommodations, and each of their facilities to  
17 handicapped access requirements per the Americans with Disabilities  
18 Act Access Guidelines (ADAAG) and Title 24 of California's Code of  
19 Regulations.

20         7. On at least once occasion within the statutory period  
21 preceding the filing of this complaint, Plaintiff was an invitee and  
22 customer at the subject public accommodation.

23         8. During Plaintiff's visit, the subject public accommodation  
24 exhibited various violations of the Americans with Disabilities Act  
25 Accessibility Guidelines ("ADAAG") and Title 24 of the California  
26 Code of Regulations including but not limited to: inaccessible  
27 public restroom facilities. Plaintiff was unable to use the  
28 restroom facilities and had an embarrassing and humiliating

1 experience as a result from the inaccessible facilities.

2 9. On information and belief, other portions of the facility  
3 were improperly inaccessible for use by persons with physical  
4 disabilities.

5 10. On information and belief, the facilities continue to the  
6 date of filing this complaint to deny equal access to Plaintiff and  
7 other persons with physical disabilities.

8 11. As a result of the inaccessible facilities, Plaintiff was  
9 humiliated, embarrassed and frustrated, suffering emotional  
10 injuries. Moreover, as a result of the inaccessible facilities,  
11 Plaintiff, suffered bodily and physical injury.

12 12. Plaintiff would like to return and use the Defendants'  
13 public accommodations but because of Defendants' violations,  
14 Plaintiff and other persons with physical disabilities are unable to  
15 use public facilities such as those owned and operated by Defendants  
16 on a "full and equal" basis unless such facility is in compliance  
17 with the provisions of the Americans with Disabilities Act  
18 Accessibility Guidelines and state accessibility law as pled herein.  
19 Plaintiff has, therefore, been deterred from returning and using the  
20 Defendants' public accommodations.

21 13. Plaintiff is informed and believes and therefore alleges  
22 that Defendants and each of them (1) caused the subject improved  
23 real properties which constitute the subject public accommodation to  
24 be constructed, altered and maintained in such a manner that persons  
25 with physical disabilities were denied full and equal access to,  
26 within and throughout said improved real property(s); (2) that the  
27 Defendants have had actual and constructive notice that the  
28 facilities were not legally accessible to persons with disabilities;

1 (3) that despite being informed of such effect on Plaintiff and  
2 other persons with physical disabilities due to the lack of  
3 accessible facilities, Defendants, and each of them, knowingly and  
4 willfully refused to take any steps to rectify the situation and to  
5 provide full and equal access for Plaintiff and other persons with  
6 physical disabilities to the subject public accommodation. Said  
7 defendants, and each of them, have continued such practices, in  
8 conscious disregard for the rights and safety of Plaintiff and other  
9 persons with physical disabilities. Said conduct, with knowledge of  
10 the effect it was and is having on Plaintiff and other persons with  
11 physical disabilities, constitutes despicable conduct in conscious  
12 disregard of the rights and safety of Plaintiff and of other  
13 similarly situated persons, justifying the imposition of punitive  
14 and exemplary damages per Civil Code section 3294.

15 I. **FIRST CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL RIGHTS ACT**  
16 (On behalf of Plaintiff and Against All Defendants) (Cal Civ S  
17 51 et seq.)

18 14. Plaintiff repleads and incorporates by reference, as if  
19 fully set forth again herein, the allegations contained in all prior  
20 paragraphs of this complaint.

21 15. California Civil Code § 52 provides that a party that  
22 discriminates against a plaintiff in violation of Civ. Code § 51  
23 shall be liable for actual damages, up to three times actual damages  
24 but not less than \$1000 for each such offense, and any attorney's  
25 fees incurred by the plaintiff.

26 **Count One:**

27 16. The Defendants have not ensured that their facilities  
28 comply with Title 24 of the California Code of Regulations, the  
California Building Code as it applies to physical access for

1 persons with disabilities and failed to ensure that disabled persons  
2 have "full and equal accommodations, advantages, facilities,  
3 privileges, or services" to the facilities identified above.

4 Count Two:

5 17. The Defendants have not complied with the Americans with  
6 Disabilities Act of 1990.

7  
8 **II. SECOND CAUSE OF ACTION: VIOLATION OF CALIFORNIA'S DISABLED**  
9 **PERSONS ACT, (On Behalf of Plaintiff and Against All**  
10 **Defendants) (California Civil Code § 54 et seq.)**

11 18. Plaintiff repleads and incorporates by reference as if  
12 fully set forth again herein, the allegations contained in all prior  
13 paragraphs of this complaint and incorporates them herein as if  
14 separately repled.

15 19. California Civil Code §55 provides that a person aggrieved  
16 under §54 of the Civil Code may bring an action to enjoin such  
17 violation and shall be entitled to recover reasonable attorney's  
18 fees.

19 Count One:

20 20. The Defendants have not ensured that their facilities  
21 comply with Title 24 of the California Code of Regulations, the  
22 California Building Code as it applies to physical access for  
23 persons with disabilities and have failed to ensure that disabled  
24 persons have full and equal access to public accommodations and/or  
25 other places that the general public is invited and that disabled  
26 persons enjoy the same accommodations, advantages, facilities, and  
27 privileges to the facilities identified above.

28 Count Two:

21. The Defendants have not complied with the Americans with

1 Disabilities Act of 1990.

2 22. Wherefore, Plaintiff prays for relief and damages as  
3 hereinafter stated.

4 **III. THIRD CAUSE OF ACTION: NEGLIGENCE**  
5 (On behalf of the Plaintiff and Against All Defendants)

6 23. Plaintiff repleads and incorporates by reference, as if  
7 fully set forth again herein, the allegations contained in all prior  
8 paragraphs of this complaint.

9 24. Defendants had a duty to exercise ordinary care, i.e.,  
10 comply with the various accessibility laws and ensure that their  
11 property was safely configured.

12 25. Defendants failed to exercise ordinary care in that they  
13 failed to ensure that their facilities complied with the  
14 accessibility guidelines or that their facilities were configured to  
15 promote safe and effective use by persons with wheelchairs.

16 26. As the actual and proximate result of Defendants' failure  
17 to exercise ordinary care, Plaintiff suffered damages in an amount  
18 to be determined by proof.

19 27. Wherefore, Plaintiff prays for relief and damages and  
20 relief as hereinafter stated.

21 **IV. FOURTH CAUSE OF ACTION: VIOLATION OF CALIFORNIA'S UNFAIR**  
22 **BUSINESS PRACTICES ACT** (On behalf of the Public and Against All  
23 Defendants) (Cal. Bus. & Prof. § 17200 et seq.)

24 28. Plaintiff repleads and incorporates by reference, as if  
25 fully set forth again herein, the allegations contained in all prior  
26 paragraphs of this complaint.

27 29. In addition to the access violations described above,  
28 Defendants' facilities are in violation of California and Federal

1 law in that they do not provide required access for disabled  
2 persons.

3 30. Defendants' acts and omissions alleged herein are a  
4 violation of both statutory requirements and public policy and,  
5 therefore, constitute a violation of Business and Professions Code  
6 sections 17200 et seq.

7 31. Plaintiff, on behalf of himself/herself and the general  
8 public, seeks injunctive relief requiring Defendants to remedy the  
9 disability access violations present at their facilities.

10 32. Wherefore, Plaintiff prays for relief and damages and  
11 relief as hereinafter stated.

12 **PRAYER:**

13 Wherefore, Plaintiff prays that this court award damages and  
14 provide relief as follows:

15 1. For injunctive relief, compelling Defendants to comply with  
16 the Unruh Civil Rights Act, and California's Disabled Person Act,  
17 which order will include the removal of barriers and the  
18 implementation of reasonable modifications in policies, practice,  
19 eligibility criteria and procedures so as to afford full access to  
20 the goods, services, facilities, privileges, advantages and  
21 accommodations being offered.

22 2. General, Special and Penalty damages in an amount to be  
23 determined by proof;

24 3. Reasonable attorneys' fees, litigation expenses and costs of  
25 suit, pursuant to Cal. Civ. Code §§ 52,55, and Cal. Civ. Proc. §  
26 1021.5;


27 ///



1 4. For such other and further relief as the court may deem  
2 proper.

3 Dated: March 6, 2002

CENTER FOR DISABILITY ACCESS, LLP


5 By:   
6 MARK D. POTTER  
7 RUSSELL C. HANDY  
8 JAMES R. BOYD  
Attorneys for Plaintiff

9 **DEMAND FOR JURY TRIAL**

10 Plaintiff hereby demands a jury for all claims for which a jury  
11 is permitted.

12  
13 Dated: March 6, 2002

CENTER FOR DISABILITY ACCESS, LLP

14  
15 By:   
16 MARK D. POTTER  
17 RUSSELL C. HANDY  
18 JAMES R. BOYD  
Attorneys for Plaintiff

040/196  
CIVIL BUSINESS OFFICE 12  
CENTRAL DIVISION  
2002 MAY -3 P 4: 06  
STEPHEN THURBERG  
SUPERIOR COURT  
S.D. CA

1 William A. Adams (SBN# 135035)  
2 NORTON & ADAMS, L.L.P.  
3 525 B Street, Suite 1500  
4 San Diego, California 92101  
5 (619) 233-8200

**ORIGINAL**

RP

6 Attorney for Defendant:  
7 BURKE EMORY

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10 040 1st Paper Fee \$196.00

8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **IN AND FOR THE COUNTY OF SAN DIEGO**

10 CHRIS LANGER,  
11 Plaintiff,

12 v.

13 SAM DIMENSTEIN; SANDRA DIMENSTEIN;  
14 EMERY BURKE; and DOES 1 through 10,  
15 inclusive,  
16 Defendants.

Case No. GIC 784559  
Complaint Filed: March 11, 2002  
ANSWER OF DEFENDANT  
BURKE EMORY

17  
18 (1)

19 Under the provisions of Code of Civil Procedure Section 431.30, Defendant BURKE  
20 EMORY, incorrectly sued as EMERY BURKE ("Defendant") hereby denies generally and  
21 specifically each and every allegation in Plaintiff CHRIS LANGER's ("Plaintiff") Complaint,  
22 and denies that Plaintiff sustained damages in the sum or sums alleged, or in any sum or  
23 sums, or at all.

24 Further answering the Complaint and the whole thereof, and including each and  
25 every purported cause of action contained therein, this Answering Defendant deny that  
26 Plaintiff has sustained any damage, injury, or loss, if any, by reason of any act, omission,  
27 fault, or negligence on the part of this Answering Defendant, his agents, servants, or  
28 employees, or either or any of them.

1 As separate affirmative defenses to the Complaint filed herein, and to each and  
2 every separate cause of action contained therein, this Answering Defendant alleges as  
3 follows:

4 FIRST AFFIRMATIVE DEFENSE

5 (Failure to State a Claim)

6 Defendant is informed and believes, and based thereon alleges, that  
7 the Complaint fails to state a claim upon which relief can be granted against Defendant.  
8

9 SECOND AFFIRMATIVE DEFENSE

10 (Defendant Did Not Cause Plaintiff's Damages)

11 Defendant is informed and believes, and based thereon alleges, that Defendant  
12 was not a party to any conduct, acts, and/or omissions, if any, that were a direct or  
13 proximate cause of the losses, damages, injuries or violations alleged by PLAINTIFF, if  
14 any.  
15

16 THIRD AFFIRMATIVE DEFENSE

17 (Comparative Fault)

18 Defendant is informed and believes, and based thereon alleges, that the losses,  
19 damages, injuries and/or violations alleged by PLAINTIFF, if any, were directly or  
20 proximately caused by conduct, acts, and/or omissions of other Defendants and/or other  
21 unknown third parties and other circumstances over which Defendant had no control,  
22 barring PLAINTIFF from recovering on his claims against Defendant, or alternatively,  
23 Defendant's liability, if any, is only in direct proportion to the extent of comparative fault of  
24 all other Defendants and/or unknown third parties.  
25

26 FOURTH AFFIRMATIVE DEFENSE

27 (Intervening/Superseding Cause)

28 Defendant is informed and believes, and based thereon alleges, that the losses,

1 damages, injuries and/or violations alleged by PLAINTIFF, if any, were directly or  
2 proximately caused by conduct, acts, and/or omissions of other Defendants and/or  
3 unknown third parties and other circumstances which were the intervening and  
4 superseding causes of the alleged damages, if any, barring PLAINTIFF from recovering on  
5 his claims against Defendant.

6  
7 FIFTH AFFIRMATIVE DEFENSE

8 (Failure to Mitigate Damages)

9 Defendant is informed and believes, and based thereon alleges, that  
10 PLAINTIFF is barred from recovering for any losses, damages, injuries, and/or violations  
11 alleged in his Complaint because he failed to mitigate his alleged damages, if any.

12  
13 SIXTH AFFIRMATIVE DEFENSE

14 (Lack of Notice of Conditions)

15 Defendant is informed and believes, and based thereon alleges, that  
16 PLAINTIFF is barred from bringing his Complaint against Defendant because Defendant  
17 did not have actual or constructive notice of the purported conditions causing alleged  
18 injuries, losses, damages or violations, and thus the risk of injury, if any, to PLAINTIFF was  
19 not reasonably foreseeable.

20  
21 SEVENTH AFFIRMATIVE DEFENSE

22 (Lack of Notice of Prior Incidents)

23 Defendant is informed and believes, and based thereon alleges, that  
24 PLAINTIFF is barred from bringing his Complaint against Defendant because Defendant  
25 did not have actual or constructive notice of prior incidents similar to the purported  
26 incidents alleged injuries, losses, damages or violations, and thus the risk of injury, if any,  
27 to PLAINTIFF was not reasonably foreseeable.

1 EIGHTH AFFIRMATIVE DEFENSE

2 (Assumption of Risk)

3 Defendant is informed and believes, and based thereon alleges, that PLAINTIFF is  
4 barred from bringing his Complaint against Defendant because PLAINTIFF had knowledge  
5 of, or voluntarily assumed, risks incident to the happenings and events alleged in his  
6 Complaint, and that PLAINTIFF's alleged damages and injuries, if any, were caused by  
7 and arose out of the assumptions of such risks.

8  
9 NINTH AFFIRMATIVE DEFENSE

10 (Contributory Negligence)

11 Defendant is informed and believes, and based thereon alleges, that PLAINTIFF is  
12 barred from bringing his Complaint against Defendant because PLAINTIFF's alleged  
13 damages and injuries, if any, were caused by and contributed to by the negligence of  
14 PLAINTIFF for failure to use reasonable care in protecting his interests, or alternatively,  
15 any recovery by PLAINTIFF should be reduced in proportion to the extent that  
16 PLAINTIFF's negligence caused PLAINTIFF's alleged damages and injuries, if any.

17  
18 TENTH AFFIRMATIVE DEFENSE

19 (Ratification)

20 Defendant is informed and believes, and based thereon alleges, that PLAINTIFF is  
21 barred from bringing his Complaint against Defendant because PLAINTIFF has engaged in  
22 conduct and activities which approved, authorized, and/or ratified the alleged conduct of  
23 Defendant with respect to the matters alleged in the Complaint, which conduct constitutes  
24 a waiver by PLAINTIFF.

25  
26 ELEVENTH AFFIRMATIVE DEFENSE

27 (Statutes of Limitation)

28 Defendant is informed and believes, and based thereon alleges, that PLAINTIFF is

1 barred from bringing his Complaint against Defendant by the applicable statutes of  
2 limitations, as found, *inter alia*, in Code of Civil Procedures Section 337, 338, 339, 340, and  
3 343.

4  
5 TWELFTH AFFIRMATIVE DEFENSE

6 (Plaintiff's Failure to Act)

7 Defendant is informed and believes, and based thereon alleges, that PLAINTIFF is  
8 barred from bringing his Complaint against Defendant because of PLAINTIFF's own failure  
9 to act, and/or the failure of others unknown to Defendant to act, when a duty, if any, to take  
10 such action existed.

11  
12 THIRTEENTH AFFIRMATIVE DEFENSE

13 (Failure to Own/Control Property)

14 Defendant is informed and believes, and based thereon alleges, that PLAINTIFF is  
15 barred from bringing his Complaint against Defendant because Defendant did not control  
16 any and/or all of the property which PLAINTIFF alleged caused him damages and injuries,  
17 if any.

18  
19 FOURTEENTH AFFIRMATIVE DEFENSE

20 (Failure to Exhaust Administrative Remedies)

21 Defendant is informed and believes, and based thereon alleges, that PLAINTIFF is  
22 barred from bringing his Complaint against Defendant because PLAINTIFF failed to first  
23 exhaust his administrative remedies.

24  
25 FIFTEENTH AFFIRMATIVE DEFENSE

26 (Unclean Hands)

27 Defendant is informed and believes, and based thereon alleges, that PLAINTIFF is  
28 barred from bringing his Complaint against Defendant because PLAINTIFF has unclean

1 hands.

2  
3 SIXTEENTH AFFIRMATIVE DEFENSE

4 (No Requirement to Accommodate)

5 Defendant is informed and believes, and based thereon alleges, that PLAINTIFF is  
6 barred from bringing his Complaint against Defendant because Defendant is not required  
7 to make reasonable accommodations, or the accommodations sought by PLAINTIFF, as  
8 described in the Americans with Disabilities Act and/or applicable state laws, for the  
9 facilities and/or establishments at issue.

10  
11 SEVENTEENTH AFFIRMATIVE DEFENSE

12 (Infeasibility of Modifications)

13 Defendant is informed and believes, and based thereon alleges, that PLAINTIFF is  
14 barred from bringing his Complaint against Defendant because any modifications to the  
15 facilities and/or establishments at issue to make them accessible, if any, are not readily  
16 achievable or feasible.

17  
18 EIGHTEENTH AFFIRMATIVE DEFENSE

19 (Equal Access)

20 Defendant is informed and believes, and based thereon alleges, that PLAINTIFF is  
21 barred from bringing his Complaint against Defendant because PLAINTIFF has equal  
22 access to the facilities and/or establishments at issue as non-disabled individuals.

23  
24 NINETEENTH AFFIRMATIVE DEFENSE

25 (No Right/Duty to Alter)

26 Defendant is informed and believes, and based thereon alleges, that PLAINTIFF is  
27 barred from bringing his Complaint against Defendant because Defendant have no right,  
28 duty, or authority to make alterations or remove access barriers, if any, to the facilities or

1 establishments at issue.

2  
3 TWENTIETH AFFIRMATIVE DEFENSE

4 (Facilities Are Accessible)

5 Defendant is informed and believes, and based thereon alleges, that PLAINTIFF is  
6 barred from bringing his Complaint against Defendant because the facilities or  
7 establishments at issue are accessible and useable by persons with disabilities as required  
8 by federal and California law.

9  
10 TWENTY-FIRST AFFIRMATIVE DEFENSE

11 (Good Faith)

12 Defendant is informed and believes, and based thereon alleges, that PLAINTIFF is  
13 barred from bringing his Complaint against Defendant because Defendant has acted in  
14 good faith, without malice, and has not violated any right that PLAINTIFF may have under  
15 federal or California law.

16  
17 TWENTY-SECOND AFFIRMATIVE DEFENSE

18 (No Denial of Equal Access)

19 Defendant is informed and believes, and based thereon alleges, that PLAINTIFF is  
20 barred from bringing his Complaint against Defendant because Defendant did not deny  
21 PLAINTIFF full and equal access to the facilities or establishments at issue.

22  
23 TWENTY-THIRD AFFIRMATIVE DEFENSE

24 (Relief Barred By Law)

25 Defendant is informed and believes, and based thereon alleges, that PLAINTIFF is  
26 barred from bringing his Complaint against Defendants because PLAINTIFF seeks relief  
27 which he is not permitted to recover under federal and/or California law.



1 TWENTY-FOURTH AFFIRMATIVE DEFENSE

2 (Actions Were Lawful and Non-Discriminatory)

3 Defendant is informed and believes, and based thereon alleges, that PLAINTIFF is  
4 barred from bringing his Complaint against Defendant because any action taken by  
5 Defendant, or anyone acting on its behalf, if any, with regards to the facilities or  
6 establishments at issue were for lawful, legitimate, non-discriminatory reasons.  
7

8 TWENTY-FIFTH AFFIRMATIVE DEFENSE

9 (Prohibitive Cost of Modifications)

10 Defendant is informed and believes, and based thereon alleges, that PLAINTIFF is  
11 barred from bringing his Complaint against Defendant because the cost of all or some of  
12 the physical alterations to the facilities or establishments at issue that PLAINTIFF seeks to  
13 have imposed on Defendant are disproportionate in terms of cost and scope to the  
14 financial resources available to Defendant for such alterations.  
15

16 TWENTY-SIXTH AFFIRMATIVE DEFENSE

17 (Defendant Accommodated Plaintiff)

18 Defendant is informed and believes, and based thereon alleges, that PLAINTIFF is  
19 barred from bringing his Complaint against Defendant because Defendant fulfilled his  
20 obligations, if any, to reasonably accommodate PLAINTIFF's alleged disability in the  
21 facilities or establishments at issue under the Americans With Disabilities Act and/or  
22 applicable California law.  
23

24 TWENTY-SEVENTH AFFIRMATIVE DEFENSE

25 (Right to Amend)

26 Defendant reserves the right to Amend this Answer to assert additional affirmative  
27 defenses and make such other amendments as are appropriate upon the discovery of  
28 facts and other matters during the course of this litigation.

1 WHEREFORE, Defendant BURKE EMORY respectfully prays that this Court  
2 adjudge that:

- 3 1. PLAINTIFF take nothing by way of his Complaint;
- 4 2. For reasonable costs of suit incurred herein as allowed by law;
- 5 3. For reasonable attorney's fees as allowed by law;
- 6 4. For such other and further relief as the Court deems just and proper.

7  
8 Dated: April 24, 2002

NORTON & ADAMS, L.L.P.

9  
10 By: 

11 William A. Adams  
12 Attorney for Defendant  
13 BURKE EMORY  
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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): <b>William A. Adams (Bar # 135035)</b> <b>NORTON &amp; ADAMS, LLP</b> 525 B Street, Suite 1500, San Diego, California 92101 TELEPHONE NO.: (619) 233-8200 FAX NO.: (619) 231-7595		FOR COURT USE ONLY CIVIL BUSINESS OFFICE 12 CENTRAL DIVISION  2002 MAY -3 P 4: 06  STEPHEN THUNBERG CLERK-SUPERIOR COURT SAN DIEGO COUNTY, CA	
ATTORNEY FOR (Name): <b>Burke Emory, Defendant</b> <b>SUPERIOR COURT OF CALIFORNIA COUNTY OF SAN DIEGO</b> <input type="checkbox"/> COUNTY COURTHOUSE, 220 W. BROADWAY, SAN DIEGO, CA 92101-3814 <input checked="" type="checkbox"/> HALL OF JUSTICE, 330 W. BROADWAY, SAN DIEGO, CA 92101-3827 <input type="checkbox"/> FAMILY COURT, 1501 6TH AVE., SAN DIEGO, CA 92101-3296 <input type="checkbox"/> MADGE BRADLEY BLDG., 1409 4TH AVE., SAN DIEGO, CA 92101-3105 <input type="checkbox"/> KEARNY MESA BRANCH, 8950 CLAIREMONT MESA BLVD., SAN DIEGO, CA 92123-1187 <input type="checkbox"/> JUVENILE COURT, 2851 MEADOW LARK DR., SAN DIEGO, CA 92123-2792 <input type="checkbox"/> NORTH COUNTY DIVISION, 325 S. MELROSE DR., VISTA, CA 92083-6643 <input type="checkbox"/> JUVENILE COURT, 325 S. MELROSE DR., VISTA, CA 92083-6634 <input type="checkbox"/> EAST COUNTY DIVISION, 250 E. MAIN ST., EL CAJON, CA 92020-3941 <input type="checkbox"/> RAMONA BRANCH, 1428 MONTECITO RD., RAMONA, CA 92065-5200 <input type="checkbox"/> SOUTH COUNTY DIVISION, 500 3RD AVE., CHULA VISTA, CA 91910-5649		JUDGE: _____ DEPT: _____ DATE: _____ TIME: _____	
PLAINTIFF(S)/PETITIONER(S) <b>Chris Langer</b>		CASE NUMBER <b>GIC 784559</b>	
DEFENDANT(S)/RESPONDENT(S) <b>Sam Dimenstein, Sandra Dimenstein, Emory Burke, et al</b>			
<b>PROOF OF SERVICE BY MAIL</b> <b>(CCP 1013a(1) &amp; (3) &amp; Local Rules, Division II, Rule 5.2C)</b>			

I, Anna E. Hartman, declare that: I am over the age of 18 years and not a party to the case; I am employed in, or am a resident of,  the County of San Diego, California  \_\_\_\_\_, where the mailing occurs; and my business/residence address is: 525 B Street, Suite 1500 San Diego, California  
(No., Street) (City, State)

I further declare that I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business.

I caused to be served the following document(s): (SET FORTH THE EXACT TITLE OF THE DOCUMENT(S) SERVED AND FILED)

ANSWER OF DEFENDANT BURKE EMORY

by placing a true copy of each document in a separate envelope addressed to each addressee, respectively, as follows: (For civil cases, specify the name of the party so served, the nature and status of the party's involvement in the case, i.e. plaintiff, defendant, cross-complainant, etc.; and the name, address and phone number of the party's counsel of record, if any)

Mark D. Potter/Russell C. Handy  
 Center for Disability Access, LLP  
 PO Box 34606  
 San Diego, CA 92163-4606  
 Attorneys for Plaintiff

I then sealed each envelope and, with postage thereon fully prepaid,  
 I deposited each in the United States Postal Service at \_\_\_\_\_  
 I placed each for deposit in the United States Postal Service, this same day, at my business address shown above, following ordinary business practices.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: May 3, 2002  
 \_\_\_\_\_  
 (Signature)

NUMBER GIC784559	COMPLAINT DATE 03/11/02	HEARING DATE 06/14/02	HEARING TIME	DEPT 66	COURT USE ONLY
JUDGE/COMMISSIONER HON. CHARLES R. HAYES			CLERK		
REPORTER			CSR #		
PLAINTIFF/PETITIONER CHRIS LANGER			DEFENDANT/RESPONDENT SAM DIMENSTEIN, et al.		
The above matter came on for hearing with the below appearances for:					
<u>ATTORNEY OF RECORD</u>		<u>PHONE</u>		<u>APPEARANCE BY</u>	
_____		_____		_____	
_____		_____		_____	
_____		_____		_____	
(add'l signatures - use attached sheet)					

IT IS ORDERED AS FOLLOWS:

PURSUANT TO CRC 225 AND/OR SUPERIOR COURT RULES DIVISION II, RULE 5.14,  
 AND THE NOTICE OF DISMISSAL PREVIOUSLY SERVED ON THE PARTIES BY THE COURT,  
 THE ABOVE-ENTITLED CASE IS DISMISSED.

ESTIMATED TRIAL TIME: \_\_\_\_\_ day(s).

JURY / NON-JURY

Ordered dismissed with \_\_\_\_\_ without \_\_\_\_\_ prejudice.

IT IS SO ORDERED:

Dated: 06/14/02

  
 \_\_\_\_\_  
 JUDGE/COMMISSIONER OF THE SUPERIOR COURT

Center for Disability Access, LLP  
P.O. Box 34606  
San Diego, CA 92163-4606

FILED  
CLERK'S BUSINESS OFFICE 6  
SAN DIEGO COUNTY DIVISION

02 SEP 27 PM 3:47

STEVE HONDERG  
CLERK-SUPERIOR COURT  
SAN DIEGO COUNTY, CA

ATTORNEY FOR (Name): Chris Langer

Insert name of court and name of judicial district and branch court, if any:  
Superior Court of the State of California  
County of San Diego

PLAINTIFF/PETITIONER: Chris Langer

DEFENDANT/RESPONDENT: Sam Dimenstein, et al.

**REQUEST FOR DISMISSAL**

- Personal Injury, Property Damage, or Wrongful Death
- Motor Vehicle       Other
- Family Law
- Eminent Domain
- Other (specify): Civil

CASE NUMBER:  
GIC 784559

- A conformed copy will not be returned by the clerk unless a method of return is provided with the document. -

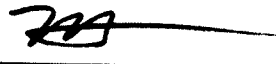
**1. TO THE CLERK: Please dismiss this action as follows:**

- a. (1)  With prejudice      (2)  Without prejudice
- b. (1)  Complaint      (2)  Petition
- (3)  Cross-complaint filed by (name):
- (4)  Cross-complaint filed by (name):
- (5)  Entire action of all parties and all causes of action
- (6)  Other: (specify):\*

on (date):  
on (date):

Date: 9/27/02


Mark D. Potter  
TYPE OR PRINT NAME OF  ATTORNEY  PARTY WITHOUT ATTORNEY

  
\_\_\_\_\_  
(SIGNATURE)  
Attorney or party without attorney for: Chris Langer

Plaintiff/Petitioner       Defendant/Respondent  
 Cross-complainant

**2. TO THE CLERK: Consent to the above dismissal is hereby given.\*\***

Date:  
\_\_\_\_\_  
TYPE OR PRINT NAME OF  ATTORNEY  PARTY WITHOUT ATTORNEY

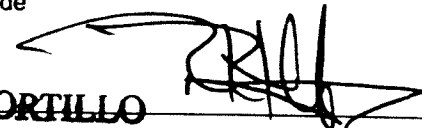
  
\_\_\_\_\_  
(SIGNATURE)  
Attorney or party without attorney for:

Plaintiff/Petitioner       Defendant/Respondent  
 Cross-complainant

(To be completed by clerk)

- 3.  Dismissal entered as requested on (date): SEP 27 2002 previously dismissed on JUN 14 2002
- 4.  Dismissal entered on (date): \_\_\_\_\_ as to only (name): \_\_\_\_\_
- 5.  Dismissal not entered as requested for the following reasons (specify): \_\_\_\_\_
- 6.  a. Attorney or party without attorney notified on (date): SEP 27 2002
- b. Attorney or party without attorney not notified. Filing party failed to provide
- a copy to conform       means to return conformed copy

Date: SEP 27 2002

Clerk, by  R. PORTILLO, Deputy

ORIGINAL