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FILED  
MAR 26 2002  
COURT CLERK  
SAN DIEGO, CALIFORNIA

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6701 01 07 GIC785302 03/26/02 09:15  
02 001 New Civil \$199.00

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10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 IN AND FOR THE COUNTY OF SAN DIEGO

12 CHRIS LANGER, ) Case No. GIC 785302  
13 )  
14 Plaintiff, ) **COMPLAINT FOR DAMAGES AND**  
15 v. ) **INJUNCTIVE RELIEF FOR VIOLATIONS**  
16 KURTZ STREET PROPERTIES, LLC; ) **OF: UNRUH CIVIL RIGHTS ACT;**  
17 LEROY G. HERSZMAN, and DOES 1 ) **CALIFORNIA'S DISABLED PERSON ACT;**  
through 10, inclusive ) **NEGLIGENCE; CALIFORNIA'S UNFAIR**  
18 Defendants. ) **BUSINESS PRACTICE ACT.**  
19 ) **DEMAND FOR JURY**  
20 )  
21 )  
22 )  
23 )  
24 )

25 Plaintiff CHRIS LANGER, (hereinafter referred to as  
26 "Plaintiff") complains of KURTZ STREET PROPERTIES, LLC; LEROY G.  
27 HERSZMAN, and DOES 1 through 10, inclusive, (hereinafter referred to  
28 as "Defendants") and alleges as follows:

**INTRODUCTION:**

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

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1 structural in nature at Defendants' place of business, located at  
2 3450 Kurtz St., 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, KURTZ STREET PROPERTIES, LLC; LEROY G. HERSZMAN,  
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 3450 Kurtz St., 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: a lack of  
27 designated van accessible parking; and a lack of designated van  
28 accessible disabled parking.

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

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

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

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

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

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

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

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

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

24 **Count One:**

25 16. The Defendants have not ensured that their facilities  
26 comply with Title 24 of the California Code of Regulations, the  
27 California Building Code as it applies to physical access for  
28 persons with disabilities and failed to ensure that disabled persons

1 have "full and equal accommodations, advantages, facilities,  
2 privileges, or services" to the facilities identified above.

3 Count Two:

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

6  
7 **II. SECOND CAUSE OF ACTION: VIOLATION OF CALIFORNIA'S DISABLED**  
8 **PERSONS ACT, (On Behalf of Plaintiff and Against All**  
9 **Defendants) (California Civil Code § 54 et seq.)**

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

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

18 Count One:

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

27 Count Two:

28 21. The Defendants have not complied with the Americans with  
Disabilities Act of 1990.

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

3  
4           **III. THIRD CAUSE OF ACTION: NEGLIGENCE**  
          (On behalf of the Plaintiff and Against All Defendants)

5  
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**  
          **BUSINESS PRACTICES ACT** (On behalf of the Public and Against All  
22 Defendants) (Cal. Bus. & Prof. § 17200 et seq.)

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

26           29. In addition to the access violations described above,  
27 Defendants' facilities are in violation of California and Federal  
28 law in that they do not provide required access for disabled

1 persons.

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

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

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

11 **PRAYER:**

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

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

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

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

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

3 Dated: March 11, 2002

CENTER FOR DISABILITY ACCESS, LLP

5  
6 By: 

MARK D. POTTER  
RUSSELL C. HANDY  
JAMES R. BOYD  
Attorneys for Plaintiff

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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 11, 2002

CENTER FOR DISABILITY ACCESS, LLP

14  
15 By: 

16 MARK D. POTTER  
17 RUSSELL C. HANDY  
18 JAMES R. BOYD  
19 Attorneys for Plaintiff  
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