

001/199

09/10/02 14:39

2002-10-31 3:31

✓

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,

9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA 5601 01 03 GIC795555 09/10/02 14:39
82 001 NEW YORK \$199.00

10 IN AND FOR THE COUNTY OF SAN DIEGO

12 CHRIS LANGER,

) Case No. **GIC 795555**

13 Plaintiff,

) **COMPLAINT FOR DAMAGES AND**
) **INJUNCTIVE RELIEF FOR VIOLATIONS**
) **OF: UNRUH CIVIL RIGHTS ACT;**
) **NEGLIGENCE; CALIFORNIA'S UNFAIR**
) **BUSINESS PRACTICE ACT.**

14 v.

15 JALIL I. ELIAS as TRUSTEE of the)
16 ELIAS FAMILY TRUST dated 10-15-)
17 96; JULIET ELIAS as TRUSTEE of)
18 the ELIAS FAMILY TRUST dated 10-)
15-96; WILLIAM JABORO, and DOES 1)
through 10, inclusive)

) **DEMAND FOR JURY**

19 Defendants.)

21 Plaintiff CHRIS LANGER, (hereinafter referred to as
22 "Plaintiff") complains of JALIL I. ELIAS -as TRUSTEE of the ELIAS
23 FAMILY TRUST dated 10-15-96; JULIET ELIAS as TRUSTEE of the ELIAS
24 FAMILY TRUST dated 10-15-96; WILLIAM JABORO, and DOES 1 through 10,
25 inclusive, (hereinafter referred to as "Defendants") and alleges as
26 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 8663 Fanita Drive, Santee 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, JALIL I. ELIAS as TRUSTEE of the ELIAS FAMILY
18 TRUST dated 10-15-96; JULIET ELIAS as TRUSTEE of the ELIAS FAMILY
19 TRUST dated 10-15-96; WILLIAM JABORO, and DOES 1 through 10,
20 inclusive (hereinafter alternatively referred to collectively as
21 "Defendants"), are the owners and operators, lessors and/or lessees,
22 or agents of the owners, lessors and/or lessees, and/or alter egos,
23 franchisers and/or franchisees, of the building and/or buildings
24 which constitute a public facility in and of itself, occupied by the
25 above described defendants, and subject to the requirements of
26 federal and state law requiring full and equal access to public
27 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 8663 Fanita Drive, Santee 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; and a lack of van
4 accessible designated disabled parking.

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

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

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

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

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

1 Plaintiff has, therefore, been deterred from returning and using the
2 Defendants' public accommodations.

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

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

28 15. Plaintiff repleads and incorporates by reference, as if
fully set forth again herein, the allegations contained in all prior

1 paragraphs of this complaint.

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

7 **Count One:**

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

14 **Count Two:**

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

17 **II. SECOND CAUSE OF ACTION: NEGLIGENCE**
18 (On behalf of the Plaintiff and Against All Defendants)

19 19. 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 20. 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 21. 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
28

1 promote safe and effective use by persons with wheelchairs.

2 22. 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 23. Wherefore, Plaintiff prays for relief and damages and
6 relief as hereinafter stated.

7 **III. THIRD 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 24. 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 25. 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 26. 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 27. 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 28. 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:

CIVIL DIVISION OFFICE 11

1 John A. James, Esq. (CBN #200569)
2 1233 Camino Del Rio South, Suite 275
3 San Diego, CA 92108
4 (619) 858-1616

2002 DEC 23 2 12:47 40/214⁰⁰

CLERK OF COURT
SAN DIEGO COUNTY, CA

9966 01 02 GIC795555 12/23/02 14:24
02 040 1st Paper Fee \$214.20

5 SUPERIOR COURT OF THE STATE OF CALIFORNIA
6 COUNTY OF SAN DIEGO - CENTRAL

7 Chris Langer)
8)
9 Plaintiff,)
10 vs.)
11 Jalil I. Elias as Trustee of the Elias Family)
12 Trust dated 10-15-96; Juliet Elias as)
13 Trustee of the Elias Family Trust dated)
14 Does 1 through 10, inclusive)
15 Defendants)

CASE No. GIC 795555
ANSWER TO COMPLAINT
FOR DAMAGES AND
INJUNCTIVE RELIEF
Assigned to:
Judge J. Richard Haden
Department: 72

16 Defendant, William Jaboro , answers the unverified Complaint and specifically, all Causes
17 of action, served by Plaintiff, Chris Langer, as follows:

18
19 **GENERAL DENIAL**

20 Under the provisions of Code of Civil Procedure Section 430.30(d), this answering
21 Defendant denies generally and specifically each and every allegation contained in said Complaint,
22 and further denies that Plaintiff, is entitled to any damages in the amount alleged, or in any
23 amount, by reason of any act, action, omission or breach of duty on the part of this answering
24 Defendant or on the part of any agent, representative, or employee of this answering Defendant.

25
26 **FIRST AFFIRMATIVE DEFENSE**

27 AS A FIRST, SEPARATE AND AFFIRMATIVE DEFENSE, this Defendant alleges that
28 the Complaint, and each purported cause of action therein, fails to state facts sufficient to

1 GORIA & WEBER
2 Charles F. Goria, Esq., Bar No. 68944
3 1761 Hotel Circle South, Suite 200
4 San Diego, CA 92108
5 (619) 692-3555

6 Attorneys for
7 Defendant Juliet Elias, Trustee

202 2007 - 1
FILED
CLERK OF SUPERIOR COURT
SAN DIEGO, CALIFORNIA

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO, CENTRAL DIVISION

11 CHRIS LANGER,)
12)
13)
14 V.)
15)
16 JALIL I. ELIAS as TRUSTEE of the)
17 ELIAS FAMILY TRUST dated 10-15-96;)
18 JULIET ELIAS as TRUSTEE of the)
19 ELIAS FAMILY TRUST dated 10-15-96;)
20 WILLIAM JABORO, and DOES 1)
21 through 10, inclusive)
22)
23)
24)
25)
26)
27)
28)
Defendants.

Case No. GIC795555

ANSWER OF DEFENDANT
JULIET ELIAS TRUSTEE
TO UNVERIFIED COMPLAINT
FOR DAMAGES AND
INJUNCTIVE RELIEF

COMES NOW Defendant JULIET ELIAS as Trustee of the Elias Family Trust dated 10-15-96, and severing herself from her Co-Defendants, answers the unverified Complaint for Damages and Injunctive Relief on file herein by denying, pursuant to Code of Civil Procedure Section 431.30(d), generally and specifically each and all allegations thereof.

///
///