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02 076 Miscellaneous \$.50

9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 IN AND FOR THE COUNTY OF SAN DIEGO

GIC 802594

12 CHRIS LANGER,) Case No.:
13)
14 Plaintiff,) **COMPLAINT FOR DAMAGES AND**
15 v.) **INJUNCTIVE RELIEF FOR VIOLATIONS**
16 JAMES F. FAZIO as TRUSTEE of the) **OF: UNRUH CIVIL RIGHTS ACT;**
17 JAMES F. FAZIO TRUST, dated 11-) **NEGLIGENCE; CALIFORNIA'S UNFAIR**
18 20-2001; BOBBYE RUTH DRAHEIM, and) **BUSINESS PRACTICE ACT.**
19 DOES 1 through 10, inclusive) **DEMAND FOR JURY**
20 Defendants.)

20 Plaintiff CHRIS LANGER, (hereinafter referred to as
21 "Plaintiff") complains of JAMES F. FAZIO as TRUSTEE of the JAMES F.
22 FAZIO TRUST, dated 11-20-2001; BOBBYE RUTH DRAHEIM, and DOES 1
23 through 10, inclusive, (hereinafter referred to as "Defendants") and
24 alleges as follows:

25 **INTRODUCTION:**

26 1. This is a Civil Rights action for discrimination against
27 persons with physical disabilities, of which Plaintiff is a member
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1 of said class, for failure to remove architectural barriers
2 structural in nature at Defendants' place of business, located at
3 6781 El Cajon Blvd., San Diego, 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, JAMES F. FAZIO as TRUSTEE of the JAMES F. FAZIO
17 TRUST, dated 11-20-2001; BOBBYE RUTH DRAHEIM, and DOES 1 through 10,
18 inclusive (hereinafter alternatively referred to collectively as
19 "Defendants"), are the owners and operators, lessors and/or lessees,
20 or agents of the owners, lessors and/or lessees, and/or alter egos,
21 franchisers and/or franchisees, of the building and/or buildings
22 which constitute a public facility in and of itself, occupied by the
23 above described defendants, and subject to the requirements of
24 federal and state law requiring full and equal access to public
25 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 6781 El Cajon Blvd., San Diego, 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: the public

1 restroom facilities were inaccessible to persons in wheel chairs.

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

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

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

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

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

28 14. Plaintiff is informed and believes and therefore alleges

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

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

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

27 16. California Civil Code § 52 provides that a party that
28 discriminates against a plaintiff in violation of Civ. Code § 51

1 shall be liable for actual damages, up to three times actual damages
2 but not less than \$4000 for each such offense, and any attorney's
3 fees incurred by the plaintiff.

4 **Count One:**

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

11 **Count Two:**

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

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

16 19. 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 20. 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 21. 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 22. As the actual and proximate result of Defendants' failure
27 to exercise ordinary care, Plaintiff suffered damages in an amount
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1 to be determined by proof.

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

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

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

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

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

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

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

23 **PRAYER:**

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

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

28 2. General and Special damages in an amount to be determined by

1 proof;

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

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

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

9 Dated: December 18, 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: December 18, 2002

CENTER FOR DISABILITY ACCESS, LLP

21 By: 

22 MARK D. POTTER
23 RUSSELL C. HANDY
24 JAMES R. BOYD
25 Attorneys for Plaintiff
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9 of the James F. Fazio Trust, dated 11-20-2001

JFW

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SAN DIEGO

12 CHRIS LANGER,

13 Plaintiff,

14 vs.

15 JAMES F. FAZIO as TRUSTEE of the
16 JAMES F. FAZIO TRUST, dated 11-20-
17 2001; BOBBYE RUTH DRAHEIM, and
18 DOES 1 through 10, inclusive,

19 Defendants.

CASE NO. GIC 802594

**ANSWER OF DEFENDANT JAMES F.
FAZIO AS TRUSTEE OF THE JAMES F.
FAZIO TRUST, DATED 11-20-2001, TO
THE UNVERIFIED COMPLAINT OF
PLAINTIFF CHRIS LANGER**

Discovery Cut-Off: Not Set
Motion Cut-Off: Not Set
MSC Date: Not Set
Trial Date: Not Set

JUDGE: Hon. S. Charles Wickersham
DEPT.: 73

COMPLAINT FILED: 12/26/2002

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