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02 001 New Civil

10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 IN AND FOR THE COUNTY OF SAN DIEGO

GIC 801116

12 CHRIS LANGER,

) Case No.:

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 MELVIN B. KIRSNER, as TRUSTEE of)
16 the MELVIN B. KIRSNER TRUST,)
dated 4-12-91; KRAIG KAPLAN)
17 KIRSNER as TRUSTEE of the MELVIN)
18 B. KIRSNER TRUST, dated 4-12-91;)
JOSE TELLO, and DOES 1 through)
19 10, inclusive)

DEMAND FOR JURY

20 Defendants.)

21 Plaintiff CHRIS LANGER, (hereinafter referred to as
22 "Plaintiff") complains of MELVIN B. KIRSNER, as TRUSTEE of the
23 MELVIN B. KIRSNER TRUST, dated 4-12-91; KRAIG KAPLAN KIRSNER as
24 TRUSTEE of the MELVIN B. KIRSNER TRUST, dated 4-12-91; JOSE TELLO,
25 and DOES 1 through 10, inclusive, (hereinafter referred to as
26 "Defendants") and alleges as follows:
27

28 INTRODUCTION:

RECEIVED ORIGINAL

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 65
5 13TH Street, San Diego, California, a place of public accommodation;
6 and for failure to modify practices and or policies in order to
7 accommodate, thereby discriminatorily denying Plaintiff and the
8 class of other similarly situated persons with physical disabilities
9 access to, the full and equal enjoyment of, opportunity to
10 participate in, and benefit from, the goods, facilities, services,
11 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, MELVIN B. KIRSNER, as TRUSTEE of the MELVIN B.
19 KIRSNER TRUST, dated 4-12-91; KRAIG KAPLAN KIRSNER as TRUSTEE of the
20 MELVIN B. KIRSNER TRUST, dated 4-12-91; JOSE TELLO, and DOES 1
21 through 10, inclusive (hereinafter alternatively referred to
22 collectively as "Defendants"), are the owners and operators, lessors
23 and/or lessees, or agents of the owners, lessors and/or lessees,
24 and/or alter egos, franchisers and/or franchisees, of the building
25 and/or buildings which constitute a public facility in and of
26 itself, occupied by the above described defendants, and subject to
27 the requirements of federal and state law requiring full and equal
28 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 65 13TH Street, 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; a lack of van accessible
5 designated disabled parking; and inaccessible public paths of
6 travel.

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

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

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

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

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

1 with the provisions of the Americans with Disabilities Act
2 Accessibility Guidelines and state accessibility law as pled herein.
3 Plaintiff has, therefore, been deterred from returning and using the
4 Defendants' public accommodations.

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

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

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

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

9 Count One:

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

16 Count Two:

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

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

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.

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

27 21. Defendants failed to exercise ordinary care in that they
28

1 failed to ensure that their facilities complied with the
2 accessibility guidelines or that their facilities were configured to
3 promote safe and effective use by persons with wheelchairs.

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

7 23. Wherefore, Plaintiff prays for relief and damages and
8 relief as hereinafter stated.

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

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

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

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

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

26 28. Wherefore, Plaintiff prays for relief and damages and
27 relief as hereinafter stated.

28 **PRAYER:**

1 Wherefore, Plaintiff prays that this court award damages and
2 provide relief as follows:

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

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

7 3. Reasonable attorneys' fees, litigation expenses and costs of
8 suit, pursuant to Cal. Civ. Code §§ 52, and Cal. Civ. Proc. §
9 1021.5;

10 4. For Punitive Damages pursuant to Cal. Civ. Code Section
11 3294(c)(1);

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

14 Dated: November 20, 2002

CENTER FOR DISABILITY ACCESS, LLP

15
16
17 By: _____

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

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20 **DEMAND FOR JURY TRIAL**

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

23
24 Dated: November 20, 2002

CENTER FOR DISABILITY ACCESS, LLP

25
26 By: _____

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

040/224.20

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CENTRAL DIVISION

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CLERK OF SUPERIOR COURT
SAN DIEGO COUNTY, CA

BM

5 Attorney for Defendant
6 JOSE TELLO

7 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 IN AND FOR THE COUNTY OF SAN DIEGO

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9	CHRIS LANGER,)	CASE NO. GIC 801116
10)	
11	Plaintiff,)	ANSWER TO COMPLAINT
12	vs.)	OF DEFENDANT
13)	JOSE TELLO
14	MELVIN B. KIRSNER, as Trustee)	
15	of the MELVIN B. KIRSNER TRUST)	
16	dated 4/12/91; KRAIG KAPLAN)	
17	KIRSNER, as Trustee of the MELVIN)	
18	B. KIRSNER TRUST dated 4/12/91;)	
19	JOSE TELLO, and Does 1 through)	Judge E. Mac Amos
20	13, inclusive,)	Depart. 70
21)	Complaint filed 12/03/02
22	Defendants.)	

20 COMES NOW, defendant JOSE TELLO denying and alleging as follows:

21 Pursuant to California Code of Civil Procedure, §431.30, this answering
22 defendant denies each and every allegation of each and every cause of action of
23 the unverified complaint and further denies that plaintiff has been damaged in
24 the manner or sums alleged, or any lesser sums, or at all.

25 **SEPARATE AFFIRMATIVE DEFENSES**

26 **FIRST AFFIRMATIVE DEFENSE**

27 As and for a separate, distinct and affirmative defense to the complaint,
28 this answering defendant alleges: That plaintiff's complaint and each purported

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Attorney for Defendants
MELVIN B. KIRSNER, as Trustee of
the MELVIN B. KIRSNER TRUST dated 4/12/91;
KRAIG KAPLAN KIRSNER, as Trustee of the
MELVIN B. KIRSNER TRUST dated 4/12/91

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
CENTRAL DIVISION
IN AND FOR THE COUNTY OF SAN DIEGO

CHRIS LANGER,)	CASE NO. GIC 801116
)	
Plaintiff,)	ANSWER TO COMPLAINT
)	
vs.)	
)	
MELVIN B. KIRSNER, as Trustee)	
of the MELVIN B. KIRSNER TRUST)	
dated 4/12/91; KRAIG KAPLAN)	
KIRSNER, as Trustee of the MELVIN)	
B. KIRSNER TRUST dated 4/12/91;)	
JOSE TELLO, and Does 1 through)	Judge E. Mac Amos
13, inclusive,)	Depart. 70
)	Complaint filed 12/03/02
Defendants.)	

COME NOW, defendants, MELVIN B. KIRSNER, as Trustee of the MELVIN
B. KIRSNER TRUST dated 4/12/91; and KRAIG KAPLAN KIRSNER, as Trustee
of the MELVIN B. KIRSNER TRUST dated 4/12/91, denying and alleging as
follows:

Pursuant to California Code of Civil Procedure, §431.30, these answering
defendants deny each and every allegation of each and every cause of action of