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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,

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02 001 New Civil \$124.0

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

GIC 790959

12 CHRIS LANGER, ) Case No.:  
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;**  
18 ) **NEGLIGENCE; CALIFORNIA'S UNFAIR**  
19 ) **BUSINESS PRACTICE ACT.**  
20 ) **DEMAND FOR JURY**  
GRAHAM KELLY, JR., SUCCESSOR )  
16 TRUSTEE of the GRAHAM M. KELLY )  
FAMILY REVOCABLE TRUST Dated )  
17 October 28, 1986, f/b/o the )  
Survivor's Trust; DAYLAMY )  
18 FARIDEH, and DOES 1 through 10, )  
inclusive )  
19 )  
20 Defendants. )

21 Plaintiff CHRIS LANGER, (hereinafter referred to as  
22 "Plaintiff") complains of GRAHAM KELLY, JR., SUCCESSOR TRUSTEE of  
23 the GRAHAM M. KELLY FAMILY REVOCABLE TRUST dated October 28, 1986,  
24 f/b/o the Survivor's Trust; DAYLAMY FARIDEH, and DOES 1 through 10,  
25 inclusive, (hereinafter referred to as "Defendants") and alleges as  
26 follows:

27 **INTRODUCTION:**

ORIGINAL

COUNTING

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 6695 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, GRAHAM KELLY, JR., SUCCESSOR TRUSTEE of the  
19 GRAHAM M. KELLY FAMILY REVOCABLE TRUST dated October 28, 1986, f/b/o  
20 the Survivor's Trust; DAYLAMY FARIDEH, and DOES 1 through 10,  
21 inclusive (hereinafter alternatively referred to collectively as  
22 "Defendants"), are the owners and operators, lessors and/or lessees,  
23 or agents of the owners, lessors and/or lessees, and/or alter egos,  
24 franchisers and/or franchisees, of the building and/or buildings  
25 which constitute a public facility in and of itself, occupied by the  
26 above described defendants, and subject to the requirements of  
27 federal and state law requiring full and equal access to public  
28 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 6695 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: there was a lack  
4 of properly configured disabled parking; and a lack of van  
5 accessible designated disabled parking.

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

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

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

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

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

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

19 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL RIGHTS ACT**  
20 (On behalf of Plaintiff and Against All Defendants) (Cal Civ §  
21 51 et seq.)

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

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

1 Count One:

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

8 Count Two:

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

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

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

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

23 Count One:

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

1 persons enjoy the same accommodations, advantages, facilities, and  
2 privileges to the facilities identified above.

3 Count Two:

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

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

8 **III. THIRD CAUSE OF ACTION: NEGLIGENCE**

9 (On behalf of the Plaintiff and Against All Defendants)

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

1 fully set forth again herein, the allegations contained in all prior  
2 paragraphs of this complaint.

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

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

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

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

16 **PRAYER:**

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

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

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



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 17, 2002

CENTER FOR DISABILITY ACCESS, LLP

8  
9 By: 

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

11  
12 **DEMAND FOR JURY TRIAL**

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

15  
16 Dated: April 17, 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  
23  
24  
25  
26  
27  
28

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(CS)

1 Richard M. Valdez, Bar No. 156957  
2 **SANDLER, LASRY, LAUBE, BYER & VALDEZ LLP**  
3 402 West Broadway, Suite 1700  
4 San Diego, CA 92101-3542  
5 Telephone (619) 235-5655  
6 Facsimile (619) 235-5648

7 Attorneys for Defendants  
8 GRAHAM KELLY, JR., Successor Trustee of the Graham M. Kelly Family Revocable  
9 Trust and DAYLAMY FARIDEH

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02 040 1st Paper Fee \$392.00

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

12 CHRIS LANGER,  
13 Plaintiff,  
14 v.  
15 GRAHAM KELLY, JR., SUCCESSOR TRUSTEE  
16 of the GRAHAM M. KELLY FAMILY  
17 REVOCABLE TRUST Dated October 28, 1986,  
18 f/b/o the Survivor's Trust; DAYLAMY FARIDEH,  
19 and DOES 1 through 10, inclusive,  
20 Defendants.

Case No GIC790959  
I/C Judge: John S. Meyer  
**ANSWER TO COMPLAINT  
DEMAND FOR JURY**  
Complaint Filed: 6/20/02

21 Defendants <sup>①</sup>GRAHAM KELLY, JR., Successor Trustee of the Graham M. Kelly Family  
22 Recvocable Trust and <sup>②</sup>DAYLAMY FARIDEH (collectively "these answering defendants") hereby  
23 answer the complaint of Plaintiff Chris Langer ("plaintiff") as follows:

24 1. Under the provisions of Section 431.30(d) of the California Code of Civil Procedure,  
25 these answering defendants deny each and every allegation of the unverified complaint . Further,  
26 these answering defendants deny that plaintiff has been damaged in any sum or sums alleged, or any  
27 other sum or sums at all, or that plaintiff is entitled to the relief sought in the complaint, by reason of  
28 any act or omission on the part of these answering defendants.

ACCOUNTING

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and address)

TELEPHONE NO.

FOR COURT USE ONLY

Mark D. Potter SBN 160017  
Center for Disability Access  
P.O. Box 34606  
San Diego, California 92163-4606

(619) 291-7593

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CIVIL BUSINESS OFFICE 10  
CENTRAL DIVISION

2003 JAN -3 P 3:20

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.

The Superior Court of the State of California  
In and For the County of San Diego

PLAINTIFF/PETITIONER: Chris Langer

DEFENDANT/RESPONDENT: Graham Kelly, Jr., Trustee  
Daylamy Farideh

REQUEST FOR DISMISSAL

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

CASE NUMBER:  
GIC 790959

- 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: 1-3-03

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

If dismissal requested is of specified parties only, of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

  
(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)

If a cross-complaint - or Response (Family Law) seeking affirmative relief - is on file, the attorney for the cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581(i) or (j).

  
(SIGNATURE)

- Attorney or party without attorney for:
- Plaintiff/Petitioner  Defendant/Respondent
- Cross-complainant

To be completed by clerk)

- Dismissal entered as requested on (date) : JAN 03 2003
- Dismissal entered on (date) : as to only (name) :
- Dismissal not entered as requested for the following reasons (specify) :
- a. Attorney or party without attorney notified on (date) : 1-2-2003
- b. Attorney or party without attorney not notified. Filing party failed to provide
  - a copy to conform  means to return conformed copy

Date: 1-3-2003

Clerk, by  Deputy

ORIGINAL