

2002 WL 33966324 (Cal.Superior) (Trial Order)
Superior Court of California.
Alameda County

CALIFORNIANS FOR DISABILITY RIG, Plaintiff(s),
v.
MERVYN'S CALIFORNIA, INC., Defendant(s).

No. 2002051738.
December 10, 2002.

Motion to Compel (Motion) Partial Grant

Order

Disability Rights Advocates, Attn: Paradisc, Laurence W., 449 Fifteenth Street, Suite 303, Oakland, CA 94612.

Morrison & Foerster LLP, Attn: McElhinney, Harold J., 425 Market Street, San Francisco, CA 94105-2482.

Judge Ronald M. Sabraw.

The Motion to Compel (Motion) filed for Californians For Disability Rights, a non-profit corporation, on behalf of the General Public was set for hearing on 12/10/2002 at 02:30 PM in Department 22 before the Honorable Ronald M. Sabraw. The Tentative Ruling was published and was contested.

The matter was argued and submitted, and good cause appearing therefore,

IT IS HEREBY ORDERED THAT:

The tentative ruling is affirmed as follows: Motion of Plaintiff Californians for Disability Rights to compel inspections of land under CCP 2031 is GRANTED subject to certain limitations.

This case concerns whether Mervyn's engages in an unfair business practice by not permitting persons with mobility difficulties full and equal access to merchandise. Therefore, the physical conditions at Mervyn's stores is relevant to the lawsuit.

Defendant argues that the stores are very busy in December and that an inspection in December will impose an undue burden on it by interfering with shoppers and the Mervyn's employees who should be attending to the merchandise and the shoppers. Defendant also suggests that a December inspection is not representative of Mervyn's year round operations.

The Court holds that the asserted burdens suggest parameters for when the inspections take place, the duration of the inspections, and how many persons may attend the inspections, but do not support a denial of this motion. The Court suggests that if Mervyn's thinks that December inspections are not representative, then Mervyn's may notice additional inspections at other times of the year.

The Court holds that Plaintiff may inspect the Peasant Hill store on December 18, 2002, and the Vallejo store on December 19, 2002. These inspections will be limited as follows:

The inspections will commence at 7:00 am and conclude by 9:00 am.

Only three persons (presumably counsel, a videographer, and an expert) may be present on behalf of Plaintiff during the inspection.

The representatives of Plaintiff may take pictures and measurements.

Defendant must provide a store representative to guide Plaintiff through the stores and provide basic information about the location of store facilities. The store representative is to facilitate the inspections.

Although the inspections will necessarily cause some disruption, the representatives of Plaintiff should make reasonable efforts not to interfere with the normal operations at the stores.

The inspections may include areas of the stores where consumers have access plus the stockrooms and loading docks.

The parties may stipulate to expand the scope of the inspections. The Court notes that information may be discoverable but not admissible at trial, and that by permitting discovery the Court does not alter the claims or defenses asserted by the parties.

Dated: 12/10/2002

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Judge Ronald M. Sabraw
