

2003 Mar 11

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SUPERIOR COURT
SAN DIEGO COUNTY, CA

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02 001 New Civil \$227.50

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Attorney for Plaintiff, CHRIS LANGER,

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

GIC 807427

CHRIS LANGER,)	Case No.:
)	
Plaintiff,)	COMPLAINT FOR DAMAGES AND
)	INJUNCTIVE RELIEF FOR VIOLATIONS
v.)	OF: UNRUH CIVIL RIGHTS ACT;
)	NEGLIGENCE; CALIFORNIA'S UNFAIR
OTTO A. HEINKEL; ELIZABETH))	BUSINESS PRACTICE ACT.
HEINKEL; FRED BALLO, and DOES 1))	DEMAND FOR JURY
through 10, inclusive)	
)	
Defendants.)	
)	
)	
)	

Plaintiff CHRIS LANGER, (hereinafter referred to as "Plaintiff") complains of OTTO A. HEINKEL; ELIZABETH HEINKEL; FRED BALLO, 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

3 accommodation; and for failure to modify practices and or policies
4 in order to accommodate, thereby discriminatorily denying Plaintiff
5 and the class of other similarly situated persons with physical
6 disabilities access to, the full and equal enjoyment of, opportunity
7 to participate in, and benefit from, the goods, facilities,
8 services, and accommodations thereof.

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

12 **PARTIES:**

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

15 4. Defendants, OTTO A. HEINKEL; ELIZABETH HEINKEL; FRED BALLO,
16 and DOES 1 through 10, inclusive (hereinafter alternatively referred
17 to collectively as "Defendants"), are the owners and operators,
18 lessors and/or lessees, or agents of the owners, lessors and/or
19 lessees, and/or alter egos, franchisers and/or franchisees, of the
20 building and/or buildings which constitute a public facility in and
21 of itself, occupied by the above described defendants, and subject
22 to the requirements of federal and state law requiring full and
23 equal access to public accommodations and facilities.

24 5. Plaintiff does not know the true names of Defendants, their
25 business capacities, their ownership connection to the property and
26 business, or their relative responsibilities in causing the access
27 violations herein complained of, and alleges a joint venture and
28 common enterprise by all such Defendants. Plaintiff is informed and

3 events herein alleged, or is a necessary party for obtaining
4 appropriate relief. Plaintiff will seek leave to amend when the true
5 names, capacities, connections, and responsibilities of the
6 Defendants and DOES 1 through 10, inclusive, are ascertained.

7 **PRELIMINARY FACTUAL ALLEGATIONS:**

8 6. Defendants are or were at the time of the incident the
9 owners and operators, lessors and lessees of the public facility,
10 located at 3747 Park Blvd., San Diego. The public accommodation, its
11 path of travel, parking, restrooms and its other facilities are each
12 a "public accommodation or facility" subject to the requirements of
13 state and federal law. On information and belief, each such facility
14 has, since July 1, 1970, undergone "alterations, structural repairs
15 and additions," each of which has subjected the public
16 accommodations, and each of their facilities to handicapped access
17 requirements per the Americans with Disabilities Act--Access
18 Guidelines (ADAAG) and Title 24 of California's Code of Regulations.

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

22 8. During Plaintiff's visit, the subject public accommodation
23 exhibited various violations of the Americans with Disabilities Act
24 Accessibility Guidelines ("ADAAG") and Title 24 of the California
25 Code of Regulations including but not limited to: there was a lack
26 of properly configured disabled parking; and a lack of van
27 accessible designated disabled parking.

28 9. On information and belief, other portions of the facility

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

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

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

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

26 14. Plaintiff is informed and believes and therefore alleges
27 that Defendants and each of them (1) caused the subject improved
28 real properties which constitute the subject public accommodation to

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

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

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

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

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

9 Count Two:

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

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

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

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

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

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

27 23. Wherefore, Plaintiff prays for relief and damages and
28

3 Defendants) (Cal. Bus. & Prof. § 17200 et seq.)

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

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

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

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

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

20 **PRAYER:**

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

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


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

27 3. Reasonable attorneys' fees, litigation expenses and costs of
28

3 4. For punitive damages pursuant to Cal. Civ. Code section
4 3294(c)(1);

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

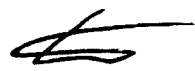
7 Dated: February 22, 2003 CENTER FOR DISABILITY ACCESS, LLP

8
9 By: 
10 MARK D. POTTER
11 RUSSELL C. HANDY
12 JAMES R. BOYD
13 Attorneys for Plaintiff

14 DEMAND FOR JURY TRIAL

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

17 Dated: February 22, 2003 CENTER FOR DISABILITY ACCESS, LLP

18
19 By: 
20 MARK D. POTTER
21 RUSSELL C. HANDY
22 JAMES R. BOYD
23 Attorneys for Plaintiff