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Attorney for Plaintiff, CHRIS LANGER,

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

GIC
802110

CHRIS LANGER,) Case No.:
Plaintiff,)
v.) **COMPLAINT FOR DAMAGES AND**
PAUL VANELDEREEN as TRUSTEE of) **INJUNCTIVE RELIEF FOR VIOLATIONS**
the VANELDEREEN FAMILY TRUST;) **OF: UNRUH CIVIL RIGHTS ACT;**
MICHAEL GARDNER, and DOES 1) **NEGLIGENCE; CALIFORNIA'S UNFAIR**
through 10, inclusive) **BUSINESS PRACTICE ACT.**
Defendants.) **DEMAND FOR JURY**

Plaintiff CHRIS LANGER, (hereinafter referred to as
"Plaintiff") complains of PAUL VANELDEREEN as TRUSTEE of the
VANELDEREEN FAMILY TRUST; MICHAEL GARDNER, and DOES 1 through 10,
inclusive, (hereinafter referred to as "Defendants") and alleges as
follows:

INTRODUCTION:

1. This is a Civil Rights action for discrimination against
persons with physical disabilities, of which Plaintiff is a member

ORIGINAL

1 of said class, for failure to remove architectural barriers
2 structural in nature at Defendants' place of business, located at
3 1205 S. Escondido Blvd., Escondido, California, a place of public
4 accommodation; and for failure to modify practices and or policies
5 in order to accommodate, thereby discriminatorily denying Plaintiff
6 and the class of other similarly situated persons with physical
7 disabilities access to, the full and equal enjoyment of, opportunity
8 to participate in, and benefit from, the goods, facilities,
9 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, PAUL VANELDEREEN as TRUSTEE of the VANELDEREEN
17 FAMILY TRUST; MICHAEL GARDNER, 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 1205 S. Escondido Blvd., Escondido, California. The
13 public accommodation, its path of travel, parking, restrooms and its
14 other facilities are each a "public accommodation or facility"
15 subject to the requirements of state and federal law. On information
16 and belief, each such facility has, since July 1, 1970, undergone
17 "alterations, structural repairs and additions," each of which has
18 subjected the public accommodations, and each of their facilities to
19 handicapped access requirements per the Americans with Disabilities
20 Act Access Guidelines (ADAAG) and Title 24 of California's Code of
21 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 were

1 inaccessible public restroom facilities. Plaintiff complained to
2 the owner about it and the owner responded that he was "not going to
3 fix it."

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

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

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

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

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

1 Defendants' public accommodations.

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

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

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

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

6 **Count One:**

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

13 **Count Two:**

14 18. The Defendants have not complied with the Americans with
15 Disabilities Act of 1990.

16 **II. SECOND CAUSE OF ACTION: NEGLIGENCE**

17 (On behalf of the Plaintiff and Against All Defendants)

18 19. 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 20. Defendants had a duty to exercise ordinary care, i.e.,
22 comply with the various accessibility laws and ensure that their
23 property was safely configured.

24 21. Defendants failed to exercise ordinary care in that they
25 failed to ensure that their facilities complied with the
26 accessibility guidelines or that their facilities were configured to
27 promote safe and effective use by persons with wheelchairs.
28

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

4 23. Wherefore, Plaintiff prays for relief and damages and
5 relief as hereinafter stated.

6 **III. THIRD CAUSE OF ACTION: VIOLATION OF CALIFORNIA'S UNFAIR**
7 **BUSINESS PRACTICES ACT (On behalf of the Public and Against All**
8 **Defendants) (Cal. Bus. & Prof. § 17200 et seq.)**

9 24. 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.

12 25. In addition to the access violations described above,
13 Defendants' facilities are in violation of California and Federal
14 law in that they do not provide required access for disabled
15 persons.

16 26. Defendants' acts and omissions alleged herein are a
17 violation of both statutory requirements and public policy and,
18 therefore, constitute a violation of Business and Professions Code
19 sections 17200 et seq.

20 27. Plaintiff, on behalf of himself/herself and the general
21 public, seeks injunctive relief requiring Defendants to remedy the
22 disability access violations present at their facilities.

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

25 **PRAYER:**

26 Wherefore, Plaintiff prays that this court award damages and
27 provide relief as follows:

- 28 1. For injunctive relief, compelling Defendants to comply with

1 the Unruh Civil Rights Act.

2 2. General and Special damages in an amount to be determined by
3 proof;

4 3. Reasonable attorneys' fees, litigation expenses and costs of
5 suit, pursuant to Cal. Civ. Code §§ 52, and Cal. Civ. Proc. §
6 1021.5;

7 4. For Punitive Damages pursuant to Cal. Civ. Code Section
8 3294(c)(1);

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

11 Dated: December 9, 2002

CENTER FOR DISABILITY ACCESS, LLP

12
13 By: 

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

17 **DEMAND FOR JURY TRIAL**

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

20
21 Dated: December 9, 2002

CENTER FOR DISABILITY ACCESS, LLP

22
23 By: 

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