

001/199

FILED
CIVIL BUSINESS OFFICE 9
CENTRAL DIVISION

7:00Z JUL 26 P 3:18

STEPHEN HANBERG
CIVIL RIGHTS DIVISION
COURT REPORTER

1 CENTER FOR DISABILITY ACCESS, LLP
MARK D. POTTER, ESQ., SBN 166317
2 RUSSELL C. HANDY, ESQ., SBN 195058
JAMES R. BOYD, ESQ., SBN175597
3 STEVE WEDEL, ESQ. SBN 214908
P.O. Box 34606
4 San Diego, CA 92163-4606
(619) 291-7593
5 Fax: (619) 725-0720

6
7 Attorney for Plaintiff, CHRIS LANGER,

5766 01 07 91 17 9/00 09:11
02 001 New Civil \$199.00

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

12 CHRIS LANGER,)
13) Case No.: **GIC 793200**
14 Plaintiff,)
15 v.) **COMPLAINT FOR DAMAGES AND**
16 JAMES N. DURKIN; JOAN M. DURKIN;) **INJUNCTIVE RELIEF FOR VIOLATIONS**
RAMZI B. MURAD, and DOES 1) **OF: UNRUH CIVIL RIGHTS ACT;**
17 through 10, inclusive) **CALIFORNIA'S DISABLED PERSON ACT;**
18 Defendants.) **NEGLIGENCE; CALIFORNIA'S UNFAIR**
19) **BUSINESS PRACTICE ACT.**
20) **DEMAND FOR JURY**
21)
22)
23)
24)

20 Plaintiff CHRIS LANGER, (hereinafter referred to as
21 "Plaintiff") complains of JAMES N. DURKIN; JOAN M. DURKIN; RAMZI B.
22 MURAD, and DOES 1 through 10, inclusive, (hereinafter referred to as
23 "Defendants") and alleges as follows:
24

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

ORIGINAL
ACCOUNTING

1 structural in nature at Defendants' place of business, located at
2 149 Lomas Sante Fe Drive, Solana Beach, 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, JAMES N. DURKIN; JOAN M. DURKIN; RAMZI B. MURAD,
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

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 149 Lomas Sante Fe Drive, Solana Beach, California. The
11 public accommodation, its path of travel, parking, restrooms and its
12 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: there was a lack
27 of properly configured disabled parking; and a lack of van
28 accessible designated disabled parking.

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

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

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

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

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

27 14. Plaintiff is informed and believes and therefore alleges
28 that Defendants and each of them (1) caused the subject improved

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

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

1 but not less than \$4000 for each such offense, and any attorney's
2 fees incurred by the plaintiff.

3 Count One:

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

10 Count Two:

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

13

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

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

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

24 Count One:

25 21. The Defendants have not ensured that their facilities
26 comply with Title 24 of the California Code of Regulations, the
27 California Building Code as it applies to physical access for
28 persons with disabilities and have failed to ensure that disabled

1 persons have full and equal access to public accommodations and/or
2 other places that the general public is invited and that disabled
3 persons enjoy the same accommodations, advantages, facilities, and
4 privileges to the facilities identified above.

5 **Count Two:**

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

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

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

12 24. 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.

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

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

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

25 28. Wherefore, Plaintiff prays for relief and damages and
26 relief as hereinafter stated.

27 **IV. FOURTH CAUSE OF ACTION: VIOLATION OF CALIFORNIA'S UNFAIR**
28 **BUSINESS PRACTICES ACT** (On behalf of the Public and Against All

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

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

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

9 31. Defendants' acts and omissions alleged herein are a
10 violation of both statutory requirements and public policy and,
11 therefore, constitute a violation of Business and Professions Code
12 sections 17200 et seq.

13 32. Plaintiff, on behalf of himself/herself and the general
14 public, seeks injunctive relief requiring Defendants to remedy the
15 disability access violations present at their facilities.

16 33. Wherefore, Plaintiff prays for relief and damages and
17 relief as hereinafter stated.

18 **PRAYER:**

19 Wherefore, Plaintiff prays that this court award damages and
20 provide relief as follows:

21 1. For injunctive relief, compelling Defendants to comply with
22 the Unruh Civil Rights Act, and California's Disabled Person Act,
23 which order will include the removal of barriers and the
24 implementation of reasonable modifications in policies, practice,
25 eligibility criteria and procedures so as to afford full access to
26 the goods, services, facilities, privileges, advantages and
27 accommodations being offered.
28

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


3 3. Reasonable attorneys' fees, litigation expenses and costs of
4 suit, pursuant to Cal. Civ. Code §§ 52,55, and Cal. Civ. Proc. §
5 1021.5;

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

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

10 Dated: June 20, 2002

CENTER FOR DISABILITY ACCESS, LLP


12
13 By: 
14 MARK D. POTTER
15 RUSSELL C. HANDY
16 JAMES R. BOYD
17 Attorneys for Plaintiff

18 **DEMAND FOR JURY TRIAL**

19 Plaintiff hereby demands a jury for all claims for which a jury
20 is permitted.

21 Dated: June 20, 2002

CENTER FOR DISABILITY ACCESS, LLP

22 By: 
23 MARK D. POTTER
24 RUSSELL C. HANDY
25 JAMES R. BOYD
26 Attorneys for Plaintiff

1 STEPHEN ATLAS (SBN 174896)
2 LAW OFFICE OF STEPHEN ATLAS
3 605 "C" STREET, SUITE 200
4 SAN DIEGO, CA 92101
5 TELEPHONE (619)702-9080
6 FACSIMILE (619)235-6723

02 AUG 15 AM 11:35

0064 01 02 AUG 15 11:35 AM
02 040 1st Paper Fee
COURT
WSA
USA

5 Attorney for Defendant(s)
6 **James N. Durkin; Joan M. Durkin; Ramzi B. Murad**

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **FOR THE COUNTY OF SAN DIEGO**

9
10 CHRIS LANGER,) Case No. GIC 793200
11)
12 Plaintiff(s),) ANSWER TO COMPLAINT FOR
13) DAMAGES AND INJUNCTIVE RELIEF
14 v.)
15 JAMES N. DURKIN; JOAN M. DURKIN;) Filed: July 26, 2002
16 RAMZI B. MURAD; and DOES 1-10,) Dept: 71
17 inclusive,) Judge: Hon. Janis Sammartino
18 Defendant(s),)

18 Defendants JAMES D. DURKIN; JOAN M. DURKIN; and RAMZI B. MURAD (hereafter
19 "defendants") answer the complaint of plaintiff CHRIS LAGER (hereafter "plaintiff") as follows:

- 20 1. In response to Paragraph one (1) of the Complaint, Defendants lack sufficient
21 information and belief to answer the allegations, and on that basis deny each and
22 every allegation.
- 23 2. In response to Paragraph two (2) of the Complaint, Defendants lack sufficient
24 information and belief to answer the allegations, and on that basis deny each and
25 every allegation.
- 26 3. In response to Paragraph three (3) of the Complaint, Defendants lack sufficient
27 information and belief to answer the allegations, and on that basis deny each and
28 every allegation.