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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

CHRIS LANGER,

Plaintiff,

v.

INSURED INCOME PROPERTIES 1984; WAYNE F. TOWNSHEND, and DOES 1 through 10, inclusive

Defendants.

Case No.: GIC 802888

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

**DEMAND FOR JURY**

Plaintiff CHRIS LANGER, (hereinafter referred to as "Plaintiff") complains of INSURED INCOME PROPERTIES 1984; WAYNE F. TOWNSHEND, and DOES 1 through 10, inclusive, (hereinafter referred to as "Defendants") and alleges as follows:

**INTRODUCTION:**

**1.** This is a Civil Rights action for discrimination against persons with physical disabilities, of which Plaintiff is a member of said class, for failure to remove architectural barriers

ORIGINAL

structural in nature at Defendants' place of business, located at 7170 Linda Vista Road, San Diego, California, a place of public accommodation; and for failure to modify practices and or policies in order to accommodate, thereby discriminatorily denying Plaintiff and the class of other similarly situated persons with physical disabilities access to, the full and equal enjoyment of, opportunity to participate in, and benefit from, the goods, facilities, services, and accommodations thereof.

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

**PARTIES:**

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

**4.** Defendants, INSURED INCOME PROPERTIES 1984; WAYNE F. TOWNSHEND, and DOES 1 through 10, inclusive (hereinafter alternatively referred to collectively as "Defendants"), are the owners and operators, lessors and/or lessees, or agents of the owners, lessors and/or lessees, and/or alter egos, franchisers and/or franchisees, of the building and/or buildings which constitute a public facility in and of itself, occupied by the above described defendants, and subject to the requirements of federal and state law requiring full and equal access to public accommodations and facilities.

**5.** Plaintiff does not know the true names of Defendants, their business capacities, their ownership connection to the property and business, or their relative responsibilities in causing the access violations herein complained of, and alleges a joint venture and

common enterprise by all such Defendants. Plaintiff is informed and believes that each of the Defendants herein, including DOES 1 through 10, inclusive, is responsible in some capacity for the events herein alleged, or is a necessary party for obtaining appropriate relief. Plaintiff will seek leave to amend when the true names, capacities, connections, and responsibilities of the Defendants and DOES 1 through 10, inclusive, are ascertained.

**PRELIMINARY FACTUAL ALLEGATIONS:**

**6.** Defendants are or were at the time of the incident the owners and operators, lessors and lessees of the public facility, located at 7170 Linda Vista Road, San Diego, California. The public accommodation, its path of travel, parking, restrooms and its other facilities are each a "public accommodation or facility" subject to the requirements of state and federal law. On information and belief, each such facility has, since July 1, 1970, undergone "alterations, structural repairs and additions," each of which has subjected the public accommodations, and each of their facilities to handicapped access requirements per the Americans with Disabilities Act Access Guidelines (ADAAG) and Title 24 of California's Code of Regulations.

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

**8.** During Plaintiff's visit, the subject public accommodation exhibited various violations of the Americans with Disabilities Act Accessibility Guidelines ("ADAAG") and Title 24 of the California Code of Regulations including but not limited to: the public restrooms were inaccessible for persons in wheel chairs.

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

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

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

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

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

**14.** Plaintiff is informed and believes and therefore alleges that Defendants and each of them (1) caused the subject improved

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

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

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

**16.** California Civil Code § 52 provides that a party that discriminates against a plaintiff in violation of Civ. Code § 51 shall be liable for actual damages, up to three times actual damages

but not less than $4000 for each such offense, and any attorney's fees incurred by the plaintiff.

**Count One:**

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

**Count Two:**

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

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

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

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

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

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

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

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

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

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

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

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

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

**PRAYER:**

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

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

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

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

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

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

Dated: December 18, 2002

CENTER FOR DISABILITY ACCESS, LLP

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

**DEMAND FOR JURY TRIAL**

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

Dated: December 18, 2002

CENTER FOR DISABILITY ACCESS, LLP

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