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CIVIL DIVISION OFFICE 11
SAN DIEGO COUNTY

2002 AUG 16 P 3 20

NEWBERG
SUPERIOR COURT
SAN DIEGO COUNTY, CA

PL

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 \$199.00

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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,) Case No.: **GIC794500**
13)
14 Plaintiff,) **COMPLAINT FOR DAMAGES AND**
15 v.) **INJUNCTIVE RELIEF FOR VIOLATIONS**
16 HATTIE M. DAVISSON as TRUSTEE of) **OF: UNRUH CIVIL RIGHTS ACT;**
the HATTIE M. DAVISSON TRUST) **NEGLIGENCE; CALIFORNIA'S UNFAIR**
17 AGREEMENT DATED July 25, 2000;) **BUSINESS PRACTICE ACT.**
PIERRE AOUN, and DOES 1 through) **DEMAND FOR JURY**
18 10, inclusive)
19 Defendants.)

20
21 Plaintiff CHRIS LANGER, (hereinafter referred to as
22 "Plaintiff") complains of HATTIE M. DAVISSON as TRUSTEE of the
23 HATTIE M. DAVISSON TRUST AGREEMENT DATED July 25, 2000; PIERRE AOUN,
24 and DOES 1 through 10, inclusive, (hereinafter referred to as
25 "Defendants") and alleges as follows:

26 **INTRODUCTION:**

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

ORIGINAL
ACCOUNTING

1 of said class, for failure to remove architectural barriers
2 structural in nature at Defendants' place of business, located at
3 11510 Woodside Ave., Santee, 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, HATTIE M. DAVISSON as TRUSTEE of the HATTIE M.
17 DAVISSON TRUST AGREEMENT DATED July 25, 2000; PIERRE AOUN, and DOES
18 1 through 10, inclusive (hereinafter alternatively referred to
19 collectively as "Defendants"), are the owners and operators, lessors
20 and/or lessees, or agents of the owners, lessors and/or lessees,
21 and/or alter egos, franchisers and/or franchisees, of the building
22 and/or buildings which constitute a public facility in and of
23 itself, occupied by the above described defendants, and subject to
24 the requirements of federal and state law requiring full and equal
25 access to public 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 11510 Woodside Ave., Santee, California. The public
13 accommodation, its path of travel, parking, restrooms and its other
14 facilities are each a "public accommodation or facility" subject to
15 the requirements of state and federal law. On information and
16 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: a lack of properly

1 configured disabled parking; and a lack of van accessible designated
2 disabled parking.

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

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

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

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

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

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

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

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

28 16. California Civil Code § 52 provides that a party that

1 discriminates against a plaintiff in violation of Civ. Code § 51
2 shall be liable for actual damages, up to three times actual damages
3 but not less than \$4000 for each such offense, and any attorney's
4 fees incurred by the plaintiff.

5 Count One:

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

12 Count Two:

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

15 **II. SECOND CAUSE OF ACTION: NEGLIGENCE**

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

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

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

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

27 22. As the actual and proximate result of Defendants' failure
28

1 to exercise ordinary care, Plaintiff suffered damages in an amount
2 to be determined by proof.

3 23. Wherefore, Plaintiff prays for relief and damages and
4 relief as hereinafter stated.

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

8 24. 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 25. In addition to the access violations described above,
12 Defendants' facilities are in violation of California and Federal
13 law in that they do not provide required access for disabled
14 persons.

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

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

22 28. Wherefore, Plaintiff prays for relief and damages and
23 relief as hereinafter stated.

24 **PRAYER:**

25 Wherefore, Plaintiff prays that this court award damages and
26 provide relief as follows:

27 1. For injunctive relief, compelling Defendants to comply with
28 the Unruh Civil Rights Act.

1 2. General and Special damages in an amount to be determined by
2 proof;

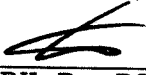
3 3. Reasonable attorneys' fees, litigation expenses and costs of
4 suit, pursuant to Cal. Civ. Code §§ 52, and Cal. Civ. Proc. §
5 1021.5;

6 4. For Punitive Damages pursuant to Cal. Civ. Code Section
7 3294(c)(1);

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

10 Dated: August 14, 2002

CENTER FOR DISABILITY ACCESS, LLP


11
12 By: 
13 MARK D. POTTER
14 RUSSELL C. HANDY
15 JAMES R. BOYD
16 Attorneys for Plaintiff

17 **DEMAND FOR JURY TRIAL**

18 Plaintiff hereby demands a jury for all claims for which a jury
19 is permitted.

20 Dated: August 14, 2002

CENTER FOR DISABILITY ACCESS, LLP

21
22 By: 
23 MARK D. POTTER
24 RUSSELL C. HANDY
25 JAMES R. BOYD
26 Attorneys for Plaintiff

1 Robert F. Wiggins, Bar No. 36590
2 Attorney at Law
3 11510 Woodside Avenue, Suite L
4 Santee, California 92071
5 Telephone: (619) 562-0702
6
7 Attorney for Defendant

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

11 CHRIS LANGER,) Case No. GIC 794500
12 Plaintiff,)
13 vs.) ANSWER TO UNVERIFIED
14 HATTIE M. DAVISSON as TRUSTEE of) COMPLAINT
15 the HATTIE M. DAVISSON TRUST)
16 AGREEMENT dated July 25, 2000;)
17 PIERRE AOUN, and DOES 1 through 10,)
Defendants.) Complaint filed: August 16, 2002
Trial Date: Not set

18
19 Defendants, HATTIE M. DAVISSON^① as TRUSTEE OF THE HATTIE M. DAVISSON
20 TRUST AGREEMENT dated July 25, 2000, and PIERRE AUON^②, answer the unverified
21 complaint of CHRIS LANGER as follows:

22 Pursuant to Code of Civil Procedure Section 431.30, said Defendants generally deny each
23 and every cause of action and allegation of the complaint.

24 **FIRST AFFIRMATIVE DEFENSE**

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26 I. The complaint and each cause of action thereof fails to state facts sufficient to
27 constitute a cause of action against these answering Defendants.
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SECOND AFFIRMATIVE DEFENSE

2. These Defendants are informed and believe, and thereon allege, that the complaint herein is barred by the doctrine of estoppel.

THIRD AFFIRMATIVE DEFENSE

3. These Defendants are informed and believe, and thereon allege, that the complaint herein is barred by the doctrine of unclean hands.

FOURTH AFFIRMATIVE DEFENSE

4. These Defendants are informed and believe, and thereon allege, that as a result of the acts of Plaintiff, Defendants were prevented from performing the obligations of which Plaintiff complains in his complaint, as a result of which each of Plaintiff's causes of action is barred, in whole or in part, by Plaintiff's express prevention of performance.

FIFTH AFFIRMATIVE DEFENSE

5. These Defendants are informed and believe, and thereon allege, that the complaint herein is barred by the doctrine of laches.

SIXTH AFFIRMATIVE DEFENSE

6. These Defendants are informed and believe, and thereon allege, that Plaintiff's claims are barred by the Statute of Frauds.

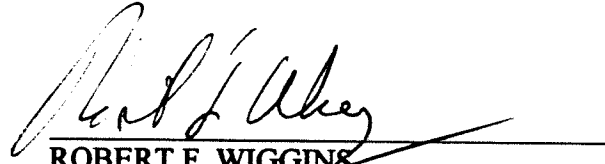
WHEREFORE, these answering Defendants pray:

1. That Plaintiff take nothing by his complaint;
2. For costs incurred;

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3. For reasonable attorney's fees;
4. For such other and further relief as the court deems just and proper.

Dated: September 27, 2002


ROBERT F. WIGGINS
Attorney for Defendants

DECLARATION OF SERVICE

F I L E D
STEPHEN THURBERG
Clerk of the Superior Court

OCT 01 2002

By: S. L. FRANKLIN, Deputy

CASE NAME: LANGER v. DAVISSON, et al

SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF SAN DIEGO

CASE NO: GIC 794500

I, **THE UNDERSIGNED**, am employed in the county of San Diego, State of California. I am over the age of 18 and not a party to the within action; my address is 11510 Woodside Avenue, Suite L, Santee, California 92071.

DOCUMENT (S) AND PERSON (S) SERVED:

On September 30, 2002, I served the following document described as **ANSWER TO UNVERIFIED COMPLAINT**, by placing a true copy in an envelope addressed as follows:

Mark D. Potter/Russell C. Handy
Center for Disability Access, LLP
P. O. Box 34606
San Diego, CA 92163-4606

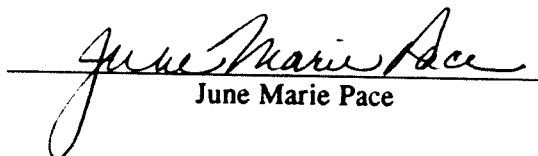
BY MAIL - I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Santee, California in the ordinary course of business. The envelope was sealed and placed for collection and mailing on this date following our ordinary practices. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more that one-day after date of deposit for mailing in affidavit.

BY PERSONAL SERVICE - I caused the foregoing document to be personally delivered to the foregoing person:

BY FAX - I personally sent to the addressee's telecopy number a true copy of the above-described documents. Thereafter I sent a true copy in a sealed envelope addressed and mailed as indicated above.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed on September 30, 2002, at Santee, California.


June Marie Pace

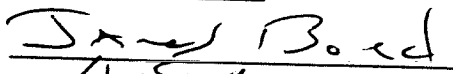

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

CALENDAR NO. 15

NUMBER GIC794500	COMPLAINT DATE 08/16/02	HEARING DATE 12/20/02	HEARING TIME 08:30AM	DEPT 60	COURT USE ONLY F I L E D Clerk of the Superior Court DEC 20 2002
JUDGE/COMMISSIONER HON. WILLIAM C. PATE			CLERK DIANE HOWARD		
REPORTER NOT REPORTED P.O. BOX 120128, SAN DIEGO, CA 92112-0128					CSR #
PLAINTIFF/PETITIONER CHRIS LANGER			DEFENDANT/RESPONDENT By: D. HOWARD, Deputy HATTIE M DAVISSON		

The above matter came on for hearing with the below appearances for:

EARLY CASE MANAGEMENT CONFERENCE

ATTORNEY OF RECORD	PHONE	APPEARANCE BY
MARK D POTTER (P)	619-291-7593	
ROBERT F. WIGGINS (D)	619-562-0702	
(add'l signatures - use attached sheet)		

PURSUANT TO THE STIPULATION SET FORTH BELOW, no procedure or deadline set forth herein may be modified, extended or avoided by stipulation or agreement of the parties unless approved by the court in advance of the date sought to be altered. Counsel acknowledge and memorialize the stipulation set forth below by affixing their signatures hereto.

IT IS STIPULATED BY THE PARTIES AND ORDERED AS FOLLOWS:

CASE DEEMED AT ISSUE AND PLACED ON THE CIVIL ACTIVE LIST. Pursuant to stipulation of the parties, no new parties may be added without leave of court, and all unserved, non-appearing and fictitiously named parties are dismissed.

JUDICIAL ARBITRATION:

NON-BINDING NO LIMIT ARBITRATION.

ALL PENDING LAW AND MOTION MATTERS, NOT INVOLVING DISCOVERY, ARE VACATED. You MUST seek the permission of the judge who ordered the case into judicial arbitration to file any motion while the case is in arbitration.

PURSUANT TO THE STIPULATION OF THE PARTIES:

APPOINTMENT of _____ or _____ (alternate) ARBITRATOR.
Estimated length _____ day(s).

BINDING ARBITRATION. The parties stipulate to binding arbitration. A stipulation with client's signature is to be filed with the Arbitration Department and the arbitrator prior to the arbitration hearing.

EXCHANGE OF EXPERTS. The parties stipulate to dispense with the demand requirements of CCP 2034, and agree to exchange experts in accordance with Local Rules, Div. II, Rule 9.3. (All other provisions of CCP 2034 apply).

MEDIATION:

Complaint was filed before 02/28/2000 and is eligible to participate in the court's mediation pilot program per CCP 1775.8 as follows:

Amount in controversy is less than \$50,000, mediator is on the court list and will be paid by the COURT.

Amount in controversy is less than \$50,000, mediator not on the court list and will be paid by the PARTIES.

Parties stipulate amount in controversy is MORE than \$50,000 and PARTIES will pay mediator.

Complaint was filed after 02/27/2000 and is eligible to participate in the court's new Pilot Mediation Program per CCP 1730.

Mediator is on the court list and will be paid by the COURT.

Mediator is not on the court list and will be paid by the PARTIES.

THE PARTIES STIPULATE TO AMCS or EHLERS/FREDRICKSON (alternate) MEDIATOR.

Case is ordered to mediation for 60 days.

Other orders:

TRIAL SETTING:
 TRIAL DATE 06/13/03 at 09:00AM in Dept. WCP
 ESTIMATED TRIAL LENGTH: _____ day(s) JURY DEMAND: Plaintiff _____ Defendant _____ Waived _____
 TRIAL READINESS CONFERENCE : 05/23/03 at 09:30AM in Dept. WCP
 SPECIAL SETTLEMENT CONFERENCE: _____ at _____ in Dept. _____

PURSUANT TO THE STIPULATION OF THE PARTIES:
 EXCHANGE OF EXPERTS:
 The parties stipulate to dispense with the demand requirements of CCP 2034, and agree to exchange experts as follows:
 1st exchange: 03/26/03 2nd exchange: 04/16/03
 (All other provisions of CCP 2034 apply).

ALL MOTIONS AND DISCOVERY, including but not limited to experts, judgment on the pleadings, leave to amend and bifurcate must be completed and jury fees posted by: 05/16/03

TRANSFER TO ANOTHER COURT OR DISTRICT
 Transfer to _____ Court. Appeal period waived.
 Plaintiff/Defendant is ordered to pay the fees and costs of transfer by _____
 Case is reclassified as limited / general jurisdiction.
 OSC why case should be deemed limited / general jurisdiction set on _____

IN ADDITION TO THE ABOVE STIPULATION, IT IS FURTHER ORDERED:

CONSOLIDATION/SEVERANCE/BIFURCATION
 The case is consolidated with Case Nos. _____ . Lead case: _____
 This case is ordered severed/bifurcated as to _____

FAILURE TO APPEAR
 The Court sets an Order to Show Cause for failing to appear as noticed by the Court for today's proceeding.
 The Order to Show Cause is set for _____ at _____ in Dept. _____

OSC WHY CASE SHOULD NOT BE DISMISSED
 The Order to Show Cause is set for _____ at _____ in Dept. _____
 CMC CONTINUED TO: _____ at _____ in Dept. _____

OTHER: _____

IT IS SO ORDERED:

Dated: 12/20/02

William C. Pate

JUDGE/COMMISSIONER OF THE SUPERIOR COURT