

001-22750

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~~CLEARING COURT  
SAN DIEGO COUNTY, CA~~

40

6 Attorney for Plaintiff, CHRIS LANGER,

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

12 CHRIS LANGER, ) Case No.: **C10 803782**  
13 )  
14 Plaintiff, ) **COMPLAINT FOR DAMAGES AND**  
15 v. ) **INJUNCTIVE RELIEF FOR VIOLATIONS**  
16 ADEK FIRESTONE as TRUSTEE of the ) **OF: UNRUH CIVIL RIGHTS ACT;**  
17 FIRESTONE FAMILY TRUST; STEVEN M. ) **NEGLIGENCE; CALIFORNIA'S UNFAIR**  
18 FIRESTONE as TRUSTEE of the ) **BUSINESS PRACTICE ACT.**  
19 FIRESTONE FAMILY TRUST; MIKE )  
HERMIZ, and DOES 1 through 10, )  
inclusive, )  
20 Defendants. )

**DEMAND FOR JURY**

ORIGINAL

21 Plaintiff CHRIS LANGER, (hereinafter referred to as  
22 "Plaintiff") complains of ADEK FIRESTONE as TRUSTEE of the FIRESTONE  
23 FAMILY TRUST; STEVEN M. FIRESTONE as TRUSTEE of the FIRESTONE FAMILY  
24 TRUST; MIKE HERMIZ, and DOES 1 through 10, inclusive, (hereinafter  
25 referred to as "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

1 of said class, for failure to remove architectural barriers  
2 structural in nature at Defendants' place of business, located at  
3 1926 Garnet Ave., 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, ADEK FIRESTONE as TRUSTEE of the FIRESTONE  
17 FAMILY TRUST; STEVEN M. FIRESTONE as TRUSTEE of the FIRESTONE FAMILY  
18 TRUST; MIKE HERMIZ, and DOES 1 through 10, inclusive (hereinafter  
19 alternatively referred to collectively as "Defendants"), are the  
20 owners and operators, lessors and/or lessees, or agents of the  
21 owners, lessors and/or lessees, and/or alter egos, franchisers  
22 and/or franchisees, of the building and/or buildings which  
23 constitute a public facility in and of itself, occupied by the above  
24 described defendants, and subject to the requirements of federal and  
25 state law requiring full and equal access to public accommodations  
26 and facilities.

27 5. Plaintiff does not know the true names of Defendants, their  
28 business capacities, their ownership connection to the property and

1 business, or their relative responsibilities in causing the access  
2 violations herein complained of, and alleges a joint venture and  
3 common enterprise by all such Defendants. Plaintiff is informed and  
4 believes that each of the Defendants herein, including DOES 1  
5 through 10, inclusive, is responsible in some capacity for the  
6 events herein alleged, or is a necessary party for obtaining  
7 appropriate relief. Plaintiff will seek leave to amend when the true  
8 names, capacities, connections, and responsibilities of the  
9 Defendants and DOES 1 through 10, inclusive, are ascertained.

10 **PRELIMINARY FACTUAL ALLEGATIONS:**

11 6. Defendants are or were at the time of the incident the  
12 owners and operators, lessors and lessees of the public facility,  
13 located at 1926 Garnet Ave., San Diego, California. The public  
14 accommodation, its path of travel, parking, restrooms and its other  
15 facilities are each a "public accommodation or facility" subject to  
16 the requirements of state and federal law. On information and  
17 belief, each such facility has, since July 1, 1970, undergone  
18 "alterations, structural repairs and additions," each of which has  
19 subjected the public accommodations, and each of their facilities to  
20 handicapped access requirements per the Americans with Disabilities  
21 Act Access Guidelines (ADAAG) and Title 24 of California's Code of  
22 Regulations.

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

26 8. During Plaintiff's visit, the subject public accommodation  
27 exhibited various violations of the Americans with Disabilities Act  
28 Accessibility Guidelines ("ADAAG") and Title 24 of the California

1 Code of Regulations including but not limited to: there was a lack  
2 of properly configured disabled parking; and a lack of van  
3 accessible designated disabled parking.

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

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

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

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

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

1 Defendants' public accommodations.

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

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

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

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

6 **Count One:**

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

13 **Count Two:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 **PRAYER:**

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

- 28           1. For injunctive relief, compelling Defendants to comply with

1 the Unruh Civil Rights Act.

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

4 3. Reasonable attorneys' fees, litigation expenses and costs of  
5 suit, pursuant to Cal. Civ. Code §§ 52, and Cal. Civ. Proc. §  
6 1021.5;

7 4. For Punitive Damages pursuant to Cal. Civ. Code Section  
8 3294(c)(1);

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

11 Dated: December 27, 2002

CENTER FOR DISABILITY ACCESS, LLP

12  
13 By: \_\_\_\_\_

14 MARK D. POTTER  
15 RUSSELL C. HANDY  
16 JAMES R. BOYD  
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  
21 Dated: December 27, 2002

CENTER FOR DISABILITY ACCESS, LLP

22  
23 By: \_\_\_\_\_

24 MARK D. POTTER  
25 RUSSELL C. HANDY  
26 JAMES R. BOYD  
27 Attorneys for Plaintiff  
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