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FILED
JUL 11 2 43 PM '81

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10 Attorney for Plaintiff, CHRIS LANGER,

8794
02 001 New Civil

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

13 CHRIS LANGER,

) Case No.: **GIC 791602**

14 Plaintiff,

) **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 LYLE E. JENKINS as TRUSTEE of the)
17 JENKINS FAMILY 1981 TRUST dated)
18 July 8, 1981; EMILY P. JENKINS as)
19 TRUSTEE of the JENKINS FAMILY)
20 1981 TRUST dated July 8, 1981;)
21 S.B. AUTO PARTS, INC., and DOES 1)
22 through 10, inclusive)

DEMAND FOR JURY

23 Defendants.

24 Plaintiff CHRIS LANGER, (hereinafter referred to as
25 "Plaintiff") complains of LYLE E. JENKINS as TRUSTEE of the JENKINS
26 FAMILY 1981 TRUST dated July 8, 1981; EMILY P. JENKINS as TRUSTEE of
27 the JENKINS FAMILY 1981 TRUST dated July 8, 1981; S.B. AUTO PARTS,
28 INC., and DOES 1 through 10, inclusive, (hereinafter referred to as
"Defendants") and alleges as follows:

INTRODUCTION:

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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
5 908 3RD AVE., Chula Vista, 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, LYLE E. JENKINS as TRUSTEE of the JENKINS FAMILY
19 1981 TRUST dated July 8, 1981; EMILY P. JENKINS as TRUSTEE of the
20 JENKINS FAMILY 1981 TRUST dated July 8, 1981; S.B. AUTO PARTS, INC.,
21 and DOES 1 through 10, inclusive (hereinafter alternatively referred
22 to collectively as "Defendants"), are the owners and operators,
23 lessors and/or lessees, or agents of the owners, lessors and/or
24 lessees, and/or alter egos, franchisers and/or franchisees, of the
25 building and/or buildings which constitute a public facility in and
26 of itself, occupied by the above described defendants, and subject
27 to the requirements of federal and state law requiring full and
28 equal 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 908 3RD AVE., Chula Vista, 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; a lack of van accessible
5 designated disabled parking; inaccessible public paths of travel
6 inside store facility; inaccessible service counters; and
7 inaccessible public restroom facilities.

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

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

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

18 12. Defendants knew their facilities were inaccessible and
19 continued to maintain these facilities in an inaccessible condition
20 and in doing so, knowingly continued to violate and interfere with
21 the rights of disabled persons including Plaintiff. Such conduct by
22 defendants is despicable, and was carried on by defendant with a
23 willful and conscious disregard for the rights of disabled persons,
24 including Plaintiff.

25 13. Plaintiff would like to return and use the Defendants'
26 public accommodations but because of Defendants' violations,
27 Plaintiff and other persons with physical disabilities are unable to
28 use public facilities such as those owned and operated by Defendants

1 on a "full and equal" basis unless such facility is in compliance
2 with the provisions of the Americans with Disabilities Act
3 Accessibility Guidelines and state accessibility law as pled herein.
4 Plaintiff has, therefore, been deterred from returning and using the
5 Defendants' public accommodations.

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

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

1 51 et seq.)

2 15. Plaintiff repleads and incorporates by reference, as if
3 fully set forth again herein, the allegations contained in all prior
4 paragraphs of this complaint.

5 16. California Civil Code § 52 provides that a party that
6 discriminates against a plaintiff in violation of Civ. Code § 51
7 shall be liable for actual damages, up to three times actual damages
8 but not less than \$4000 for each such offense, and any attorney's
9 fees incurred by the plaintiff.

10 **Count One:**

11 17. The Defendants have not ensured that their facilities
12 comply with Title 24 of the California Code of Regulations, the
13 California Building Code as it applies to physical access for
14 persons with disabilities and failed to ensure that disabled persons
15 have "full and equal accommodations, advantages, facilities,
16 privileges, or services" to the facilities identified above.

17 **Count Two:**

18 18. The Defendants have not complied with the Americans with
19 Disabilities Act of 1990.

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

23 19. 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 and incorporates them herein as if
26 separately repled.

27 20. California Civil Code §55 provides that a person aggrieved
28 under §54 of the Civil Code may bring an action to enjoin such

1 violation and shall be entitled to recover reasonable attorney's
2 fees.

3 **Count One:**

4 21. The Defendants have not ensured that their facilities
5 comply with Title 24 of the California Code of Regulations, the
6 California Building Code as it applies to physical access for
7 persons with disabilities and have failed to ensure that disabled
8 persons have full and equal access to public accommodations and/or
9 other places that the general public is invited and that disabled
10 persons enjoy the same accommodations, advantages, facilities, and
11 privileges to the facilities identified above.

12 **Count Two:**

13 22. The Defendants have not complied with the Americans with
14 Disabilities Act of 1990.

15 23. Wherefore, Plaintiff prays for relief and damages as
16 hereinafter stated.

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

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

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

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

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

2 27. As the actual and proximate result of Defendants' failure
3 to exercise ordinary care, Plaintiff suffered damages in an amount
4 to be determined by proof.

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

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

10 29. 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 30. In addition to the access violations described above,
14 Defendants' facilities are in violation of California and Federal
15 law in that they do not provide required access for disabled
16 persons.

17 31. Defendants' acts and omissions alleged herein are a
18 violation of both statutory requirements and public policy and,
19 therefore, constitute a violation of Business and Professions Code
20 sections 17200 et seq.

21 32. Plaintiff, on behalf of himself/herself and the general
22 public, seeks injunctive relief requiring Defendants to remedy the
23 disability access violations present at their facilities.

24 33. Wherefore, Plaintiff prays for relief and damages and
25 relief as hereinafter stated.

26 **PRAYER:**

27 Wherefore, Plaintiff prays that this court award damages and
28 provide relief as follows:

1 1. For injunctive relief, compelling Defendants to comply with
2 the Unruh Civil Rights Act, and California's Disabled Person Act,
3 which order will include the removal of barriers and the
4 implementation of reasonable modifications in policies, practice,
5 eligibility criteria and procedures so as to afford full access to
6 the goods, services, facilities, privileges, advantages and
7 accommodations being offered.

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

10 3. Reasonable attorneys' fees, litigation expenses and costs of
11 suit, pursuant to Cal. Civ. Code §§ 52,55, and Cal. Civ. Proc. §
12 1021.5;

13 4. For Punitive Damages pursuant to Cal. Civ. Code Section
14 3294(c)(1);

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

FILED
CIVIL BUSINESS OFFICE 9
CENTRAL DIVISION

2002 OCT 31 3:31

STEPHEN THUNBERG
CLERK OF THE SUPERIOR COURT
COUNTY OF SAN DIEGO

BM

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: Lyle E. Jenkins, 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 791602

- 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): _____ on (date): _____
- (4) Cross-complaint filed by (name): _____ on (date): _____
- (5) Entire action of all parties and all causes of action
- (6) Other: (specify): *

Date:

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.

BM

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 (required by Code of Civil Procedure section 581(f)).

BM

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): OCT 31 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): OCT 31 2002
- b. Attorney or party without attorney not notified. Filing party failed to provide a copy to conform means to return conformed copy

Date: OCT 31 2002

Clerk, by *B. Morgan*

STEPHEN THUNBERG
Clerk of the Superior Court
County of San Diego State of California

B. MORGAN

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REQUEST FOR DISMISSAL

Date of Civil Procedure § 101 et seq.
Cal. Rules of Court, rules 883, 1239