

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Luis Marquez;

Plaintiffs,

v.

**Wolf Family Real Estate
Partnership**, a Corporation General
Partnership;
Bodega Latina Corporation, a
Delaware Corporation; and Does 1-
10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For** Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act

Plaintiff Luis Marquez complains of Defendants Wolf Family Real Estate Partnership, a Corporation General Partnership; Bodega Latina Corporation, a Delaware Corporation; and Does 1-10 ("Defendants") and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is a paraplegic who cannot walk and who uses a wheelchair for mobility.

1 2. Defendant Wolf Family Real Estate Partnership owned the real
2 property located at or about 14601 Lakewood Blvd., Paramount, California,
3 in August 2017.

4 3. Defendant Wolf Family Real Estate Partnership owns the real property
5 located at or about 14601 Lakewood Blvd., Paramount, California, currently.

6 4. Defendant Bodega Latina Corporation owned the El Super Market
7 located at or about 14601 Lakewood Blvd., Paramount, California, in August
8 2017.

9 5. Defendant Bodega Latina Corporation owns the El Super Market
10 (“Supermarket”) located at or about 14601 Lakewood Blvd., Paramount,
11 California, currently.

12 6. Plaintiffs do not know the true names of Defendants, their business
13 capacities, their ownership connection to the property and business, or their
14 relative responsibilities in causing the access violations herein complained of,
15 and alleges a joint venture and common enterprise by all such Defendants.
16 Plaintiffs are informed and believe that each of the Defendants herein,
17 including Does 1 through 10, inclusive, is responsible in some capacity for the
18 events herein alleged, or is a necessary party for obtaining appropriate relief.
19 Plaintiffs will seek leave to amend when the true names, capacities,
20 connections, and responsibilities of the Defendants and Does 1 through 10,
21 inclusive, are ascertained.

22
23 **JURISDICTION & VENUE:**

24 7. This Court has subject matter jurisdiction over this action pursuant to
25 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
26 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

27 8. Pursuant to supplemental jurisdiction, an attendant and related cause
28 of action, arising from the same nucleus of operative facts and arising out of

1 the same transactions, is also brought under California's Unruh Civil Rights
2 Act, which act expressly incorporates the Americans with Disabilities Act.

3 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
4 founded on the fact that the real property which is the subject of this action is
5 located in this district and that Plaintiffs' cause of action arose in this district.

6
7 **FACTUAL ALLEGATIONS:**

8 10. The Plaintiff went to the Supermarket in August 2017 to shop.

9 11. The Supermarket is a facility open to the public, a place of public
10 accommodation, and a business establishment.

11 12. Ticket dispensers are one of the facilities, privileges, and advantages
12 offered by Defendants to patrons of the Supermarket.

13 13. Unfortunately, there were ticket dispensers placed on the transaction
14 counters in the meat and cheese departments for patrons to take a serving
15 number that were too high.

16 14. The ticket dispensers were more than 48 inches above the finish floor
17 and were not effectively used by wheelchair users. In fact, the ticket dispensers
18 at the meat and cheese departments are 59 inches high.

19 15. Currently, there are ticket dispensers placed on the transaction counters
20 of the meat and cheese departments for patrons to take a serving number.

21 16. Currently, the ticket dispensers are more than 48 inches above the finish
22 floor and are not effectively used by wheelchair users.

23 17. Service counters are one of the facilities, privileges, and advantages
24 offered by Defendants to patrons of the Supermarket.

25 18. The service counters were more than 36 inches in height. In fact, the
26 meat and cheese counters are 55 inches high.

27 19. There were no lowered, 36-inch or lower portion of the service counters
28 for a person with disabilities to use, to interact with store personnel, or to

1 receive his order.

2 20. Currently, the service counters are more than 36 inches in height.

3 21. Currently, there are no lowered, 36-inch or lower portion of the service
4 counters for a person with disabilities to use, to interact with store personnel,
5 or to receive his order.

6 22. Plaintiffs personally encountered these barriers.

7 23. These inaccessible conditions denied the plaintiffs full and equal access
8 and caused them difficulty and frustration.

9 24. Plaintiffs would like to return and patronize the Supermarket but will be
10 deterred from visiting until the defendants cure the violations.

11 25. The violations identified above are easily removed without much
12 difficulty or expense. They are the types of barriers identified by the
13 Department of Justice as presumably readily achievable to remove and, in fact,
14 are readily achievable to remove. Moreover, there are numerous alternative
15 accommodations that could be made to provide a greater level of access if
16 complete removal were not achievable.

17 26. A common barrier removal project is modifying service counters to
18 make a portion of the counter accessible. This is a simple construction task,
19 well within the capabilities of any general contractor. The task can be
20 completed easily and for a modest price.

21 27. Ticket dispensers, meanwhile, could be lowered so that they are
22 accessible to wheelchair users. This could be done at little cost.

23 28. Plaintiffs are and have been deterred from returning and patronizing
24 the Supermarket because of his knowledge of the illegal barriers that exist.
25 Plaintiffs will, nonetheless, return to the business to assess ongoing
26 compliance with the ADA and will return to patronize the Supermarket as a
27 customer once the barriers are removed.

28 29. Given the obvious and blatant violation, the plaintiffs allege, on

1 information and belief, that there are other violations and barriers on the site
2 that relate to his disability. Plaintiffs will amend the Complaint to provide
3 proper notice regarding the scope of this lawsuit once they conduct a site
4 inspection. However, please be on notice that the plaintiffs seek to have all
5 barriers related to his disability remedied. See *Doran v. 7-11*, 506 F.3d 1191
6 (9th Cir. 2008) (holding that once a plaintiff encounters one barrier at a site,
7 he can sue to have all barriers that relate to her disability removed regardless
8 of whether he personally encountered them).

9 30. Additionally, on information and belief, the plaintiff alleges that the
10 failure to remove these barriers was intentional because: (1) these particular
11 barriers are intuitive and obvious; (2) the defendants exercised control and
12 dominion over the conditions at this location and, therefore, the lack of
13 accessible facilities was not an “accident” because, had the defendants
14 intended any other configuration, they had the means and ability to make the
15 change.

16
17 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
18 **WITH DISABILITIES ACT OF 1990** (On behalf of plaintiff and against all
19 defendants (42 U.S.C. section 12101, et seq.)

20 31. Plaintiffs replead and incorporates by reference, as if fully set forth
21 again herein, the allegations contained in all prior paragraphs of this
22 complaint.

23 32. Under the ADA, it is an act of discrimination to fail to ensure that the
24 privileges, advantages, accommodations, facilities, goods and services of any
25 place of public accommodation is offered on a full and equal basis by anyone
26 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
27 § 12182(a). Discrimination is defined, inter alia, as follows:

28 a. A failure to make reasonable modifications in policies, practices,

1 or procedures, when such modifications are necessary to afford
2 goods, services, facilities, privileges, advantages, or
3 accommodations to individuals with disabilities, unless the
4 accommodation would work a fundamental alteration of those
5 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).

6 b. A failure to remove architectural barriers where such removal is
7 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
8 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
9 Appendix “D.”

10 c. A failure to make alterations in such a manner that, to the
11 maximum extent feasible, the altered portions of the facility are
12 readily accessible to and usable by individuals with disabilities,
13 including individuals who use wheelchairs or to ensure that, to the
14 maximum extent feasible, the path of travel to the altered area and
15 the bathrooms, telephones, and drinking fountains serving the
16 altered area, are readily accessible to and usable by individuals
17 with disabilities. 42 U.S.C. § 12183(a)(2).

18 33. In areas used for transactions that may not have a cash register but at
19 which goods or services are sold or distributed, the business must provide
20 either: (1) a portion of the main counter which is a minimum of 36 in inches
21 length shall be provided with a maximum height of 36 inches; or (2) an
22 auxiliary counter with a maximum height of 36 inches in close proximity to the
23 main counter; or (3) some sort of qualifying equivalent facilitation. 1991
24 Standards § 7.2(2). Under the 2010 Standards, where the approach to the sales
25 or service counter is a parallel approach, such as in this case, there must be a
26 portion of the sales counter that is no higher than 36 inches above the floor and
27 36 inches in width and must extend the same depth as the rest of the sales or
28 service counter top. 2010 Standards § 904.4 & 904.4.1.

1 34. Here, no such accessible counter has been provided in violation of the
2 ADA.

3 35. Ticket dispensers are covered by the height/reach requirements of the
4 1991 Standards § 4.27 and 2010 Standards § 308.3 for control or operating
5 mechanisms. If the clear floor space allows parallel approach by a person in a
6 wheelchair, and the high-side reach is obstructed, the maximum high side
7 reach allowed shall be 48 inches.

8 36. Here, the failure to provide an accessible ticket dispensers in the meat
9 and cheese department is a violation of the ADA.

10 37. A public accommodation must maintain in operable working condition
11 those features of its facilities and equipment that are required to be readily
12 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

13 38. Here, the failure to ensure that the accessible facilities were available
14 and ready to be used by the plaintiff is a violation of the law.

15 39. Given its location and options, plaintiffs will continue to desire to
16 patronize the Supermarket but they have been and will continue to be
17 discriminated against due to the lack of accessible facilities and, therefore,
18 seek injunctive relief to remove the barriers.

19
20 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
21 **RIGHTS ACT** (On behalf of plaintiff and against all defendants) (Cal Civ §
22 51-53)

23 40. Plaintiffs replead and incorporates by reference, as if fully set forth
24 again herein, the allegations contained in all prior paragraphs of this
25 complaint.

26 41. Because the defendants violated the plaintiffs' rights under the ADA,
27 they also violated the Unruh Civil Rights Act and are liable for damages. (Civ.
28 Code § 51(f), 52(a).)

1 42. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
2 discomfort or embarrassment for the plaintiffs, the defendants are also each
3 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
4 (c).)

5
6 **PRAYER:**

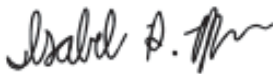
7 Wherefore, Plaintiffs pray that this court award damages and provide
8 relief as follows:

9 1. For injunctive relief, compelling defendants to comply with the
10 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
11 Plaintiffs are not invoking section 55 of the California Civil Code and is not
12 seeking injunctive relief under the Disabled Persons Act at all.

13 2. Damages under the Unruh Civil Rights Act which damages provide for
14 actual damages and a statutory minimum of \$4,000.

15 3. Reasonable attorney fees, litigation expenses and costs of suit,
16 pursuant to 42 U.S.C. § 12205; Cal. Civ. Code § 52.

17
18 Dated: December 26, 2017 CENTER FOR DISABILITY ACCESS

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20
21 By:  _____

22 Isabel Masanque, Esq.
23 Attorney for Plaintiff
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