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CLERK OF SUPERIOR COURT

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

12 ✓ CHRIS LANGER,
13
14 Plaintiff,

) Case No.: **GIC 786316**
)
) **COMPLAINT FOR DAMAGES AND**
) **INJUNCTIVE RELIEF FOR VIOLATIONS**
) **OF: UNRUH CIVIL RIGHTS ACT;**
) **CALIFORNIA'S DISABLED PERSON ACT;**
) **NEGLIGENCE; CALIFORNIA'S UNFAIR**
) **BUSINESS PRACTICE ACT.**

15 v.
16 JOSEPH BALISTRIERI as TRUSTEE of)
17 the BALISTRIERI TRUST dated June)
18 22, 1990; VICTORIA BALISTRIERI as)
19 TRUSTEE of the BALISTRIERI TRUST)
20 dated June 22, 1990; JOSEPH)
21 BALISTRIERI, INC., and DOES 1)
22 through 10, inclusive)
23 Defendants.)

✓ **DEMAND FOR JURY**

21
22 Plaintiff CHRIS LANGER, (hereinafter referred to as
23 "Plaintiff") complains of JOSEPH BALISTRIERI as TRUSTEE of the
24 BALISTRIERI TRUST dated June 22, 1990; VICTORIA BALISTRIERI as
25 TRUSTEE of the BALISTRIERI TRUST dated June 22, 1990; JOSEPH
26 BALISTRIERI, INC., and DOES 1 through 10, inclusive, (hereinafter
27 referred to as "Defendants") and alleges as follows:

28 **INTRODUCTION:**

RECORDED

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
5 3001 El Cajon Blvd., San Diego, California, a place of public
6 accommodation; and for failure to modify practices and or policies
7 in order to accommodate, thereby discriminatorily denying Plaintiff
8 and the class of other similarly situated persons with physical
9 disabilities access to, the full and equal enjoyment of, opportunity
10 to participate in, and benefit from, the goods, facilities,
11 services, 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, JOSEPH BALISTRIERI as TRUSTEE of the BALISTRIERI
19 TRUST dated June 22, 1990; VICTORIA BALISTRIERI as TRUSTEE of the
20 BALISTRIERI TRUST dated June 22, 1990; JOSEPH BALISTRIERI, INC., and
21 DOES 1 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 3001 El Cajon Blvd., 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: a lack of
4 designated disabled parking.

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

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

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

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

24 **13.** Plaintiff is informed and believes and therefore alleges
25 that Defendants and each of them (1) caused the subject improved
26 real properties which constitute the subject public accommodation to
27 be constructed, altered and maintained in such a manner that persons
28 with physical disabilities were denied full and equal access to,

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

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

21 **14.** 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 **15.** California Civil Code § 52 provides that a party that
25 discriminates against a plaintiff in violation of Civ. Code § 51
26 shall be liable for actual damages, up to three times actual damages
27 but not less than \$1000 for each such offense, and any attorney's
28 fees incurred by the plaintiff.

Count One:

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

7 **Count Two:**

8 **17.** The Defendants have not complied with the Americans with
9 Disabilities Act of 1990.

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11 **II. SECOND CAUSE OF ACTION: VIOLATION OF CALIFORNIA'S DISABLED**
12 **PERSONS ACT, (On Behalf of Plaintiff and Against All**
13 **Defendants) (California Civil Code § 54 et seq.)**

14 **18.** 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 and incorporates them herein as if
17 separately repled.

18 **19.** California Civil Code §55 provides that a person aggrieved
19 under §54 of the Civil Code may bring an action to enjoin such
20 violation and shall be entitled to recover reasonable attorney's
21 fees.

22 **Count One:**

23 **20.** The Defendants have not ensured that their facilities
24 comply with Title 24 of the California Code of Regulations, the
25 California Building Code as it applies to physical access for
26 persons with disabilities and have failed to ensure that disabled
27 persons have full and equal access to public accommodations and/or
28 other places that the general public is invited and that disabled
persons enjoy the same accommodations, advantages, facilities, and

1 privileges to the facilities identified above.

2 **Count Two:**

3 21. The Defendants have not complied with the Americans with
4 Disabilities Act of 1990.

5 22. Wherefore, Plaintiff prays for relief and damages as
6 hereinafter stated.

7
8 **III. THIRD CAUSE OF ACTION: NEGLIGENCE**
(On behalf of the Plaintiff and Against All Defendants)

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

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

16 25. Defendants failed to exercise ordinary care in that they
17 failed--to ensure that their facilities complied with the
18 accessibility guidelines or that their facilities were configured to
19 promote safe and effective use by persons with wheelchairs.

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

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

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

28 28. Plaintiff repleads and incorporates by reference, as if
fully set forth again herein, the allegations contained in all prior

1 paragraphs of this complaint.

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

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

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

13 **32.** Wherefore, Plaintiff prays for relief and damages and
14 relief as hereinafter stated.

15 **PRAYER:**

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

18 **1.** For injunctive relief, compelling Defendants to comply with
19 the Unruh Civil Rights Act, and California's Disabled Person Act,
20 which order will include the removal of barriers and the
21 implementation of reasonable modifications in policies, practice,
22 eligibility criteria and procedures so as to afford full access to
23 the goods, services, facilities, privileges, advantages and
24 accommodations being offered.

25 **2.** General, Special and Penalty damages in an amount to be
26 determined by proof;
27
28

1 3. Reasonable attorneys' fees, litigation expenses and costs of
2 suit, pursuant to Cal. Civ. Code §§ 52,55, and Cal. Civ. Proc. §
3 1021.5;

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

6 Dated: April 1, 2002

CENTER FOR DISABILITY ACCESS, LLP

8
9 By: 

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

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12 **DEMAND FOR JURY TRIAL**

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

15
16 Dated: April 1, 2002

CENTER FOR DISABILITY ACCESS, LLP

17
18 By: 

MARK D. POTTER
RUSSELL C. HANDY
JAMES R. BOYD
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