

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

Luis Villegas,

Plaintiff,

v.

KC Prop, LLC, a California Limited Liability Company;
Starbucks Corporation, a Washington 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 Villegas complains of Defendants KC Prop, LLC, a California Limited Liability Company; Starbucks Corporation, a Washington 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.
2. Defendant KC Prop, LLC owned the real property located at or about

1 33300 Bernard Drive, Kettleman City, California, in December 2017.

2 3. Defendant KC Prop, LLC owns the real property located at or about
3 33300 Bernard Drive, Kettleman City, California, currently.

4 4. Defendant Starbucks Corporation owned the Starbucks located at or
5 about 33300 Bernard Drive, Kettleman City, California, in December 2017.

6 5. Defendant Starbucks Corporation owns the Starbucks (“Coffee Shop”)
7 located at or about 33300 Bernard Drive, Kettleman City, California,
8 currently.

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

19
20 **JURISDICTION & VENUE:**

21 7. This Court has subject matter jurisdiction over this action pursuant to
22 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
23 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

24 8. Pursuant to supplemental jurisdiction, an attendant and related cause
25 of action, arising from the same nucleus of operative facts and arising out of
26 the same transactions, is also brought under California’s Unruh Civil Rights
27 Act, which act expressly incorporates the Americans with Disabilities Act.

28 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is

1 founded on the fact that the real property which is the subject of this action is
2 located in this district and that Plaintiff's cause of action arose in this district.

3
4 **FACTUAL ALLEGATIONS:**

5 10. Plaintiff went to the Coffee Shop in December 2017 to have coffee and
6 use the restroom.

7 11. The Coffee Shop is a facility open to the public, a place of public
8 accommodation, and a business establishment.

9 12. Parking spaces are one of the facilities, privileges and advantages
10 reserved by defendants to persons at the Coffee Shop.

11 13. Unfortunately, although parking spaces were one of the facilities
12 specifically reserved for patrons, there were no compliant, accessible handicap
13 parking spaces available for persons with disabilities that complied with the
14 Americans with Disability Act Accessibility Guidelines (ADAAG) during
15 plaintiff's visit.

16 14. The parking stalls and access aisles were not level with each other.

17 15. The parking spaces and access aisles had slopes greater than 2.1%.

18 16. Currently, the parking stalls and access aisles are not level.

19 17. Currently, the parking stalls and access aisles have slopes greater than
20 2.1%.

21 18. The Defendants had no policy or plan in place to make sure that the
22 parking spaces reserved for persons with disabilities remained useable prior to
23 plaintiff's visit.

24 19. The Defendants have no policy or plan in place to make sure that the
25 parking spaces reserved for persons with disabilities remain useable, currently.

26 20. Plaintiff personally encountered this barrier.

27 21. This inaccessible parking lot denied Plaintiff full and equal access and
28 caused him difficulty and frustration.

1 22. Transaction counters are another one of the facilities, privileges, and
2 advantages offered by defendants to persons at the Coffee Shop.

3 23. Meanwhile, and even though plaintiff did not personally confront the
4 barrier although Defendants provided a lowered transaction counter at the
5 Coffee Shop, the counters were still not accessible to plaintiff.

6 24. Indeed, the Defendants crowded the transaction counters with
7 merchandise and displays, which narrowed the clear width of the counter to
8 less than 36 inches.

9 25. Currently, although Defendants provide a lowered transaction counter
10 at the Coffee Shop, the counters are not accessible to plaintiff.

11 26. Currently, the Defendants crowd the transaction counters with
12 merchandise and displays, which narrows the clear width of the counters to
13 less than 36 inches.

14 27. The Defendants have no policy in place to make sure that the
15 transaction counters are kept clear for persons with disabilities.

16 28. Restrooms are also one of the facilities, privileges and advantages
17 reserved by defendants to persons at the Coffee Shop.

18 29. The restroom mirror was mounted on the wall so that its bottom edge
19 was more than 40 inches above the finish floor.

20 30. Currently, the restroom mirror is mounted on the wall so that its bottom
21 edge is more than 40 inches above the finish floor.

22 31. Plaintiff would like to return and patronize the Coffee Shop but will be
23 deterred from visiting until the defendants cure the violations.

24 32. The defendants have failed to maintain in working and useable
25 conditions those features required to provide ready access to persons with
26 disabilities.

27 33. The violations identified above are easily removed without much
28 difficulty or expense. They are the types of barriers identified by the

1 Department of Justice as presumably readily achievable to remove and, in fact,
2 these barriers are readily achievable to remove. Moreover, there are numerous
3 alternative accommodations that could be made to provide a greater level of
4 access if complete removal were not achievable.

5 34. For example, there are numerous paint/stripe companies that will come
6 and stripe level parking stalls and access aisles and install proper signage on
7 rapid notice, with very modest expense, sometimes as low as \$300 in full
8 compliance with federal and state access standards.

9 35. Meanwhile, the mirror in the restroom could be removed or lowered so
10 that it is accessible.

11 36. Plaintiff is and has been deterred from returning and patronizing the
12 Coffee Shop because of his knowledge of the illegal barriers that exist. Plaintiff
13 will, nonetheless, return to the business to assess ongoing compliance with the
14 ADA and will return to patronize the Coffee Shop as a customer once the
15 barriers are removed.

16 37. Given the obvious and blatant violation, the plaintiff alleges, on
17 information and belief, that there are other violations and barriers on the site
18 that relate to his disability. Plaintiff will amend the complaint, to provide
19 proper notice regarding the scope of this lawsuit, once he conducts a site
20 inspection. However, please be on notice that the plaintiff seeks to have all
21 barriers related to his disability remedied. See *Doran v. 7-11*, 524 F.3d 1034
22 (9th Cir. 2008) (holding that once a plaintiff encounters one barrier at a site,
23 he can sue to have all barriers that relate to his disability removed regardless of
24 whether he personally encountered them).

25 38. Additionally, on information and belief, the plaintiff alleges that the
26 failure to remove these barriers was intentional because: (1) these particular
27 barriers are intuitive and obvious; (2) the defendants exercised control and
28 dominion over the conditions at this location and, therefore, the lack of

1 accessible facilities was not an “accident” because had the defendants
2 intended any other configuration, they had the means and ability to make the
3 change.

4
5 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
6 **WITH DISABILITIES ACT OF 1990** (On behalf of plaintiff and against all
7 defendants (42 U.S.C. section 12101, et seq.)

8 39. Plaintiff repleads and incorporates by reference, as if fully set forth
9 again herein, the allegations contained in all prior paragraphs of this
10 complaint.

11 40. Under the ADA, it is an act of discrimination to fail to ensure that the
12 privileges, advantages, accommodations, facilities, goods and services of any
13 place of public accommodation is offered on a full and equal basis by anyone
14 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
15 § 12182(a). Discrimination is defined, inter alia, as follows:

- 16 a. A failure to make reasonable modifications in policies, practices,
17 or procedures, when such modifications are necessary to afford
18 goods, services, facilities, privileges, advantages, or
19 accommodations to individuals with disabilities, unless the
20 accommodation would work a fundamental alteration of those
21 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 22 b. A failure to remove architectural barriers where such removal is
23 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
24 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
25 Appendix “D.”
- 26 c. A failure to make alterations in such a manner that, to the
27 maximum extent feasible, the altered portions of the facility are
28 readily accessible to and usable by individuals with disabilities,

1 including individuals who use wheelchairs or to ensure that, to the
2 maximum extent feasible, the path of travel to the altered area and
3 the bathrooms, telephones, and drinking fountains serving the
4 altered area, are readily accessible to and usable by individuals
5 with disabilities. 42 U.S.C. § 12183(a)(2).

6 41. Under the 1991 Standards, parking spaces and access aisles must be
7 level with surface slopes not exceeding 1:50 (2%) in all directions. 1991
8 Standards § 4.6.3. Here, the access aisle is not level and has a ramp taking up
9 part of the access aisle. Under the 2010 Standards, access aisles shall be at the
10 same level as the parking spaces they serve. Changes in level are not
11 permitted. 2010 Standards 502.4. “Access aisle are required to be nearly level
12 in all directions to provide a surface for wheelchair transfer to and from
13 vehicles.” 2010 Standards § 502.4 Advisory. Specifically, built up curb ramps
14 are not permitted to project into access aisles and parking spaces. *Id.* No more
15 than a 1:48 slope is permitted. 2010 Standards § 502.4.

16 42. Here, the failure to provide level parking is a violation of the law.

17 43. In areas used for transactions where counters have cash registers and
18 are provided for sales or distribution of goods or services to the public, at least
19 one of each type shall have a portion of the counter which is at least 36 inches
20 in length with a maximum height of 36 inches above the floor. 1991 Standards
21 § 7.2(1). Under the 2010 Standards, where the approach to the sales or service
22 counter is a parallel approach, such as in this case, there must be a portion of
23 the sales counter that is no higher than 36 inches above the floor and 36 inches
24 in width and must extend the same depth as the rest of the sales or service
25 counter top. 2010 Standards § 904.4 & 904.4.1.

26 44. Here, no such accessible, compliant transaction counters have been
27 provided. This is a violation of the ADA.

28 45. Mirrors shall be mounted with the bottom edge of the reflecting surface

1 no higher than 40 inches above the finish floor. 1991 Standards § 4.19.6;
2 2010 Standards § 603.3.

3 46. Here, the mirror was mounted higher than the maximum permitted and
4 is a violation of the ADA.

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

8 48. Here, the failure to ensure that the accessible facilities were available
9 and ready to be used by the plaintiff is a violation of the law.

10 49. Given its location and options, plaintiff will continue to desire to
11 patronize the Coffee Shop but he has been and will continue to be
12 discriminated against due to the lack of accessible facilities and, therefore,
13 seeks injunctive relief to remove the barriers.

14
15 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
16 **RIGHTS ACT** (On behalf of plaintiff and against all defendants) (Cal Civ §
17 51-53)

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

21 51. Because the defendants violated the plaintiff's rights under the ADA,
22 they also violated the Unruh Civil Rights Act and are liable for damages. (Civ.
23 Code § 51(f), 52(a).)

24 52. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
25 discomfort or embarrassment for the plaintiff, the defendants are also each
26 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
27 (c).)

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PRAYER:

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

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

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

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

Dated: February 20, 2018 CENTER FOR DISABILITY ACCESS

By: 

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Attorney for Plaintiff