

LEXSEE 2003 U.S. DIST. LEXIS 26988

**JO ANN PETERS, Plaintiff, v. CJK ASSOCIATES, LLC dba APPLEBEES
NEIGHBORHOOD GRILL AND BAR; CHRISTIAN J. KNOX, Trustee of the
Christian J. Knox separate Trust, Defendants.**

NO. CIV. S-03-1388 LKK/KJM

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

2003 U.S. Dist. LEXIS 26988

**October 29, 2003, Decided
October 29, 2003, Filed**

COUNSEL: [*1] For Jo Ann Peters, Plaintiff: Lynn Hubbard, Law Offices of Lynn Hubbard III, Chico, CA.

For CJK Associates, Doing business as Applebees Neighborhood Grill and Bar, Defendant: Douglas Tucker, Kimble MacMichael and Upton, Fresno, CA.

For Christian J Knox Trustee, Doing business as Natomas Market Place, Defendant: Dennis Shore, Brown Hall Shore and McKinley, Stockton, CA.

JUDGES: LAWRENCE K. KARLTON, SENIOR JUDGE.

OPINION BY: LAWRENCE K. KARLTON

OPINION:

ORDER

This matter comes before the court on defendant's motions to strike and for a more definite statement. I decide the motions based on the papers and pleadings filed herein.

I.

BACKGROUND

The plaintiff is an amputee and requires the use of a wheelchair. This action arises out of her visit to the defendants' restaurant, during which she allegedly encountered architectural barriers denying her equal access. Plaintiff brings claims and requests relief under the Americans with Disabilities Act (*42 U.S.C. §§ 12102 et seq.*); *Cal. Health & Safety Code § 19955*; the Unruh Civil Rights Act (*Cal. Civ. Code §§ 51 et seq.*); the Disabled Persons [*2] Act, (*Cal. Civ. Code §§ 54 et seq.*);

the Unfair Business Practices Act (*Cal. Bus. and Prof. Code §§ 17200 et seq.*) and for Negligence (*Cal. Civ. Code § 1714*). In response to the complaint, defendant filed these motions for a more definite statement and to strike the portions of the complaint seeking restitution, punitive and special damages.

II.

STANDARDS

A. STANDARDS UNDER *FED. R. CIV. P. 12(f)*

Rule 12(f) authorizes the court to strike from a pleading "any redundant, immaterial, impertinent, or scandalous matter." A party may bring on a motion to strike within twenty days after the filing of the pleading under attack. The court, however, may make appropriate orders to strike under the rule at any time on its own initiative. Thus, the court may consider and grant an untimely motion to strike where it seems proper to do so. See 5A Wright and Miller, Federal Practice and Procedure: Civil 2d § 1380.

Motions to strike are generally viewed with disfavor, and will usually be denied unless the allegations in the pleading have [*3] no possible relation to the controversy, and may cause prejudice to one of the parties. See 5A C. Wright & A. Miller, Federal Practice and Procedure: Civil 2d § 1380; See also *Hanna v. Lane*, 610 *F.Supp. 32, 34 (N.D. Ill. 1985)*. If the court is in doubt as to whether the challenged matter may raise an issue of fact or law, the motion to strike should be denied, leaving an assessment of the sufficiency of the allegations for adjudication on the merits. See 5A Wright & Miller, *supra*, at § 1380.

B. STANDARDS UNDER *FED. R. CIV. P. 12 (e)*

Under *Rule 12(e)*, "[i]f a pleading . . . is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement." *Fed. R. Civ. P. 12(e)*. Motions for a more definite statement are generally disfavored, and are rarely granted given the liberal pleading standards of *Rule 8(a)*. *Sagan v. Apple Computer, Inc.*, 874 *F.Supp.* 1072, 1077 (C.D. Cal. 1994). "[W]here the information sought by the moving party is available and/or properly sought [*4] through discovery the motion should be denied." *Famolare, Inc. v. Edison Bros. Stores, Inc.*, 525 *F.Supp.* 940, 948 (E.D. Cal., 1981). Therefore, a motion for a more definite statement should not be granted "unless the defendant literally cannot frame a responsive pleading." *Bureerong v. Uvawas*, 922 *F.Supp.* 1450, 1460 (C.D. Cal. 1996).

III.

MOTION FOR A MORE DEFINITE STATEMENT

I first consider whether the complaint is "so vague and ambiguous" that a response should not be required. Plaintiff alleges that she visited the restaurant in question and encountered architectural barriers that denied her full and equal access. Among other things, she claims that the defendant failed to provide access to the restroom and to those areas of the bar where goods and services are made available to the public. Plaintiff suggests that to cure the alleged failure to allow access the defendants may be required to rearrange furniture, install ramps, widen toilet stalls and install grab bars. The complaint contains six causes of actions, all of which incorporate the alleged facts, and advert to the federal and state laws on which she relies.

The defendant [*5] argues that is "should not be forced to guess" as to which of the listed violations in the statement of facts is actually alleged under each applicable law. This assertion is without merit.

The plaintiff has pled a short and plain statement of the facts that gives the defendant fair notice of both the claims and the grounds upon which they rest. The plaintiff is not required to plead each violation of accessibility with greater specificity. *Clark v. McDonald's Corp.*, 213 *F.R.D.* 198, 232 (D.N.J. 2003)(defendant "should be able to determine from its own inspection or records its compliance or non-compliance with the ADA, as to enable it to either admit or deny the existence of such violations"); see also *Campos v. San Francisco State Univ.*, 1998 *U.S. Dist. LEXIS* 22615, 1999 *WL* 1201809 (N.D. Cal. 1999)(rejecting defendant's assertion that complaint was indefinite because it does not specify to which of the university's programs disabled students had been denied access).

"[A] motion for more particular statement of claim contemplates a major ambiguity or omission in a complaint which renders it unanswerable, and it is not for the purpose of preparing for trial." *United Ins. Co. of America v. B. W. Rudy, Inc.* 42 *F.R.D.* 398, 403 (E.D. Pa. 1967). [*6] Defendant may properly elicit the specific facts and details relevant to plaintiff's allegations through the discovery process. *Sagan v. Apple Computer, Inc.*, 874 *F.Supp.* 1072, 1077 (C.D. Cal. 1994). Indeed, I note that plaintiff has already submitted to the defendant a Preliminary Site Report which contains a list of the specific alleged violations. In sum, plaintiff's complaint is adequate and does not require a more definite statement.

IV.

MOTION TO STRIKE

A. PUNITIVE DAMAGES

Punitive damages may not be awarded in a private suit brought under the ADA, *Barnes v. Gorman*, 536 *U.S.* 181, 189, 122 *S. Ct.* 2097, 153 *L. Ed.* 2d 230 (2002), and plaintiff does not seek them under her federal cause of action. The plaintiff, however, alleges a "negligence per se" claim pursuant to *Cal. Civ. Code section 1714* n1, based on alleged violations of the ADA, *sections 51* and *51.5* of the Unruh Act n2, and *sections 54(a)* and *54.1(a)(1)* of the California Disabled Persons Act n3, and seeks punitive damages pursuant to that claim. See *Potter v. Firestone Tire & Rubber Co.*, 6 *Cal. 4th* 965, 1004, 25 *Cal. Rptr.* 2d 550, 863 *P.2d* 795 (1993)(allowing punitive damages in unintentional [*7] tort actions). Plaintiff alleges that defendant had duties under the specified acts, that its failure to fulfill those duties was negligence per se, and that its conduct was oppressive, fraudulent, or malicious, and in conscious disregard of the rights or safety of plaintiff and the physically disabled. She alleges that "[f]or the sake of example and by way of punishing Defendant," she be awarded punitive damages as proved by *Cal. Civ. Code § 3294*. n4 1st Am. Compl. at 14.

n1 In pertinent part, *section 1714(a)* provides that "Every one is responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself or herself."

n2 *Cal. Civ. Code Section § 51(b)* provides:

" All persons within the jurisdiction of this state are free and equal, and no matter what their . . . disability, or medical condition are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever."

Cal. Civ. Code section § 51.5(a) provides:

"No business establishment of any kind whatsoever shall discriminate against, boycott or blacklist, or refuse to buy from, contract with, sell to, or trade with any person in this state because of the . . . disability, or medical condition of the person . . . because the person is perceived to have one or more of those characteristics, or because the person is associated with a person who has, or is perceived to have, any of those characteristics."

[*8]

n3 Cal. Civ. Code Section 54(a) provides:

"Individuals with disabilities or medical conditions shall have the same right as the general public to the full and free use of the streets, highways, sidewalks, walkways, public buildings, . . . public facilities, and other public places."

Cal. Civ. Code Section 54.1(a)(1) provides:

"Individuals with disabilities shall be entitled to full and equal access, as other members of the general public, to accommodations, advantages, facilities, . . . telephone facilities, . . . places of public accommodation, . . . and other places to which the general public is invited, subject only to the conditions and limitations established by law, or state or federal regulation, and applicable alike to all persons."

n4 California Civil Code § 3294(a) states that exemplary damages are allowed "[i]n an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant."

Malice is defined as conduct intended to cause injury or "despicable conduct which is carried on by the defendant."

[*9]

The availability of general punitive damages (i.e. damages awarded pursuant to Cal. Civ. Code § 3294) under plaintiff's pleading is uncertain. The California courts have not ruled on this precise question, and as I explain below the issue has divided the district courts.

The California Disabled Persons and Unruh Civil Rights Acts, provide for treble damages, but include a statutory cap on such damages. n5 See *Botosan v. Fitzhugh*, 13 F. Supp. 2d 1047, 1052 (S.D. Cal. 1998). At least two district courts in this circuit have found that the legislative history of the California acts' remedies sections demonstrate the legislature's intent to limit remedies to treble damages, and thereby prohibit the award of § 3294 punitive damages. *Loskot v. Lulu's Rest.*, 2000 U.S. Dist. LEXIS 22252, No. Civ. S-00-1497 WBS/PAN (E.D. Cal.2000); *Doran v. Embassy Suites Hotel*, 2002 U.S. Dist. LEXIS 16116, 2002 WL 1968166 (N.D. Cal. 2002)("the Legislature evidently concluded that the extensive remedies that it enacted were adequate for enforcement of this important law."). "Accordingly, punitive damages for violations of Sections 52(a) and 54.3 are limited to three times the amount of actual damages, [*10] and [a] request for punitive damages under Cal. Civ. Code section 3294" are not available. *Loskot*, 2000 U.S. Dist. LEXIS 22252 *8.

n5 Cal. Civ. Code Section 52(a) sets forth the damages available for violations of section 51 and 51.5 of the Unruh Act as follows:

"Whoever denies, aids or incites a denial, or makes any discrimination or distinction contrary to Section 51 or 51.5, is liable for each and every offense for the actual damages, and any amount that may be determined by a jury, or a court sitting without a jury, up to a maximum of three times the amount of actual damages but in no case less than one thousand dollars (\$ 1,000), and any attorney's fees that may be determined by the court in addition thereto, suffered by any person denied the rights provided in Section 51 or 51.5."

Cal. Civ. Code Section 54.3(a) sets forth the damages available for violations of sections 54 and 54.1 of the Disabled Persons Act as follows:

"Any person or persons, firm or corporation who denies or interferes with admittance to or enjoyment of the public facilities as specified in Sections 54 and 54.1, and 54.2 is liable for each offense for the actual damages and any amount as may be determined by a jury, or the court sitting without a jury, up to a maximum of three times

the amount of actual damages but in no case less than one thousand dollars (\$ 1,000), and any attorney's fees as may be determined by the court in addition thereto, suffered by any person denied any of the rights provided in *Sections 54, 54.1 and 54.2.*"

[*11]

The plaintiff insists, however, that she does not seek punitive damages directly under the two Acts, but pursuant to her negligence per se claim. Plaintiff relies on two district court decisions in cases similar to this one which have allowed such claims: *Saylor v. Zeenat*, No. Civ. S-02-863 WBS/DAD at 9 (E.D. Cal. 2002) (Shubb, J.) and *Uhls v. OfficeMax, Inc. et al.*, No. Civ. S-02-2138 WBS/JFM (E.D. Cal. 2002)(Shubb, J.) n6 In response to a motion to strike claims for punitive damages, Judge Shubb noted that "while punitive damages may be limited under the California Disabled Persons Act and the Unruh Civil Rights Act, California authority does not preclude punitive damages sought in conjunction with a claim based on negligence per se." *Saylor*, at 9 (E.D. Cal. 2002)(Shubb, J.); *Uhls v. OfficeMax, Inc., et al.*, No. Civ. S-02-2138 WBS/JFM (E.D. Cal. 2002)(Shubb, J.).

As noted, other district courts have found such general punitive damages unavailable. Thus, in *Doran v. Embassy Suites Hotels*, supra, the plaintiff also sought punitive damages pursuant to *Cal. Civ. Code § 3294* for violations of the Unruh and Disabled Persons Acts. [*12] Magistrate Judge LaPorte concluded that they were unavailable. She wrote that "[w]here a statute provides a remedy that is punitive in nature, [such as the statutes here], a plaintiff may not recover punitive damages in addition to the punitive statutory damages." 2002 U.S. Dist. LEXIS 16116 at *6. n7 She also relied on the Legislature's stated intent "to establish reasonable limits of recovery" with regard to private rights of Civil Code § 54.3. Id. Finally, she noted that Civil Code § 52(b), which creates a remedy for sexual harassment and discriminatory violence, expressly provides for exemplary damages, while *section 52(a)*, which is at issue here, provides instead for treble damages. This distinction between two subsections of the same statute demonstrated to her that the Legislature knew how to provide unlimited damages as a remedy when it wished to do so and consciously chose not to under Civil Code § 52(a). 2002 U.S. Dist. LEXIS 16116 at *6.

n6 Both decisions are unpublished.

n7 *Doran* distinguished possible contrary California authority by observing that "[t]he express

statutory provision for treble damages at issue here is punitive in nature . . . and [was] unlike the statutory silence on damages at issue in *Commodore Home*." 2002 U.S. Dist. LEXIS 16116, 2002 WL 1968166 *3 (N.D. Cal. 2002)(citing *Commodore Home Systems Inc. v. Superior Court*, 32 Cal.3d 211, 185 Cal. Rptr. 270, 649 P.2d 912 (1982) and noting that codifications of common law ordinarily provide for the full range of damages))

[*13]

The *Doran* decision seems highly persuasive. Nonetheless, recent Circuit authority, in a different context, may cast doubt on its conclusions. See *Freund v. Nycomed Amersham*, 347 F.3d 752 (9th Cir. 2003).

Given all the above, the best that can be said is that, as the district court cases demonstrate, good arguments exist to support both those who assert that general punitive damages may be awarded, and those who have concluded that punitive damages are restricted to those provided by the relevant California statutes. Given that fact, and given that the California courts have not spoken, it appears to this court to be appropriate to decline to exercise jurisdiction pursuant to the discretion provided by 28 U.S.C. § 1367(c)(1) ("The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if 1) the claim raises a novel or complex issue of State law".)

B. SPECIAL DAMAGES

The defendant also asks the court to strike plaintiff's claim for special damages. Special damages must be pleaded with particularity. See *Fed. R. Civ. P. 9(g)*. Defendant [*14] claims that plaintiff has not done so because she casts her allegations in general language. I disagree.

Damages for emotional distress and attorney's fees can constitute special damages. *Botoson*, 13 F.Supp.2d 1047, 1053 (S.D. Cal. 1998)(citing *Avitia v. Metropolitan Club of Chicago, Inc.*, 49 F.3d 1219, 1226 (7th Cir. 1995)). Here, Plaintiff has claimed attorney's fees, (See 1st Am. Compl. P 60), and alleges that she suffered emotional distress and mental suffering. (See 1st Am. Compl. PP 24-26).

Defendant objects that these injuries cannot be special damages, because the plaintiff alleges that all injuries suffered by plaintiff are expectedly and *naturally* associated with the denial of equal access. The argument does not lie.

"[S]pecial damages are those elements of damages that are the natural, but not the *necessary*, consequence

of a defendant's conduct." 5 Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1310 (1990). The plaintiff does not claim that the damages are the necessary result of the architectural barriers, but only that they are natural and can be expected. Plaintiff has sufficiently pled her claim [*15] for special damages.

C. RESTITUTION DAMAGES

Lastly, the defendant asks the court to strike the plaintiff's request for restitution pursuant to her allegation under *section 17200 of the California Business and Professions Code*. The plaintiff agreed to withdraw her prayer for damages under this claim. The court accordingly strikes the language seeking restitution in paragraph 88 of the First Amended Complaint.

V.

CONCLUSION

For the foregoing reasons, the court hereby ORDERS as follows:

1. Defendants' Motion to Strike is GRANTED IN PART and DENIED IN PART, as follows:

A. Plaintiff's claim for restitution is stricken;

B. Plaintiff's claim for general punitive damages is stricken;

2. In all other respects, the defendant's motion is DENIED.

IT IS SO ORDERED.

DATED: October 29, 2003.

LAWRENCE K. KARLTON

SENIOR JUDGE

UNITED STATES DISTRICT COURT