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**E-FILED on 11/7/02** \_\_\_\_\_

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

DEBORAH A. LANE and JOSHUA E. LOYA,  
Plaintiffs,  
v.  
SANTA CRUZ METROPOLITAN TRANSIT  
DISTRICT, a political subdivision of the State of  
California,  
Defendant.

No. C-02-01808 RMW

ORDER GRANTING DEFENDANT'S  
MOTION TO DISMISS PLAINTIFFS' 6TH  
CLAIM FOR RELIEF FOR FAILURE TO  
STATE A CLAIM UPON WHICH RELIEF  
MAY BE GRANTED

**[Re Docket No. 10]**

DEFENDANT'S motion to dismiss PLAINTIFFS' sixth claim for relief for failure to state a claim upon which relief may be granted was heard on November 1, 2002. For the reasons set forth below, the court grants DEFENDANT'S motion.

**I. BACKGROUND**

Plaintiffs Deborah A. Lane and Joshua E. Loya allege that defendant Santa Cruz Metropolitan Transit District ("Metro"), a political subdivision of the State of California, discriminated against plaintiffs because of their disabilities in violation of (1) the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq., (2) the Rehabilitation Act of 1973, 29 U.S.C. § 701, et seq., (3) the Unruh Civil Rights Act, Cal. Civ. Code, § 51, et seq., (4) the Public Accommodations Law, Cal. Civ. Code, § 54, et seq., (5) California Government Code § 11135, et seq., and (6) the Unfair Competition Act, Cal. Bus. & Prof.

1 Code, § 17200, et seq. Plaintiffs allege that defendant is a political division of the State of California and a  
2 "public entity" under the relevant portions of state and federal law.

3 The gravamen of the complaint is that Metro does not comply with federal regulation which  
4 purportedly requires Metro to ". . . announce bus stops at transfer points with other fixed routes, other  
5 major intersections and destination points, and intervals along route sufficient to permit individuals with  
6 visual impairments or other disabilities be oriented to their location." (Mot. at 3.) As a result of this  
7 asserted failure to comply with federal regulations, plaintiffs contends that they have suffered injuries,  
8 including emotional distress, apprehension of danger, embarrassment, anguish, pain, exhaustion,  
9 inconvenience, delay, and the inability to travel to appointments in a timely manner." (*Id.*)

10 In this motion, defendant questions whether plaintiffs' claim under the Unfair Competition Act,  
11 California Business and Professions Code § 17200, et seq. ("section 17200"), plaintiffs' sixth claim for  
12 relief, is sufficient to state a claim for which relief can be granted. Defendant contends that Metro is  
13 immune from suit under California Government Code § 815 ("section 815") and that, as a matter of law, as  
14 a "public entity" Metro is not subject to section 17200. Plaintiffs counter that governmental immunity under  
15 section 815 does not extend to actions for injunctive relief and that section 17200 is a statute of general  
16 application and, therefore, covers "public entities" unless enforcement would impair that entity's "sovereign  
17 powers."

## 18 II. ANALYSIS

19 Under Federal Rules of Civil Procedure Rule 12(b)(6) parties may, by motion, assert a defense to  
20 any claim for relief that such claim fails to state a claim upon which relief can be granted. In a Rule  
21 12(b)(6) motion, all material allegations in the complaint must be taken as true and construed in the light  
22 most favorable to the plaintiff. *Pilsbury, Madison & Sutro v. Lerner*, 31 F.3d 924, 928 (9th Cir. 1994).  
23 Dismissal is appropriate only when it "appears beyond doubt that the plaintiff can prove no set of facts in  
24 support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S. Ct.  
25 99, 2 L.Ed.2d 80 (1957).

26 In their sixth claim for relief, plaintiffs allege that defendant has violated section 17200 because  
27 defendant's "services are not accessible to individuals with disabilities" in violation of state and federal law.  
28

1 Defendant moves to dismiss this claim on the grounds that Metro is immune to suit under section 815 and,  
2 as a matter of law, section 17200 does not apply to "public entities."

3 In arguing that Metro is not subject to suit under section 17200, defendant relies, in part, on section  
4 815 of the California Government Code which states that "[e]xcept as otherwise provided by statute: (a) a  
5 public entity is not liable for an injury, whether such injury arises out of an act or omission of the public  
6 entity or a public employee or any other person." Cal. Gov. Code § 815 (West 1995). Plaintiffs counter  
7 that under section 814, section 815 does not immunize public entities from claims seeking relief other than  
8 money damages, see Cal. Gov. Code § 814, and argue that section 815 does not apply to their section  
9 17200 claims, which seek only injunctive relief. (Opp. Br. at 3.) In reply, defendant seems to concede this  
10 point and relies solely on its arguments regarding the limited scope of section 17200. (Reply Br. at 2.)  
11 Because defendant is correct about the limited scope of section 17200, this court does not need to apply  
12 California Government Code sections 814 and 815.

13 Section 17200 defines "unfair competition" to include "any unlawful, unfair or fraudulent business  
14 act or practice and unfair, deceptive, untrue or misleading practice and unfair, deceptive, untrue or  
15 misleading advertising." Cal. Bus. & Prof. Code § 17200 (West 1997). Section 17203, provides for  
16 injunctive relief against "persons" who engage in acts of unfair competition. § 17203. Section 17201  
17 defines "person" as including "natural persons corporations, firms, partnerships, joint stock companies,  
18 associations and other organization of persons." § 17201. This definition of "person" does not include  
19 "public entities." See California Medical Association, Inc. v. Regents of the University of California, 79  
20 Cal. App. 4th 542, 551 (2000) (holding University of California is a "public entity" and not a "person"  
21 within meaning of section 17201); Janis v. California State Lottery Com., 68 Cal. App. 4th 824, 831  
22 (1998) (holding California Lottery is a "public entity" and not a "person" within meaning of section 17201);  
23 Trinkle v. California State Lottery, 71 Cal. App. 4th 1198, 1203 (1999) (holding that state is not a  
24 "person" within meaning of section 17201); see also Community Memorial Hospital, 50 Cal. App. 4th  
25 199, 209 (1996) (county hospital may not be sued under section 17200); Santa Monica Rent Control Bd.  
26 v. Bluvshstein, 230 Cal. App. 3d 308, 318 (1991) (Rent Control Board, as a government agency, falls  
27 outside of definition of "person" set out in section 17201). The Metro is a political subdivision of the State  
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1 of California, a public entity, and cannot constitute a "person" within the meaning of the section 17200. It  
2 follows that, as a matter of law, plaintiffs cannot prevail on their section 17200 claim of unfair competition  
3 or unfair practices.

4  
5 **III. ORDER**

6 For the foregoing reasons, the court grants defendant's motion to dismiss plaintiffs' sixth claim for  
7 relief for failure to state a claim upon which relief can be granted.

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9 DATED: 11/7/02 \_\_\_\_\_ /s/ Ronald M. Whyte \_\_\_\_\_  
10 RONALD M. WHYTE  
11 United States District Judge  
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12 **Dated:** 11/7/02 /s/ KPO  
**Chambers of Judge Whyte**

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