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1 CENTER FOR DISABILITY ACCESS, LLP  
2 MARK D. POTTER, ESQ., SBN 166317 ✓  
3 RUSSELL C. HANDY, ESQ., SBN 195058  
4 JAMES R. BOYD, ESQ., SBN175597  
5 STEVE WEDEL, ESQ. SBN 214908  
6 P.O. Box 34606  
7 San Diego, CA 92163-4606  
8 (619) 291-7593  
9 Fax: (619) 725-0720

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6 Attorney for Plaintiff, CHRIS LANGER,

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02 001 New CIVIL

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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,  
13  
14 Plaintiff,

) Case No.: **GIC 786316**  
)  
) **COMPLAINT FOR DAMAGES AND**  
) **INJUNCTIVE RELIEF FOR VIOLATIONS**  
) **OF: UNRUH CIVIL RIGHTS ACT;**  
) **CALIFORNIA'S DISABLED PERSON ACT;**  
) **NEGLIGENCE; CALIFORNIA'S UNFAIR**  
) **BUSINESS PRACTICE ACT.**

15 v.  
16 JOSEPH BALISTRERI as TRUSTEE of)  
17 the BALISTRERI TRUST dated June)  
18 22, 1990; VICTORIA BALISTRERI as)  
19 TRUSTEE of the BALISTRERI TRUST)  
20 dated June 22, 1990; JOSEPH)  
21 BALISTRERI, INC., and DOES 1)  
22 through 10, inclusive )  
23 Defendants. )

✓ **DEMAND FOR JURY**

21  
22 Plaintiff CHRIS LANGER, (hereinafter referred to as  
23 "Plaintiff") complains of JOSEPH BALISTRERI as TRUSTEE of the  
24 BALISTRERI TRUST dated June 22, 1990; VICTORIA BALISTRERI as  
25 TRUSTEE of the BALISTRERI TRUST dated June 22, 1990; JOSEPH  
26 BALISTRERI, INC., and DOES 1 through 10, inclusive, (hereinafter  
27 referred to as "Defendants") and alleges as follows:

28 **INTRODUCTION:**

RECORDED

1           1. This is a Civil Rights action for discrimination against  
2 persons with physical disabilities, of which Plaintiff is a member  
3 of said class, for failure to remove architectural barriers  
4 structural in nature at Defendants' place of business, located at  
5 3001 El Cajon Blvd., San Diego, California, a place of public  
6 accommodation; and for failure to modify practices and or policies  
7 in order to accommodate, thereby discriminatorily denying Plaintiff  
8 and the class of other similarly situated persons with physical  
9 disabilities access to, the full and equal enjoyment of, opportunity  
10 to participate in, and benefit from, the goods, facilities,  
11 services, and accommodations thereof.

12           2. Plaintiff seeks injunctive relief and damages for  
13 violations of civil rights and for damages flowing from such  
14 violations.

15 **PARTIES:**

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

18           4. Defendants, JOSEPH BALISTRIERI as TRUSTEE of the BALISTRIERI  
19 TRUST dated June 22, 1990; VICTORIA BALISTRIERI as TRUSTEE of the  
20 BALISTRIERI TRUST dated June 22, 1990; JOSEPH BALISTRIERI, INC., and  
21 DOES 1 through 10, inclusive (hereinafter alternatively referred to  
22 collectively as "Defendants"), are the owners and operators, lessors  
23 and/or lessees, or agents of the owners, lessors and/or lessees,  
24 and/or alter egos, franchisers and/or franchisees, of the building  
25 and/or buildings which constitute a public facility in and of  
26 itself, occupied by the above described defendants, and subject to  
27 the requirements of federal and state law requiring full and equal  
28 access to public accommodations and facilities.

1           5. Plaintiff does not know the true names of Defendants, their  
2 business capacities, their ownership connection to the property and  
3 business, or their relative responsibilities in causing the access  
4 violations herein complained of, and alleges a joint venture and  
5 common enterprise by all such Defendants. Plaintiff is informed and  
6 believes that each of the Defendants herein, including DOES 1  
7 through 10, inclusive, is responsible in some capacity for the  
8 events herein alleged, or is a necessary party for obtaining  
9 appropriate relief. Plaintiff will seek leave to amend when the true  
10 names, capacities, connections, and responsibilities of the  
11 Defendants and DOES 1 through 10, inclusive, are ascertained.

12 **PRELIMINARY FACTUAL ALLEGATIONS:**

13           6. Defendants are or were at the time of the incident the  
14 owners and operators, lessors and lessees of the public facility,  
15 located at 3001 El Cajon Blvd., San Diego, California. The public  
16 accommodation, its path of travel, parking, restrooms and its other  
17 facilities are each a "public accommodation or facility" subject to  
18 the requirements of state and federal law. On information and  
19 belief, each such facility has, since July 1, 1970, undergone  
20 "alterations, structural repairs and additions," each of which has  
21 subjected the public accommodations, and each of their facilities to  
22 handicapped access requirements per the Americans with Disabilities  
23 Act Access Guidelines (ADAAG) and Title 24 of California's Code of  
24 Regulations.

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

28           8. During Plaintiff's visit, the subject public accommodation

1 exhibited various violations of the Americans with Disabilities Act  
2 Accessibility Guidelines ("ADAAG") and Title 24 of the California  
3 Code of Regulations including but not limited to: a lack of  
4 designated disabled parking.

5       **9.** On information and belief, other portions of the facility  
6 were improperly inaccessible for use by persons with physical  
7 disabilities.

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

11       **11.** As a result of the inaccessible facilities, Plaintiff was  
12 humiliated, embarrassed and frustrated, suffering emotional  
13 injuries. Moreover, as a result of the inaccessible facilities,  
14 Plaintiff, suffered bodily and physical injury.

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

24       **13.** Plaintiff is informed and believes and therefore alleges  
25 that Defendants and each of them (1) caused the subject improved  
26 real properties which constitute the subject public accommodation to  
27 be constructed, altered and maintained in such a manner that persons  
28 with physical disabilities were denied full and equal access to,

1 within and throughout said improved real property(s); (2) that the  
2 Defendants have had actual and constructive notice that the  
3 facilities were not legally accessible to persons with disabilities;  
4 (3) that despite being informed of such effect on Plaintiff and  
5 other persons with physical disabilities due to the lack of  
6 accessible facilities, Defendants, and each of them, knowingly and  
7 willfully refused to take any steps to rectify the situation and to  
8 provide full and equal access for Plaintiff and other persons with  
9 physical disabilities to the subject public accommodation. Said  
10 defendants, and each of them, have continued such practices, in  
11 conscious disregard for the rights and safety of Plaintiff and other  
12 persons with physical disabilities. Said conduct, with knowledge of  
13 the effect it was and is having on Plaintiff and other persons with  
14 physical disabilities, constitutes despicable conduct in conscious  
15 disregard of the rights and safety of Plaintiff and of other  
16 similarly situated persons, justifying the imposition of punitive  
17 and exemplary damages per Civil Code section 3294.

18 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL RIGHTS ACT**  
19 (On behalf of Plaintiff and Against All Defendants) (Cal Civ §  
20 51 et seq.)

21 **14.** Plaintiff repleads and incorporates by reference, as if  
22 fully set forth again herein, the allegations contained in all prior  
23 paragraphs of this complaint.

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

**Count One:**

1           **16.** The Defendants have not ensured that their facilities  
2 comply with Title 24 of the California Code of Regulations, the  
3 California Building Code as it applies to physical access for  
4 persons with disabilities and failed to ensure that disabled persons  
5 have "full and equal accommodations, advantages, facilities,  
6 privileges, or services" to the facilities identified above.

7           **Count Two:**

8           **17.** The Defendants have not complied with the Americans with  
9 Disabilities Act of 1990.

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

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

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

21           **Count One:**

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

1 privileges to the facilities identified above.

2 **Count Two:**

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

5       22. Wherefore, Plaintiff prays for relief and damages as  
6 hereinafter stated.

7  
8 **III. THIRD CAUSE OF ACTION: NEGLIGENCE**  
(On behalf of the Plaintiff and Against All Defendants)

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10       23. 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.

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

16       25. Defendants failed to exercise ordinary care in that they  
17 failed--to ensure that their facilities complied with the  
18 accessibility guidelines or that their facilities were configured to  
19 promote safe and effective use by persons with wheelchairs.

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

23       27. Wherefore, Plaintiff prays for relief and damages and  
24 relief as hereinafter stated.

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

28       28. Plaintiff repleads and incorporates by reference, as if  
fully set forth again herein, the allegations contained in all prior

1 paragraphs of this complaint.

2       **29.** In addition to the access violations described above,  
3 Defendants' facilities are in violation of California and Federal  
4 law in that they do not provide required access for disabled  
5 persons.

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

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

13       **32.** Wherefore, Plaintiff prays for relief and damages and  
14 relief as hereinafter stated.

15 **PRAYER:**

16       Wherefore, Plaintiff prays that this court award damages and  
17 provide relief as follows:

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

25       **2.** General, Special and Penalty damages in an amount to be  
26 determined by proof;  
27  
28



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

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

6 Dated: April 1, 2002

CENTER FOR DISABILITY ACCESS, LLP

8  
9 By: 

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

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12 **DEMAND FOR JURY TRIAL**

13 Plaintiff hereby demands a jury for all claims for which a jury  
14 is permitted.

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16 Dated: April 1, 2002

CENTER FOR DISABILITY ACCESS, LLP

17  
18 By: 

19 MARK D. POTTER  
20 RUSSELL C. HANDY  
21 JAMES R. BOYD  
22 Attorneys for Plaintiff  
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