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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,) Case No.: **GIC787362**
13)
14 Plaintiff,) **COMPLAINT FOR DAMAGES AND**
15 v.) **INJUNCTIVE RELIEF FOR VIOLATIONS**
16 RAYMOND F. DOWD; PHO HOA SAN) **OF: UNRUH CIVIL RIGHTS ACT;**
DIEGO, CORP.; SLAMMED PIZZA,) **CALIFORNIA'S DISABLED PERSON ACT;**
17 INC., and DOES 1 through 10,) **NEGLIGENCE; CALIFORNIA'S UNFAIR**
inclusive) **BUSINESS PRACTICE ACT.**
18 Defendants.) **DEMAND FOR JURY**
19)
20)

21 Plaintiff CHRIS LANGER, (hereinafter referred to as
22 "Plaintiff") complains of RAYMOND F. DOWD; PHO HOA SAN DIEGO, CORP.,
23 and DOES 1 through 10, inclusive, (hereinafter referred to as
24 "Defendants") and 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
28 of said class, for failure to remove architectural barriers

1 structural in nature at Defendants' place of business, located at
2 4701 and or 4717 El Cajon Blvd., San Diego, California, a place of
3 public accommodation; and for failure to modify practices and or
4 policies in order to accommodate, thereby discriminatorily denying
5 Plaintiff and the class of other similarly situated persons with
6 physical disabilities access to, the full and equal enjoyment of,
7 opportunity to participate in, and benefit from, the goods,
8 facilities, 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, RAYMOND F. DOWD; PHO HOA SAN DIEGO, CORP., and
16 DOES 1 through 10, inclusive (hereinafter alternatively referred to
17 collectively as "Defendants"), are the owners and operators, lessors
18 and/or lessees, or agents of the owners, lessors and/or lessees,
19 and/or alter egos, franchisers and/or franchisees, of the building
20 and/or buildings which constitute a public facility in and of
21 itself, occupied by the above described defendants, and subject to
22 the requirements of federal and state law requiring full and equal
23 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

1 believes that each of the Defendants herein, including DOES 1
2 through 10, inclusive, is responsible in some capacity for the
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 4701 and or 4717 El Cajon Blvd., San Diego, California.
11 The public accommodation, its path of travel, parking, restrooms and
12 its other facilities are each a "public accommodation or facility"
13 subject to the requirements of state and federal law. On information
14 and belief, each such facility has, since July 1, 1970, undergone
15 "alterations, structural repairs and additions," each of which has
16 subjected the public accommodations, and each of their facilities to
17 handicapped access requirements per the Americans with Disabilities
18 Act Access Guidelines (ADAAG) and Title 24 of California's Code of
19 Regulations.

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

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

1 parking.

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

21 13. Plaintiff is informed and believes and therefore alleges
22 that Defendants and each of them (1) caused the subject improved
23 real properties which constitute the subject public accommodation to
24 be constructed, altered and maintained in such a manner that persons
25 with physical disabilities were denied full and equal access to,
26 within and throughout said improved real property(s); (2) that the
27 Defendants have had actual and constructive notice that the
28 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 S 51 et seq.)

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

15. 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 \$1000 for each such offense, and any attorney's fees incurred by the plaintiff.

Count One:

16. 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

1 persons with disabilities and failed to ensure that disabled persons
2 have "full and equal--accommodations, advantages, facilities,
3 privileges, or services" to the facilities identified above.

4 Count Two:

5 17. The Defendants have not complied with the Americans with
6 Disabilities Act of 1990.

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

11 18. Plaintiff repleads and incorporates by reference as if
12 fully set forth again herein, the allegations contained in all prior
13 paragraphs of this complaint and incorporates them herein as if
14 separately repled.

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

19 Count One:

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

28 Count Two:

21. The Defendants have not complied with the Americans with

1 Disabilities Act of 1990.

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

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

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

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

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

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

19 27. Wherefore, Plaintiff prays for relief and damages and
20 relief as hereinafter stated.

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

24 28. 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 29. In addition to the access violations described above,
28 Defendants' facilities are in violation of California and Federal

1 law in that they do not provide required access for disabled
2 persons.

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

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

10 32. Wherefore, Plaintiff prays for relief and damages and
11 relief as hereinafter stated.

12 **PRAYER:**

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

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

22 2. General, Special and Penalty damages in an amount to be
23 determined by proof;

24 3. Reasonable attorneys' fees, litigation expenses and costs of
25 suit, pursuant to Cal. Civ. Code §§ 52,55, and Cal. Civ. Proc. §
26 1021.5;

27 ///

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

3
4 Dated: April 8, 2002

CENTER FOR DISABILITY ACCESS, LLP

5
6 By: 

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

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9 **DEMAND FOR JURY TRIAL**

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

12
13 Dated: April 8, 2002

CENTER FOR DISABILITY ACCESS, LLP

14
15 By: 

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