

001/199

FILED

2002 JUN -5 3:22

2002 JUN -5 3:22

CLERK OF COURT  
SUPERIOR COURT  
SAN DIEGO

CT

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

6 Attorney for Plaintiff, CHRIS LANGER,

3871 01 11 GIC789964 06/06/02 12:59  
02 001 New Civil \$199.00

7  
8  
9  
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 789964**  
13 )  
14 Plaintiff, ) **COMPLAINT FOR DAMAGES AND**  
15 v. ) **INJUNCTIVE RELIEF FOR VIOLATIONS**  
16 ) **OF: UNRUH CIVIL RIGHTS ACT;**  
17 ) **CALIFORNIA'S DISABLED PERSON ACT;**  
MICHAEL BARTELL; ELIZABETH J. ) **NEGLIGENCE; CALIFORNIA'S UNFAIR**  
18 GARFIELD; MELISSA GARFIELD) **BUSINESS PRACTICE ACT.**  
19 BARTELL; MARIA SANCHEZ, and DOES )  
1 through 10, inclusive ) **DEMAND FOR JURY**  
20 Defendants. )  
21 )  
22 )  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )

20 Plaintiff CHRIS LANGER, (hereinafter referred to as  
21 "Plaintiff") complains of MICHAEL BARTELL; ELIZABETH J. GARFIELD;  
22 MELISSA GARFIELD BARTELL; MARIA SANCHEZ, and DOES 1 through 10,  
23 inclusive, (hereinafter referred to as "Defendants") and alleges as  
24 follows:

25 **INTRODUCTION:**

26 1. This is a Civil Rights action for discrimination against  
27 persons with physical disabilities, of which Plaintiff is a member  
28

ORIGINAL

1 of said class, for failure to remove architectural barriers  
2 structural in nature at Defendants' place of business, located at  
3 3851 Clairemont Mesa Blvd., San Diego, California, a place of public  
4 accommodation; and for failure to modify practices and or policies  
5 in order to accommodate, thereby discriminatorily denying Plaintiff  
6 and the class of other similarly situated persons with physical  
7 disabilities access to, the full and equal enjoyment of, opportunity  
8 to participate in, and benefit from, the goods, facilities,  
9 services, and accommodations thereof.

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

13 **PARTIES:**

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

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

26 5. Plaintiff does not know the true names of Defendants, their  
27 business capacities, their ownership connection to the property and  
28 business, or their relative responsibilities in causing the access

1 violations herein complained of, and alleges a joint venture and  
2 common enterprise by all such Defendants. Plaintiff is informed and  
3 believes that each of the Defendants herein, including DOES 1  
4 through 10, inclusive, is responsible in some capacity for the  
5 events herein alleged, or is a necessary party for obtaining  
6 appropriate relief. Plaintiff will seek leave to amend when the true  
7 names, capacities, connections, and responsibilities of the  
8 Defendants and DOES 1 through 10, inclusive, are ascertained.

9 **PRELIMINARY FACTUAL ALLEGATIONS:**

10 6. Defendants are or were at the time of the incident the  
11 owners and operators, lessors and lessees of the public facility,  
12 located at 3851 Clairemont Mesa Blvd., San Diego, California. The  
13 public accommodation, its path of travel, parking, restrooms and its  
14 other facilities are each a "public accommodation or facility"  
15 subject to the requirements of state and federal law. On information  
16 and belief, each such facility has, since July 1, 1970, undergone  
17 "alterations, structural repairs and additions," each of which has  
18 subjected the public accommodations, and each of their facilities to  
19 handicapped access requirements per the Americans with Disabilities  
20 Act Access Guidelines (ADAAG) and Title 24 of California's Code of  
21 Regulations.

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

25 8. During Plaintiff's visit, the subject public accommodation  
26 exhibited various violations of the Americans with Disabilities Act  
27 Accessibility Guidelines ("ADAAG") and Title 24 of the California  
28 Code of Regulations including but not limited to: there was a lack

1 of properly configured disabled parking; a lack of van accessible  
2 designated disabled parking; and inaccessible public paths of  
3 travel.

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

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

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

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

23 13. Plaintiff is informed and believes and therefore alleges  
24 that Defendants and each of them (1) caused the subject improved  
25 real properties which constitute the subject public accommodation to  
26 be constructed, altered and maintained in such a manner that persons  
27 with physical disabilities were denied full and equal access to,  
28 within and throughout said improved real property(s); (2) that the

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

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

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

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

28 **Count One:**

16. The Defendants have not ensured that their facilities

1 comply with Title 24 of the California Code of Regulations, the  
2 California Building Code as it applies to physical access for  
3 persons with disabilities and failed to ensure that disabled persons  
4 have "full and equal accommodations, advantages, facilities,  
5 privileges, or services" to the facilities identified above.

6 **Count Two:**

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

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

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

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

20 **Count One:**

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

1 **Count Two:**

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

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

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

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

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

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

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

21 27. Wherefore, Plaintiff prays for relief and damages and  
22 relief as hereinafter stated.

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

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

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

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

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

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

14 **PRAYER:**

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

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

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

26           3. Reasonable attorneys' fees, litigation expenses and costs of  
27 suit, pursuant to Cal. Civ. Code §§ 52,55, and Cal. Civ. Proc. §  
28



1 1021.5;

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

4 Dated: April 17, 2002

CENTER FOR DISABILITY ACCESS, LLP

6 By: 

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

10 **DEMAND FOR JURY TRIAL**

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

13  
14 Dated: April 17, 2002

CENTER FOR DISABILITY ACCESS, LLP

15  
16 By: 

17 MARK D. POTTER  
18 RUSSELL C. HANDY  
19 JAMES R. BOYD  
20 Attorneys for Plaintiff  
21  
22  
23  
24  
25  
26  
27  
28

1 ERIC B. FREEDUS (SBN 61175)  
2 JOHN M. FEDOR (SBN 149587)  
3 **FRANK AND FREEDUS, A P.C.**  
4 1202 Kettner Boulevard, Suite 6000  
5 San Diego, California 92101-3344  
6 (619) 239-3000 / (619) 236-0217 (Fax)

FILED  
JUL 23 2002 8:55  
CLERK OF SUPERIOR COURT  
SAN DIEGO COUNTY, CA

5 Attorneys for Defendants  
6 MICHAEL BARTELL, ELIZABETH GARFIELD,  
7 MELISSA BARTELL AND MARIA SANCHEZ

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

11 CHRIS LANGER, )  
12 )  
13 Plaintiff, )  
14 v. )  
15 MICHAEL BARTELL; ELIZABETH J. )  
16 GARFIELD; MELISSA GARFIELD )  
17 BARTELL; MARIA SANCHEZ, and DOES )  
1 through 10, inclusive, )  
Defendants. )

**CASE NO.: GIC 789964**  
Complaint Filed: June 5, 2002  
**NOTICE TO PARTIES AND COURT  
OF REMOVAL OF ACTION TO  
FEDERAL COURT**  
Judge: Honorable Wayne L. Peterson  
Dept.: 5 / (619) 685-6120

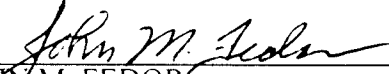
18 TO: CLERK OF THE SUPERIOR COURT, PLAINTIFF CHRIS LANGER AND TO  
19 PLAINTIFF'S ATTORNEY OF RECORD:

20 PLEASE TAKE NOTICE THAT Defendants filed a Notice of Removal of this action in  
21 the United States District Court for the Southern District of California on July 22, 2002, under  
22 Federal Case Number 02 CV 01432 B (RBB).

23 A copy of the said Notice of Removal is attached to this Notice, and is served herewith.

24 Dated: July 23, 2002

FRANK AND FREEDUS, A P.C.  
By:

26   
27 JOHN M. FEDOR  
Attorneys for Defendants  
MICHAEL BARTELL, ELIZABETH  
28 GARFIELD, MELISSA BARTELL  
AND MARIA SANCHEZ

1 ERIC B. FREEDUS (SBN 61175)  
JOHN M. FEDOR (SBN 149587)  
2 **FRANK AND FREEDUS, A P.C.**  
1202 Kettner Boulevard, Suite 6000  
3 San Diego, California 92101-3344  
(619) 239-3000 / (619) 236-0217 (Fax)

4  
5 Attorneys for Defendants  
MICHAEL BARTELL, ELIZABETH GARFIELD,  
6 MELISSA BARTELL AND MARIA SANCHEZ

78  
12  
OFFICE 15  
DIVISION  
2002 JUL 22 A 10:49  
NEERG  
4278 01 07 GIC789964 COURT 07/22/02 11:00  
02 040 1st Paper Fee 7.00 \$78.00  
4278 01 07 07/22/02 11:00  
02 076 Miscellaneous \$12.00

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

11 CHRIS LANGER, )  
12 )  
Plaintiff, )  
13 v. )  
14 MICHAEL BARTELL; ELIZABETH J. )  
GARFIELD; MELISSA GARFIELD )  
15 BARTELL; MARIA SANCHEZ, and DOES )  
1 through 10, inclusive, )  
16 Defendants. )

**CASE NO.: GIC 789964**  
Complaint Filed: June 5, 2002  
**DEFENDANTS' ANSWER  
TO COMPLAINT**  
  
Judge: Honorable Wayne L. Peterson  
Dept.: 5 / (619) 685-6120

17  
18 COME NOW Defendants MICHAEL BARTELL, ELIZABETH GARFIELD, MELISSA  
19 BARTELL and MARIA SANCHEZ ("Defendants") and answer the Complaint of plaintiff  
20 CHRIS LANGER ("plaintiff") as follows:

21 That under the provisions of section 431.30 of the California Code of Civil Procedure,  
22 answering Defendants, and each of them, deny each, every and all allegations of said Complaint,  
23 and the whole thereof, including each and every purported cause of action contained therein, and  
24 deny that the plaintiff sustained injury or damage in the sum or sums alleged, or in any other sum  
25 or sums whatsoever, or at all.

26 ///  
27 ///  
28 ///