

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

**Shirley Lindsay,**

Plaintiff,

v.

**Torn & Glasser, Inc.,** a California  
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 Shirley Lindsay complains of Defendants Torn & Glasser, Inc., a California Corporation; and Does 1-10 ("Defendants") and alleges as follows:

**PARTIES:**

1. Plaintiff is a California resident with physical disabilities. She suffers from arthritis (osteoarthritis of multiple joints; spinal stenosis of the lumbar spine; and essential hypertension) of her hands, knees, and hips. She uses both a cane and wheelchair for mobility.

2. Defendant Torn & Glasser, Inc. owned the real property located at or

1 about 1622 E. Olympic Blvd., Los Angeles, California, in November 2016.

2 3. Defendant Torn & Glasser, Inc. owns the real property located at or  
3 about 1622 E. Olympic Blvd., Los Angeles, California, currently.

4 4. Defendant Torn & Glasser, Inc. owned the Torn & Glasser store located  
5 at or about 1622 E. Olympic Blvd., Los Angeles, California, in November  
6 2016.

7 5. Defendant Torn & Glasser, Inc. owns the Torn & Glasser store (“Store”)  
8 located at or about 1622 E. Olympic Blvd., Los Angeles, California, 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 Store in November 2016 to shop.

6 11. The Store is a facility open to the public, a place of public  
7 accommodation, and a business establishment.

8 12. Parking spaces are one of the facilities, privileges and advantages  
9 specifically offered by defendants to patrons of the Store.

10 13. Unfortunately, there was no van-accessible parking spaces marked and  
11 reserved for persons with disabilities during plaintiff's visit in November  
12 2016.

13 14. Instead, there was just a single parking space marked and reserved for  
14 persons with disabilities that measured 96 inches in width and an access aisle  
15 that measured 60 inches in width. This is not van accessible.

16 15. Currently, there is not a single van-accessible parking space marked and  
17 reserved for persons with disabilities.

18 16. In addition to not having a van-accessible parking space, the defendants  
19 routinely and regularly store merchandise, machinery and pallets in the  
20 parking space marked and reserved for persons with disabilities.

21 17. On information and belief, plaintiff alleges that there used to be a van-  
22 accessible parking space in the parking lot.

23 18. Unfortunately, the space has been allowed to fade to oblivion. The  
24 defendants do not maintain the parking lot, so parking spaces are allowed to  
25 fade or get paved over.

26 19. Plaintiff personally encountered these barriers.

27 20. This inaccessible condition denied the plaintiff full and equal access and  
28 caused her difficulty and frustration.

1       21. In addition to not having a van-accessible parking space, and even  
2 though the plaintiff did not personally confront the barrier, the transaction  
3 counter is 44 inches in height. There is no lowered, 36 inch portion of counter  
4 for use by persons in wheelchairs. Moreover, the defendants crowd the  
5 transaction counter with merchandise and displays that narrow the clear width  
6 of the counter to less than 36 inches.

7       22. Plaintiff would like to return and patronize the Store but will be deterred  
8 from visiting until the defendants cure the violations.

9       23. The defendants have failed to maintain in working and useable  
10 conditions those features required to provide ready access to persons with  
11 disabilities.

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

18       25. For example, there are numerous paint/stripe companies that will come  
19 and stripe a van-accessible space and aisle and install proper signage on rapid  
20 notice, with very modest expense, sometimes as low as \$300 in fully  
21 compliance with federal and state access standards.

22       26. Additionally, one of the common barrier removal projects is to modify  
23 transaction counters so that there is an accessible portion of counter. This is a  
24 simple architectural and construction task, well within the capabilities of any  
25 general contractor, and done with a modicum of expense and effort.

26       27. Plaintiff is and has been deterred from returning and patronizing the  
27 Store because of her knowledge of the illegal barriers that exist. Plaintiff will,  
28 nonetheless, return to assess ongoing compliance with the ADA and will

1 return to patronize the Store as a customer once the barriers are removed.

2 28. Given the obvious and blatant violation, the plaintiff alleges, on  
3 information and belief, that there are other violations and barriers on the site  
4 that relate to her disability. Plaintiff will amend the complaint, to provide  
5 proper notice regarding the scope of this lawsuit, once she conducts a site  
6 inspection. However, please be on notice that the plaintiff seeks to have all  
7 barriers related to her disability remedied. See *Doran v. 7-11*, 524 F.3d 1034  
8 (9th Cir. 2008) (holding that once a plaintiff encounters one barrier at a site,  
9 he can sue to have all barriers that relate to his disability removed regardless of  
10 whether he personally encountered them).

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

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

22 30. Plaintiff re-pleads and incorporates by reference, as if fully set forth  
23 again herein, the allegations contained in all prior paragraphs of this  
24 complaint.

25 31. Under the ADA, it is an act of discrimination to fail to ensure that the  
26 privileges, advantages, accommodations, facilities, goods and services of any  
27 place of public accommodation is offered on a full and equal basis by anyone  
28 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.

1 § 12182(a). Discrimination is defined, inter alia, as follows:

- 2 a. A failure to make reasonable modifications in policies, practices,  
3 or procedures, when such modifications are necessary to afford  
4 goods, services, facilities, privileges, advantages, or  
5 accommodations to individuals with disabilities, unless the  
6 accommodation would work a fundamental alteration of those  
7 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 8 b. A failure to remove architectural barriers where such removal is  
9 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are  
10 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,  
11 Appendix “D.”
- 12 c. A failure to make alterations in such a manner that, to the  
13 maximum extent feasible, the altered portions of the facility are  
14 readily accessible to and usable by individuals with disabilities,  
15 including individuals who use wheelchairs or to ensure that, to the  
16 maximum extent feasible, the path of travel to the altered area and  
17 the bathrooms, telephones, and drinking fountains serving the  
18 altered area, are readily accessible to and usable by individuals  
19 with disabilities. 42 U.S.C. § 12183(a)(2).

20 32. Any business that provides parking spaces must provide a sufficient  
21 number of handicap parking spaces. 1991 Standards § 4.1.2(5). 2010  
22 Standards § 208. According to the 1991 Standards, if a parking lot has 30  
23 spaces, it must have 2 accessible parking spaces. 1991 Standards § 4.1.2(5)(a).  
24 Under the 2010 Standards, a parking lot with 30 spaces must have 2 accessible  
25 spaces. 2010 Standards § 208.2 and 1 of them must be van accessible. *Id.* at  
26 208.2.4.

27 33. Here, there was no van accessible parking.

28 34. In areas used for transactions where counters have cash registers and

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

35. Here, no such accessible transaction counter has been provided in violation of the ADA.

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

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

38. Given its location and options, plaintiff will continue to desire to patronize the Store but she has been and will continue to be discriminated against due to the lack of accessible facilities and, therefore, seeks injunctive relief to remove the barriers.

## **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ. Code § 51-53.)

39. Plaintiff re-pleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint.

40. Because the defendants violated the plaintiff's rights under the ADA, they also violated the Unruh Civil Rights Act and are liable for damages. (Cal.

1 Civ. Code § 51(f), 52(a).)

2 41. Because the violation of the Unruh Civil Rights Act resulted in difficulty,  
3 discomfort or embarrassment for the plaintiff, the defendants are also each  
4 responsible for statutory damages, i.e., a civil penalty. (Cal. Civ. Code §  
5 55.56(a)-(c).)

6  
7 **PRAYER:**

8 Wherefore, Plaintiff prays that this Court award damages and provide  
9 relief as follows:

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

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

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

18  
19 Dated March 7, 2017

CENTER FOR DISABILITY ACCESS

20  
21 By:   
22 Russell Handy, Esq.  
23 Attorneys for plaintiff  
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