

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

330 W. Broadway, Dept. 68
San Diego, CA 92101
619-685-6026

TO:

FILE COPY: PAGE 1 OF 1
1 NOTICE PREPARED

CHRIS LANGER

Plaintiff(s)

Case No.: GIC795101

vs.

NOTICE OF HEARING

HECTOR DIAZ, et al.

Defendant(s)

Notice is given that the above-entitled case has been set for the reason listed below and at the location shown above. All inquiries regarding this notice should be referred to the court and phone number listed above.

<u>TYPE OF HEARING</u>	<u>DATE</u>	<u>TIME</u>	<u>REPORT TO JUDGE</u>
Failure to File Judgment	03/14/03	11:00AM	SHERIDAN REED

Appearances at all hearings are mandatory unless specifically excused by the court for good cause shown. Refer to local rules.

CERTIFICATE OF SERVICE

I certify that: I am not a party to the above-entitled case; on the date shown below, I served this notice on the parties shown by placing a true copy in a separate envelope, addressed as shown; each envelope was then sealed and, with postage thereon fully prepaid, deposited in the United States Postal Service at San Diego California.

DATED: 02/11/03

CLERK OF THE SUPERIOR COURT
BY: L. CRAIG , Deputy

MARK D POTTER
CENTER FOR DISABILITY ACCESS LLP
PO BOX 34606
SAN DIEGO, CA 92163-4606

1 structural in nature at Defendants' place of business, located at
2 10320 Mission Gorge Rd., Santee, California, a place of public
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 damages for violations of civil rights and
10 for damages flowing from such violations.

11 **PARTIES:**

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

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

23 5. Plaintiff does not know the true names of Defendants, their
24 business capacities, their ownership connection to the property and
25 business, or their relative responsibilities in causing the access
26 violations herein complained of, and alleges a joint venture and
27 common enterprise by all such Defendants. Plaintiff is informed and
28 believes that each of the Defendants herein, including DOES 1

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

6 **PRELIMINARY FACTUAL ALLEGATIONS:**

7 6. Defendants are or were at the time of the incident the
8 owners and operators, lessors and lessees of the public facility,
9 located at 10320 Mission Gorge Rd., Santee, California. The public
10 accommodation, its path of travel, parking, restrooms and its other
11 facilities are each a "public accommodation or facility" subject to
12 the requirements of state and federal law. On information and
13 belief, each such facility has, since July 1, 1970, undergone
14 "alterations, structural repairs and additions," each of which has
15 subjected the public accommodations, and each of their facilities to
16 handicapped access requirements per the Americans with Disabilities
17 Act Access Guidelines (ADAAG) and Title 24 of California's Code of
18 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

1 were improperly inaccessible for use by persons with physical
2 disabilities.

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

19 13. Plaintiff is informed and believes and therefore alleges
20 that Defendants and each of them - (1) caused the subject improved
21 real properties which constitute the subject public accommodation to
22 be constructed, altered and maintained in such a manner that persons
23 with physical disabilities were denied full and equal access to,
24 within and throughout said improved real property(s); (2) that the
25 Defendants have had actual and constructive notice that the
26 facilities were not legally accessible to persons with disabilities;
27 (3) that despite being informed of such effect on Plaintiff and
28 other persons with physical disabilities due to the lack of

1 accessible facilities, Defendants, and each of them, knowingly and
2 willfully refused to take any steps to rectify the situation and to
3 provide full and equal access for Plaintiff and other persons with
4 physical disabilities to the subject public accommodation. Said
5 defendants, and each of them, have continued such practices, in
6 conscious disregard for the rights and safety of Plaintiff and other
7 persons with physical disabilities. Said conduct, with knowledge of
8 the effect it was and is having on Plaintiff and other persons with
9 physical disabilities, constitutes despicable conduct in conscious
10 disregard of the rights and safety of Plaintiff and of other
11 similarly situated persons, justifying the imposition of punitive
12 and exemplary damages per Civil Code section 3294.

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

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

18 15. California Civil Code § 52 provides that a party that
19 discriminates against a plaintiff in violation of Civ. Code § 51
20 shall be liable for actual damages, up to three times actual damages
21 but not less than \$4000 for each such offense, and any attorney's
22 fees incurred by the plaintiff.

23 **Count One:**

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

1 privileges, or services" to the facilities identified above.

2 Count Two:

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

5

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

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

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

17 Count One:

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

26 Count Two:

27 21. The Defendants have not complied with the Americans with
28 Disabilities Act of 1990.

22. Wherefore, Plaintiff prays for damages as hereinafter

1 stated.

2
3 **III. THIRD CAUSE OF ACTION: NEGLIGENCE**

(On behalf of the Plaintiff and Against All Defendants)

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

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

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

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

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

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

23 **28.** 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 **29.** In addition to the access violations described above,
27 Defendants' facilities are in violation of California and Federal
28 law in that they do not provide required access for disabled
persons.

1 30. 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 31. 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 32. Wherefore, Plaintiff prays for relief and damages and
9 relief as hereinafter stated.

10 **PRAYER:**

11 Wherefore, Plaintiff prays that this court award damages and
12 provide relief as follows:

13 1. For injunctive relief pursuant to the California Unfair
14 Business Practices Act for violations of the Americans With
15 Disabilities Act and Unruh Civil Rights Act.

16 2. General, Special and Penalty damages in an amount to be
17 determined by proof pursuant to the Unruh Civil Rights Act and
18 California Disabled Persons Act;

19 3. Reasonable attorneys' fees, litigation expenses and costs of
20 suit, pursuant to Cal. Civ. Code §§ 52,55, and Cal. Civ. Proc. §
21 1021.5;

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

24
25 Dated: August 12, 2002

CENTER FOR DISABILITY ACCESS, LLP

26
27 By: 

28 _____
MARK D. POTTER
RUSSELL C. HANDY

1 JAMES R. BOYD
2 Attorneys for Plaintiff

3 **DEMAND FOR JURY TRIAL**

4 Plaintiff hereby demands a jury for all claims for which a jury
5 is permitted.

6
7 Dated: August 12, 2002

CENTER FOR DISABILITY ACCESS, LLP

8
9 By: 

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