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02 001 New Civil \$199.00

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5110 01 07 GIC792957 07/25/02 08:57
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8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SAN DIEGO

11 CHRIS LANGER,
12
13 Plaintiff,

) Case No.: GIC 792957
)
) **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.**

14 v.

15 TONY M. RABABY, as TRUSTEE of the)
RABABY TRUST AGREEMENT dated)
March 25, 1982; ADELE M. RABABY,)
16 as TRUSTEE of the RABABY TRUST)
AGREEMENT dated March 25, 1982;)
17 MARK RABABY, and DOES 1 through)
10, inclusive)

DEMAND FOR JURY

18 Defendants.
19

20
21 Plaintiff CHRIS LANGER, (hereinafter referred to as
22 "Plaintiff") complains of TONY M. RABABY, as TRUSTEE of the RABABY
23 TRUST AGREEMENT dated March 25, 1982; ADELE M. RABABY, as TRUSTEE of
24 the RABABY TRUST AGREEMENT dated March 25, 1982; MARK RABABY, and
25 DOES 1 through 10, inclusive, (hereinafter referred to as
26 "Defendants") and alleges as follows:

27 **INTRODUCTION:**

28 1. This is a Civil Rights action for discrimination against

ORIGINAL

ACCOUNTING

1 persons with physical disabilities, of which Plaintiff is a member
2 of said class, for failure to remove architectural barriers
3 structural in nature at Defendants' place of business, located at
4 6089 La Flecha, Rancho Sante Fe, California, a place of public
5 accommodation; and for failure to modify practices and or policies
6 in order to accommodate, thereby discriminatorily denying Plaintiff
7 and the class of other similarly situated persons with physical
8 disabilities access to, the full and equal enjoyment of, opportunity
9 to participate in, and benefit from, the goods, facilities,
10 services, and accommodations thereof.

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

14 **PARTIES:**

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

17 4. Defendants, TONY M. RABABY, as TRUSTEE of the RABABY TRUST
18 AGREEMENT dated March 25, 1982; ADELE M. RABABY, as TRUSTEE of the
19 RABABY TRUST AGREEMENT dated March 25, 1982; MARK RABABY, and DOES 1
20 through 10, inclusive (hereinafter alternatively referred to
21 collectively as "Defendants"), are the owners and operators, lessors
22 and/or lessees, or agents of the owners, lessors and/or lessees,
23 and/or alter egos, franchisers and/or franchisees, of the building
24 and/or buildings which constitute a public facility in and of
25 itself, occupied by the above described defendants, and subject to
26 the requirements of federal and state law requiring full and equal
27 access to public accommodations and facilities.

28 5. Plaintiff does not know the true names of Defendants, their

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

11 **PRELIMINARY FACTUAL ALLEGATIONS:**

12 6. Defendants are or were at the time of the incident the
13 owners and operators, lessors and lessees of the public facility,
14 located at 6089 La Flecha, Rancho Sante Fe, California. The public
15 accommodation, its path of travel, parking, restrooms and its other
16 facilities are each a "public accommodation or facility" subject to
17 the requirements of state and federal law. On information and
18 belief, each such facility has, since July 1, 1970, undergone
19 "alterations, structural repairs and additions," each of which has
20 subjected the public accommodations, and each of their facilities to
21 handicapped access requirements per the Americans with Disabilities
22 Act Access Guidelines (ADAAG) and Title 24 of California's Code of
23 Regulations.

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

27 8. During Plaintiff's visit, the subject public accommodation
28 exhibited various violations of the Americans with Disabilities Act

1 Accessibility Guidelines ("ADAAG") and Title 24 of the California
2 Code of Regulations including but not limited to: there was a lack
3 of properly configured disabled parking; a lack of van accessible
4 designated disabled parking; inaccessible public restroom
5 facilities; and inaccessible public paths of travel.

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

23 13. Plaintiff would like to return and use the Defendants'
24 public accommodations but because of Defendants' violations,
25 Plaintiff and other persons with physical disabilities are unable to
26 use public facilities such as those owned and operated by Defendants
27 on a "full and equal" basis unless such facility is in compliance
28 with the provisions of the Americans with Disabilities Act

1 Accessibility Guidelines and state accessibility law as pled herein.
2 Plaintiff has, therefore, been deterred from returning and using the
3 Defendants' public accommodations.

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

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

28 **15.** 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 16. California Civil Code § 52 provides that a party that
4 discriminates against a plaintiff in violation of Civ. Code § 51
5 shall be liable for actual damages, up to three times actual damages
6 but not less than \$4000 for each such offense, and any attorney's
7 fees incurred by the plaintiff.

8 Count One:

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

15 Count Two:

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

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

21 19. 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 and incorporates them herein as if
24 separately repled.

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

28 Count One:

1 21. 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 have failed to ensure that disabled
5 persons have full and equal access to public accommodations and/or
6 other places that the general public is invited and that disabled
7 persons enjoy the same accommodations, advantages, facilities, and
8 privileges to the facilities identified above.

9 **Count Two:**

10 22. The Defendants have not complied with the Americans with
11 Disabilities Act of 1990.

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

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

16 24. 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 25. Defendants had a duty to exercise ordinary care, i.e.,
20 comply with the various accessibility laws and ensure that their
21 property was safely configured.

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

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

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

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

6 29. 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 30. In addition to the access violations described above,
10 Defendants' facilities are in violation of California and Federal
11 law in that they do not provide required access for disabled
12 persons.

13 31. Defendants' acts and omissions alleged herein are a
14 violation of both statutory requirements and public policy and,
15 therefore, constitute a violation of Business and Professions Code
16 sections 17200 et seq.

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

20 33. Wherefore, Plaintiff prays for relief and damages and
21 relief as hereinafter stated.

22 **PRAYER:**

23 Wherefore, Plaintiff prays that this court award damages and
24 provide relief as follows:

25 1. For injunctive relief, compelling Defendants to comply with
26 the Unruh Civil Rights Act, and California's Disabled Person Act,
27 which order will include the removal of barriers and the
28 implementation of reasonable modifications in policies, practice,

1 eligibility criteria and procedures so as to afford full access to
2 the goods, services, facilities, privileges, advantages and
3 accommodations being offered.

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

6 3. Reasonable attorneys' fees, litigation expenses and costs of
7 suit, pursuant to Cal. Civ. Code §§ 52,55, and Cal. Civ. Proc. §
8 1021.5;

9 4. For Punitive Damages pursuant to Cal. Civ. Code Section
10 3294(c)(1);

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

13 Dated: May 29, 2002

CENTER FOR DISABILITY ACCESS, LLP

14
15 By: 

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

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19 **DEMAND FOR JURY TRIAL**

20 Plaintiff hereby demands a jury for all claims for which a jury
21 is permitted.

22
23 Dated: May 29, 2002

CENTER FOR DISABILITY ACCESS, LLP

24
25 By: 

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

1 JEAN DETTMANN FISHER (SBN 163873)
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3 San Diego, California 92101
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F I L E D
STEPHEN THUNBERG
Clerk of the Superior Court

SEP 05 2002

By: L. JONES, Deputy

5 Attorneys for Defendants
TONY M. RABABY AND ADELE M. RABABY,
6 as individuals and trustees of The Rababy Trust Agreement

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SAN DIEGO

11 CHRIS LANGER,

12 Plaintiff,

13 v.

14 TONY M. RABABY, as TRUSTEE of the)
RABABY TRUST AGREEMENT dated March)
15 25, 1982; ADELE M. RABABY, as TRUSTEE)
of the RABABY TRUST AGREEMENT dated)
16 March 25, 1982; MARK RABABY, and DOES)
1 through 10, inclusive,)

17 Defendants.)
18

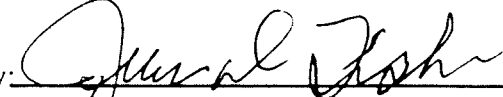
CASE NO. GIC 792957

DEFENDANTS TONY RABABY AND
ADELE RABABY'S REMOVAL

19 TO PLAINTIFF AND HIS ATTORNEY OF RECORD:

20 PLEASE TAKE NOTICE THAT a Notice of Removal of this action was filed in the
21 United States District Court for the Southern District of California. A copy of said Notice of
22 Removal is attached to this Notice and is served and filed herewith.

23 DATED: September 5, 2002 SELMAN • BREITMAN

24 By: 
25 JEAN DETTMANN FISHER
26 ROBERT A. STELLER
Attorneys for Defendants
27 TONY M. RABABY AND ADELE M. RABABY,
as individuals and trustees of The Rababy Trust
28 Agreement

1 ROBERT A. STELLER
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3 San Diego, California 92101
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FILED
02 SEP -5 PM 12:44
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY: DEPUTY

5 Attorneys for Defendants
MARK RABABY, TONY M. RABABY AND ADELE M.
6 RABABY, as trustees of The Rababy Trust Agreement

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

11 CHRIS LANGER,
12 Plaintiff,
13
14 v.
15 TONY M. RABABY, as TRUSTEE of the
16 RABABY TRUST AGREEMENT dated March
17 25, 1982; ADELE M. RABABY, as TRUSTEE
18 of the RABABY TRUST AGREEMENT dated
19 March 25, 1982; MARK RABABY, and DOES
20 1 through 10, inclusive,
21 Defendants:

CASE NO. **02 CV 01759JM (RBB)**

Removal from the Superior Court of San
Diego County, California
Case No. GIC 792957

**NOTICE OF REMOVAL OF ACTION
UNDER 28 U.S.C. 1441(b)
(Federal Question)**

21 TO THE CLERK OF THE ABOVE-ENTITLED COURT AND ALL COUNSEL:
22 PLEASE TAKE NOTICE that defendants TONY M. RABABY AND ADELE M. RABABY
23 (hereafter "defendants") hereby remove to this Court the state court action described below.

24 Pursuant to 28 U.S.C. section 1441(b), Defendants Tony M. Rababy and Adele M. Rababy
25 ("defendants") hereby give notice of their removal of the civil action designated as Langer v.
26 Rababy, et al., Superior Court of San Diego County, California, Case No. GIC 792957 (the "Civil
27 Action"). A copy of the complaint is attached hereto as Exhibit "A".

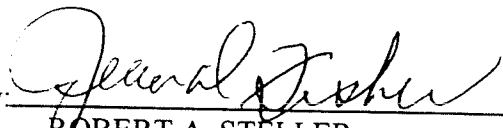
28 ///

1 1. On or about July 22, 2002, an action was commenced in the Superior Court of the
2 State of California in and for the County of San Diego, entitled *CHRIS LANGER, v. TONY M.*
3 *RABABY, as TRUSTEE of the RABABY TRUST AGREEMENT dated March 25, 1982; ADELE M.*
4 *RABABY, as TRUSTEE of the RABABY TRUST AGREEMENT dated March 25, 1982; MARK*
5 *RABABY, and DOES 1 through 10, inclusive*, as case number GIC 792957.

6 2. The first date upon which a defendant received a copy of said complaint was August
7 6, 2002. A copy of the Summons is also attached as Exhibit "B."

8 3. This action is a civil action of which this Court has original jurisdiction under 42
9 U.S.C. §12101, et. seq and removal is appropriate based on federal questions and 28 U.S.C.
10 §1441(b).

11 DATED: September 5, 2002 SELMAN • BREITMAN

12
13 By: 

14 ROBERT A. STELLER
15 JEAN D. FISHER
16 Attorneys for Defendants
17 MARK RABABY, TONY M. RABABY AND ADELE
18 M. RABABY, as trustees of The Rababy Trust
19 Agreement
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