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7

2116 01 07 GIC789330 05/30/02 10:40
02 001 New Civil \$199.00

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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.: **GIC 789330**
13)
14 Plaintiff,) **COMPLAINT FOR DAMAGES AND**
15 v.) **INJUNCTIVE RELIEF FOR VIOLATIONS**
16 MICHAEL BARTELL; MELISSA G.) **OF: UNRUH CIVIL RIGHTS ACT;**
17 BARTELL; ELIZABETH J. GARFIELD;) **CALIFORNIA'S DISABLED PERSON ACT;**
PEARLE VISION, INC., and DOES 1) **NEGLIGENCE; CALIFORNIA'S UNFAIR**
18 through 10, inclusive) **BUSINESS PRACTICE ACT.**
19 Defendants.) **DEMAND FOR JURY**
20)
21)
22)
23)
24)
25)
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27)
28)

20 Plaintiff CHRIS LANGER, (hereinafter referred to as
21 "Plaintiff") complains of MICHAEL BARTELL; MELISSA G. BARTELL;
22 ELIZABETH J. GARFIELD; PEARLE VISION, INC., and DOES 1 through 10,
23 inclusive, (hereinafter referred to as "Defendants") and alleges as
24 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

1 of said class, for failure to remove architectural barriers
2 structural in nature at Defendants' place of business, located at
3 4595 Clairemont Drive, San Diego, California (APN# 360-430-08), a
4 place of public accommodation; and for failure to modify practices
5 and or policies in order to accommodate, thereby discriminatorily
6 denying Plaintiff and the class of other similarly situated persons
7 with physical disabilities access to, the full and equal enjoyment
8 of, opportunity to participate in, and benefit from, the goods,
9 facilities, 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, MICHAEL BARTELL; MELISSA G. BARTELL; ELIZABETH
17 J. GARFIELD; PEARLE VISION, INC., and DOES 1 through 10, inclusive
18 (hereinafter alternatively referred to collectively as
19 "Defendants"), are the owners and operators, lessors and/or lessees,
20 or agents of the owners, lessors and/or lessees, and/or alter egos,
21 franchisers and/or franchisees, of the building and/or buildings
22 which constitute a public facility in and of itself, occupied by the
23 above described defendants, and subject to the requirements of
24 federal and state law requiring full and equal access to public
25 accommodations and facilities.

26 5. Plaintiff does not know the true names of Defendants, their
27 business capacities, their ownership connection to the property and
28 business, or their relative responsibilities in causing the access

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

9 **PRELIMINARY FACTUAL ALLEGATIONS:**

10 6. Defendants are or were at the time of the incident the
11 owners and operators, lessors and lessees of the public facility,
12 located at 4595 Clairemont Drive, San Diego, California (APN# 360-
13 430-08). The public accommodation, its path of travel, parking,
14 restrooms and its other facilities are each a "public accommodation
15 or facility" subject to the requirements of state and federal law.
16 On information and belief, each such facility has, since July 1,
17 1970, undergone "alterations, structural repairs and additions,"
18 each of which has subjected the public accommodations, and each of
19 their facilities to handicapped access requirements per the
20 Americans with Disabilities Act Access Guidelines (ADAAG) and Title
21 24 of California's Code of Regulations.

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

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

1 of properly configured disabled parking; and a lack of van
2 accessible designated disabled parking.

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

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

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

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

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

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

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

18 **14.** 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 **15.** California Civil Code § 52 provides that a party that
22 discriminates against a plaintiff in violation of Civ. Code § 51
23 shall be liable for actual damages, up to three times actual damages
24 but not less than \$1000 for each such offense, and any attorney's
25 fees incurred by the plaintiff.

26 **Count One:**

27 **16.** The Defendants have not ensured that their facilities
28 comply with Title 24 of the California Code of Regulations, the

1 California Building Code as it applies to physical access for
2 persons with disabilities and failed to ensure that disabled persons
3 have "full and equal accommodations, advantages, facilities,
4 privileges, or services" to the facilities identified above.

5 **Count Two:**

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

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

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

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

20 **Count One:**

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

Count Two:

1 21. The Defendants have not complied with the Americans with
2 Disabilities Act of 1990.

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

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

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

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

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

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

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

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

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

28 29. In addition to the access violations described above,

1 Defendants' facilities are in violation of California and Federal
2 law in that they do not provide required access for disabled
3 persons.

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

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

11 **32.** Wherefore, Plaintiff prays ~~for relief and damages~~ and
12 relief as hereinafter stated.

13 **PRAYER:**

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

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

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

25 **3.** Reasonable attorneys' fees, litigation expenses and costs of
26 suit, pursuant to Cal. Civ. Code §§ 52,55, and Cal. Civ. Proc. §
27 1021.5;
28

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

3 Dated: April 11, 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 11, 2002

CENTER FOR DISABILITY ACCESS, LLP

14
15 By:  _____

16 MARK D. POTTER
17 RUSSELL C. HANDY
18 JAMES R. BOYD
19 Attorneys for Plaintiff
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0218 01 09 GIC789330 07/03/02 11:00
02 040 1st Paper Fee \$192.00

5 Attorneys for Defendants
MELISSA G. BARTELL, MICHAEL BARTELL
6 and ELIZABETH J. GARFIELD

0219 01 09 GIC789330 07/03/02 11:00
02 040 1st Paper Fee \$392.00

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

0219 01 09 02 076 Miscellaneous 07/03/02 11:00
\$9.00

10 **CENTRAL DIVISION**

12 CHRIS LANGER,)
13 Plaintiff,)

CASE NO.: GIC 789330
Complaint Filed: May 28, 2002

14 v.)

DEFENDANTS' ANSWER TO
PLAINTIFF'S COMPLAINT

15 MICHAEL BARTELL; MELISSA G.)
16 BARTELL; ELIZABETH J. GARFIELD;)
17 PEARLE VISION, INC., and DOES 1)
through 10, inclusive,)
18 Defendants.)

Judge: Hon. J. Richard Haden
Dept.: 72 / (619) 685-6027

19 _____)
20 (3) COME NOW Defendants MELISSA G. BARTELL, MICHAEL BARTELL and
21 ELIZABETH J. GARFIELD ("Defendants") and answer the Complaint of plaintiff CHRIS
22 LANGER ("plaintiff") as follows:

23 That under the provisions of section 431.30 of the California Code of Civil Procedure,
24 answering Defendants, and each of them, deny each, every and all allegations of said Complaint,
25 and the whole thereof, including each and every purported cause of action contained therein, and
26 deny that the plaintiff sustained injury or damage in the sum or sums alleged, or in any other sum
27 or sums whatsoever, or at all.

28 ///

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CLERK OF SUPERIOR COURT
SAN DIEGO COUNTY, CA

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7 MICHAEL BARTELL and ELIZABETH J. GARFIELD

8
9
10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 IN AND FOR THE COUNTY OF SAN DIEGO

12
13) No. GIC 789330
14 CHRIS LANGER,)
15 Plaintiff,) ANSWER OF PEARL VISION, INC. TO
16 vs.) COMPLAINT; DEMAND FOR JURY TRIAL
17)
18 MICHAEL BARTELL, MELISSA G.)
19 BARTELL; ELIZABETH J. GARFIELD;)
20 PEARLE VISION, INC., and DOES 1)
through 10, inclusive,)
21 Defendants.)
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22 COME NOW defendant, PEARL VISION, INC., and for itself alone
23 answer the unverified Complaint of plaintiff, CHRIS LANGER, as
24 follows:

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26 / / /
27 / / /