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9

10 **IN THE UNITED STATES DISTRICT COURT**
FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 DEBORAH A. LANE)
12 and)
13 JOSHUA E. LOYA,)
14 Plaintiffs,)
15 v.)
16 SANTA CRUZ METROPOLITAN)
17 TRANSIT DISTRICT,)
18 a political subdivision of the)
State of California,)
19 Defendant.)

Case No. 02-01808-RMW HRL

**PLAINTIFFS' MEMORANDUM IN
OPPOSITION TO DEFENDANT
SANTA CRUZ METROPOLITAN
TRANSIT DISTRICT'S MOTION
TO DISMISS PLAINTIFFS' 6TH
CLAIM FOR RELIEF FOR FAILURE
TO STATE A CLAIM UPON WHICH
RELIEF MAY BE GRANTED**

Date: October 18, 2002
Time: 9:00 a.m.

20 Plaintiffs Deborah A. Lane and Joshua E. Loya hereby file their Brief in Opposition to
21 Defendant Santa Cruz Metropolitan Transit District's Motion to Dismiss Plaintiffs' 6th Claim
22 for Relief for Failure to State a Claim Upon Which Relief May Be Granted ("Mot. to
23 Dismiss").
24

25 Plaintiffs' Memorandum in Opposition to Defendant's
26 Motion to Dismiss Plaintiffs' 6th Claim for Relief
Lane v. Santa Cruz Metro, Case No.C- 02-1808-RMW

1 **ISSUES TO BE DECIDED**

2 1. Are Plaintiffs' claims under the Unfair Competition Act, which do not seek
3 relief in the form of money or damages, barred by the Tort Claims Act?

4 2. Is Defendant subject to the Unfair Competition Act in its operation of a bus
5 system?

6 **BACKGROUND**

7 Plaintiffs Joshua Loya and Deborah Lane are residents of Santa Cruz County,
8 California. Mr. Loya is blind, and Ms. Lane has multiple sclerosis (along with other
9 disabilities) which causes periodic bouts of double vision. Because of their disabilities, neither
10 Plaintiff can drive, and both rely upon the Santa Cruz public transportation system as their
11 principal means of transportation. This system is operated by Defendant Santa Cruz
12 Metropolitan Transit District.

13 Because of their disabilities, Plaintiffs need bus stops to be announced by bus operators
14 (or electronically on buses equipped with the appropriate technology) and, at bus stops serving
15 more than one route, the routes of the buses announced so that they can board the correct bus.
16 This lawsuit arises out of Defendant's repeated failures to ensure that bus stops and bus routes
17 are announced. Plaintiffs have asserted claims for violations of Title II of the Americans with
18 Disabilities Act ("ADA"), 42 U.S.C. § 12131, et seq., the Rehabilitation Act of 1973, 29
19 U.S.C. § 701, et seq., the Unruh Civil Rights Act, Cal. Civ. Code § 51, et seq., the Public
20 Accommodations Law, Cal. Civ. Code § 54, et seq., California Government Code § 11135, et
21 seq., and the Unfair Competition Statute, Cal. Bus. & Prof. Code § 17200, et seq. Defendant's
22 Motion to Dismiss seeks dismissal of Plaintiffs' claims under the Unfair Competition Act.

23 **ARGUMENT**

24 Defendant's Motion to Dismiss, although not expressly divided as such, is actually

1 based on two arguments: (1) that California's Tort Claim Act immunizes Defendant from
 2 liability under the Unfair Competition Act; and (2) that Defendant, as a public entity, is not a
 3 "person" covered by the Unfair Competition Act. These arguments are incorrect.

4 **A. The Tort Claims Act Does Not Apply to Non-Monetary Relief.**

5 Defendant argues that the Tort Claims Act protects it from liability under the Unfair
 6 Competition Act. (Motion to Dismiss at 3-4.) This argument can be disposed of quickly. The
 7 Tort Claims Act, by its express terms, does not immunize public entities from claims seeking
 8 "relief other than money or damages." Cal. Gov't Code § 814; see also Qwest
 9 Communications Corp. v. City of Berkeley, 146 F. Supp. 2d 1081, 1090 (N.D. Cal. 2001)
 10 (stating that "injunctive relief . . . is not subject to the procedural requirements of the Tort
 11 Claims Act"(citations omitted)); Minsky v. City of Los Angeles, 11 Cal. 3d 113, 121 (1974)
 12 ("The claims statutes do not 'impose any . . . requirements for nonpecuniary actions, such as
 13 those seeking injunctive, specific, or declaratory relief.'" (Emphasis and citation omitted.))

14 The Unfair Competition Act provides for injunctive relief, but damages are not
 15 recoverable.¹ See Cal. Bus. & Prof. Code § 17203; Rosales v. Citibank, Fed. Sav. Bank, 133
 16 F. Supp. 2d 1177, 1181 (N.D. Cal. 2001) (stating that damages are not recoverable under the
 17 Unfair Competition Act). Because Plaintiffs do not seek money or damages under the Unfair
 18 Competition Act, their claims under that statute are not barred by the Tort Claims Act.

21
 22 ¹ The Unfair Competition Act also provides for "disgorgement of monies
 23 wrongfully obtained." Vikco Ins. Servs., Inc. v. Ohio Indem. Co., 70 Cal. App. 4th 55, 67
 24 Cal. 3d at 117, 124 (holding that complaint seeking recovery of money wrongfully withheld by
 25 the defendant was not subject to the Tort Claims Act). In any event, Plaintiffs in this action do
 not seek disgorgement under the Unfair Competition Act, and thus the issue of whether
 Defendant would be immune to such a claim is irrelevant.

1 Indeed, two of the cases cited by Defendant explicitly recognize the principle that
2 “[w]here ... no impairment of sovereign powers would result . . . the Legislature may properly
3 be held to have intended that the statute apply to governmental bodies even though it used
4 general statutory language only.” Cnty. Mem’l Hosp. v. County of Ventura, 50 Cal. App. 4th
5 199, 209 (1996) (citations omitted); Cal. Med. Ass’n, Inc. v. Regents of the Univ. of
6 California, 79 Cal. App. 4th 542, 548 (2000) (“The University of California is excluded from
7 the operation of a general statutory provision if the University’s inclusion would result in an
8 infringement upon the powers granted to it as an instrumentality of the state.” (Citations
9 omitted.)). Each of these cases, however, involved operating a hospital, and “there can be no
10 dispute that guarding the public health is within the [defendant’s] sovereign powers.” Cnty.
11 Mem’l Hosp., 50 Cal. App. 4th at 209.

12 Defendant cites two other cases -- Janis v. California State Lottery Commission, 68 Cal.
13 App. 4th 824 (1998) and Trinkle v. California State Lottery, 71 Cal. App. 4th 1198 (1999) -- in
14 which the courts found that the defendants in those cases were not covered by the Unfair
15 Competition Act. Although these cases do not explicitly refer to the statutory construction
16 principles set forth in Hoyt and its progeny, the results in both cases are consistent with these
17 principles. Both Janis and Trinkle concerned operation of a state lottery, and numerous cases
18 have held that operating a lottery is an exercise of sovereign rather than proprietary power.
19 See, e.g., Wojcik v. Mass. State Lottery Comm’n, 300 F.3d 92, 100 (1st Cir. 2002) (“This
20 revenue-raising function [of a state lottery] is decidedly governmental in nature.”(Citations
21 omitted.)); Hilton Apothecary, Inc. v. State, 630 N.Y.S.2d 446, 448 (Ct. Cl. 1995) (“Here, the
22 activity involved, the operation of the Lottery, is fully governmental and not proprietary in
23 nature.”).

24 This action concerns Defendant’s failure to ensure that bus stops and bus routes are

1 Lopez is consistent with the decisions of numerous courts across the country holding
 2 that operating a bus system is not an exercise of sovereign power. See, e.g., Gleason v. Metro.
 3 Council Transit Operations, 582 N.W.2d 216, 221 (Minn. 1998) (“[T]he rational . . . that the
 4 inequity of extending official immunity to governmental employees who perform the same
 5 proprietary functions as private entities would be unwarranted, applies equally to a bus driver
 6 who discriminates against a disabled passenger.”); Board of Comm’rs v. Chatham Advertisers,
 7 371 S.E.2d 850, 851 (Ga. 1988) (“The operation of a public transportation system, such as a
 8 scheduled fixed-route transit bus system . . . is a proprietary or ministerial function.” (Citations
 9 omitted.); Lepore v. R.I. Pub. Transit Auth., 524 A.2d 574, 575 (R.I. 1987) (holding that
 10 operation of a public bus system was not a governmental function); Comastro v. Vill. of
 11 Rosemont, 461 N.E.2d 616, 619 (Ill. App. 1984) (Holding that “[a] municipal corporation
 12 engaged in a non-governmental function, such as the operation of . . . a public transportation
 13 system . . . will be held to the same standard of care as that imposed on a private party.”
 14 (citations omitted)); Johnson v. Detroit Metro. Airport, 350 N.W.2d 295, 297 (Mich. App.
 15 1984) (Holding that “the municipal operation of bus and streetcar companies . . . were always
 16 considered proprietary . . .”); Butts v. County of Dade, 178 So. 2d 592, 596 (Fla. Dist. Ct. App.
 17 1965) (“We therefore hold that the operation of the transit system is not a governmental
 18 operation of Dade County . . .”).

19 The numerous authorities cited above demonstrate that Defendant’s operation of a bus
 20 system is not an exercise of its sovereign power. Under Hoyt and its progeny, because
 21 subjecting Defendant to the Unfair Competition Act will not impair its sovereign power,
 22

23 'provided by statute' if a statute defines the tort in general terms.” Id. (citation omitted). The
 24 Court found that Civil Code section 2100 – which does not expressly apply to “public entities”
 25 – nevertheless “otherwise provide[d]” for the liability of public entities within the meaning of
 section 815. Id.

1 Defendant is covered by the Act.

2 3. *Subjecting Defendant's Bus Stop and Route Announcement Practices to the*
 3 *Unfair Competition Act Will Not Impair Any Of Its Powers.*

4 Plaintiffs' Unfair Competition Act claim is limited to Defendant's failure to ensure that
 5 bus stops and bus routes are announced. These aspects of Defendant's bus system are subject
 6 to specific requirements set forth in other state and federal laws. Thus even if Defendant's
 7 operational decisions concerning its bus system generally are exercises of its sovereign power,
 8 its practices concerning stop and route announcements are highly regulated. Applying the
 9 Unfair Competition Act with respect to these aspects of Defendant's bus system, therefore,
 10 cannot impair its sovereign power.

11 The requirements under Title II of the ADA concerning announcement of bus stops and
 12 bus routes are specific and clear. Defendant must (1) announce stops at the request of an
 13 individual with a disability, (2) announce transfer points with other fixed routes,⁴ (3) announce
 14 other major intersections and destination points, and (4) announce intervals along a route
 15 sufficient to permit individuals with visual impairments or other disabilities to be oriented to
 16 their location. 49 C.F.R. § 37.167(b)(1), (2). In addition, where buses for more than one route
 17 serve the same stop, Metro must provide a means by which an individual with a visual
 18 impairment or other disability can identify the proper bus to enter. 49 C.F.R. § 37.167(c).

19 In addition, the California Public Accommodations Law provides that "[i]ndividuals
 20 with disabilities shall be entitled to full and equal access, as other members of the general
 21 public, to accommodations . . . and privileges of all common carriers . . . motorbuses . . . or any
 22 other public conveyances or modes of transportation (whether private, public, franchised,

23 ⁴ A transfer point is any stop "where a passenger can get off and transfer to
 24 another bus or rail line (or to another form of transportation, such as commuter rail or ferry) . .
 25 . ." 49 C.F.R. pt. 37, app. D, § 37.167.

1 licensed, contracted, or otherwise provided) . . .” Cal. Civ. Code § 54.1(a)(1). The Public
2 Accommodations Law expressly incorporates the requirements of Title II and its regulations.
3 Id. § 54.1(a)(3).

4 Defendant is bound by the requirements of California and federal law. Therefore
5 subjecting Defendant to the Unfair Competition Act based on its failure to ensure that bus
6 stops and bus routes are announced cannot, by definition, impair any of its powers, sovereign
7 or otherwise.

8 **CONCLUSION**

9 For the reasons set forth above, Plaintiffs respectfully request that Defendant’s Motion
10 to Dismiss be denied.

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12 Respectfully Submitted,

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FOX & ROBERTSON, P.C.

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BY: s/ Timothy P. Fox
Timothy P. Fox

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DISABILITY RIGHTS EDUCATION AND
DEFENSE FUND, INC.

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Linda D. Kilb

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Dated: September 26, 2002

Attorneys for Plaintiffs

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