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**United States District Court  
Central District of California**

ANTONIO FERNANDEZ,  
Plaintiff,

v.

O'REILLY AUTO ENTERPRISES, LLC,  
et al.,  
Defendants.

Case No. 2:19-cv-05464-ODW (KSx)

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW; ORDER  
DENYING DEFENDANT'S MOTION  
IN LIMINE NO. 1 [46][61]**

**I. INTRODUCTION**

On July 20, 2021, the Court held a one-day bench trial in this case. (ECF No. 75.) Plaintiff Antonio Fernandez tried one claim against Defendant O'Reilly Auto Enterprises, LLC under the Americans with Disabilities Act ("ADA"). Fernandez contends that the lowered accessible transaction counter ("ADA Counter") at an O'Reilly store was cluttered, and O'Reilly failed to modify a policy, practice, or procedure to prevent discrimination under the ADA.

The parties submitted documentary evidence and elicited testimony from Fernandez, Evens Louis (Fernandez's investigator), and Jose Montellano (O'Reilly's regional director for Los Angeles).

1 Having carefully reviewed and considered the evidence and arguments of  
2 counsel as presented at trial and in their written submissions, the Court issues the  
3 following findings of fact and conclusions of law pursuant to Federal Rule of Civil  
4 Procedure 52(a). To the extent that any finding of fact constitutes a conclusion of law,  
5 it is adopted as such, and vice versa.

## 6 II. FINDINGS OF FACT

7 1. Fernandez is disabled as defined by the ADA.

8 2. O'Reilly Auto Enterprises, LLC operates the O'Reilly store located at  
9 8270 Whittier Boulevard, Pico Rivera, California (the "Store").

10 3. The Store has several non-ADA sales and service counters and one ADA  
11 Counter that is structurally compliant with ADA requirements. On June 10, 2019,  
12 Fernandez visited the Store to purchase a one-gallon container of antifreeze and a car  
13 fuse.

14 4. Fernandez provided testimony regarding his experiences at the Store.  
15 The Court did not find Fernandez credible. Fernandez was careless with the facts and  
16 overall unreliable.

17 5. Fernandez testified, but failed to establish, that clutter on the ADA  
18 Counter made it unusable. Fernandez relies on a photograph of the ADA Counter  
19 taken on June 10, 2019, admitted as Exhibit 1. The photograph shows a clipboard, a  
20 roll of paper towels, magazines, and merchandise on the Counter. The photograph  
21 fails to demonstrate that the items on the ADA Counter made it unusable. On  
22 cross-examination, Fernandez admitted that he could have placed his items on the  
23 ADA Counter.

24 6. Fernandez testified that during the June 10, 2019 visit, an O'Reilly sales  
25 associate summoned him to a non-ADA counter to complete his sales transaction.  
26 Fernandez testified he completed his transaction at the non-ADA counter, but it was  
27 difficult and embarrassing.

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1           7.     Fernandez relies on Exhibit 2, which is a photograph taken on June 10,  
2 2019, that depicts Fernandez at a non-ADA counter purportedly using the debit/credit  
3 card point of sale terminal to make his purchase. There is no sales associate at the  
4 counter where Fernandez is located, and the antifreeze and fuse are not seen on the  
5 counter or otherwise visible.

6           8.     On direct examination, Fernandez testified confidently several times that  
7 during the June 10, 2019 visit he took a photograph admitted as Exhibit 7, which  
8 depicts a white plastic bag on top of the ADA Counter. Later, and only after leading  
9 questions from his counsel, Fernandez admitted that Fernandez’s investigator, Evens  
10 Louis, took the photograph admitted as Exhibit 7 during Louis’s June 17, 2019 visit to  
11 the Store.

12           9.     On December 15, 2020, Fernandez visited the Store again to purchase  
13 one bottle of headlight cleaner. Fernandez testified that clutter on the ADA Counter  
14 precluded him from conducting his sale at that counter. However, Fernandez  
15 introduced no evidence demonstrating the extent of the purported clutter on the ADA  
16 Counter during the December 15, 2020 visit.

17           10.    Fernandez testified that during the December 15, 2020 visit, an O’Reilly  
18 sales associate summoned him to a non-ADA counter to complete his transaction.

19           11.    Fernandez also advanced a new theory at trial that O’Reilly violated the  
20 ADA because it does not have a policy that mandates its sales associates assist persons  
21 with disabilities at the ADA Counter. This “policy” theory was not included in the  
22 pleadings.

23           12.    Montellano, the Regional Director for O’Reilly’s Los Angeles stores,  
24 testified at trial. Montellano’s testimony concerning O’Reilly’s ADA policies was  
25 generally credible. Montellano testified that he visits the Store approximately once  
26 every three months and is familiar with O’Reilly’s policies. Montellano testified that  
27 O’Reilly’s policy is to comply with the ADA’s accessibility requirements and  
28 O’Reilly provides ADA training to its employees.

1 13. Montellano testified that O'Reilly's policy is to encourage employees to  
2 assist customers at whichever counter they are located, and O'Reilly does not have a  
3 policy or practice of summoning a person with a disability to a non-ADA counter.  
4 Montellano stated it is counter and contrary to O'Reilly's policy to summon a person  
5 with a disability to a non-ADA counter.

### 6 III. CONCLUSIONS OF LAW

7 14. Fernandez's initial theory of liability was that O'Reilly failed to maintain  
8 the ADA Counter in a usable manner. (*See generally* Compl., ECF No. 1.)

9 15. Title III of the ADA "prohibits discrimination against the disabled in the  
10 full and equal enjoyment of public accommodations." *Chapman v. Pier 1 Imports*  
11 (*U.S.*) *Inc.*, 779 F.3d 1001, 1005 (9th Cir. 2015) (quoting *Spector v. Norwegian Cruise*  
12 *Line Ltd.*, 545 U.S. 119, 128 (2005)). The anti-discrimination provisions of the ADA  
13 require public accommodations, like O'Reilly, "to design and construct facilities" that  
14 are "readily accessible to and usable by individuals with disabilities." *Id.*; 42 U.S.C.  
15 § 12183(a)(1).

16 16. ADA regulations "require that a public accommodation maintain in  
17 operable working condition those features of facilities and equipment that are required  
18 to be readily accessible to and usable by persons with disabilities." *Chapman*,  
19 779 F.3d at 1006 (internal quotation marks omitted); 28 C.F.R. § 36.211(a). "[T]he  
20 generally applicable regulations explain that the requirement that public  
21 accommodations maintain 'readily accessible' facilities and equipment 'does not  
22 prohibit isolated or *temporary interruptions* in . . . access.'" *Id.* at 1006 (quoting  
23 28 C.F.R. § 36.211(b)). An obstruction must "*persist beyond a reasonable period of*  
24 *time*" to violate the ADA. *Chapman*, 779 F.3d at 1007.

25 17. Evaluating the ADA standards and federal regulations, the Ninth Circuit  
26 has concluded that clutter on an accessible sales counter "on only two or three visits"  
27 is insufficient to demonstrate a violation of the ADA. *Id.* at 1010.

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1           18. The Court finds Fernandez’s theory that O’Reilly failed to maintain the  
2 ADA Counter in a usable manner meritless. First, based on the evidence presented at  
3 trial, the items on the ADA Counter did not render it unusable. Indeed, Fernandez  
4 testified that he could have placed his items on the counter. Second, Fernandez  
5 testified that he encountered clutter on the ADA Counter on two occasions, sixteen  
6 months apart. However, applicable precedent holds that these isolated and temporary  
7 obstructions cannot establish a violation of the ADA. *See id.* (explaining that clutter  
8 on an accessible sales counter on only two or three visits to a public accommodation is  
9 at most a “temporary or isolated interruption[] in . . . access.”).

10           19. Accordingly, Fernandez fails to demonstrate O’Reilly violated the ADA  
11 by failing to maintain the ADA Counter in a usable manner.

12           20. Fernandez’s new theory of liability is that O’Reilly violates the ADA  
13 because it does not have a policy that mandates its sales associates assist persons with  
14 disabilities at the ADA Counter.

15           21. To prove this policy or practice claim, Fernandez must establish: “(1) he  
16 is disabled as that term is defined by the ADA; (2) the defendant is a private entity  
17 that owns, leases, or operates a place of public accommodation; (3) the defendant  
18 employed a discriminatory policy or practice; and (4) the defendant discriminated  
19 against the plaintiff based upon the plaintiff’s disability by (a) failing to make a  
20 requested reasonable modification that was (b) necessary to accommodate the  
21 plaintiff’s disability.” *Fortyune v. Am. Multi-Cinema, Inc.*, 364 F.3d 1075, 1082  
22 (9th Cir. 2004).

23           22. Fernandez is required to prove each element of this claim by a  
24 preponderance of the evidence. *See Lopez v. Catalina Channel Express, Inc.*,  
25 974 F.3d 1030, 1033 (9th Cir. 2020).

26           23. Fernandez presented no credible evidence that O’Reilly has a  
27 discriminatory policy or practice. He claims that on two occasions an O’Reilly  
28 employee refused to assist him at the ADA Counter. Even if that were true, two

1 isolated encounters does not establish a discriminatory policy or practice. The Court  
2 credits the testimony of Montellano and finds that a Store employee's purported  
3 refusal to serve a person with disabilities at the ADA Counter is contrary to O'Reilly  
4 policy and practice. Because Fernandez fails to establish a discriminatory policy or  
5 practice, he also cannot show that O'Reilly discriminated against him by failing to  
6 reasonably modify a policy or practice. *See Fortune*, 364 F.3d at 1082.

7 24. Accordingly, the Court finds that Fernandez fails to demonstrate O'Reilly  
8 violated the ADA by employing a discriminatory policy or practice.

9 25. Therefore, Fernandez has not proven his claim under Title III of the  
10 ADA. The Court finds in favor of O'Reilly and against Fernandez on Fernandez's  
11 claim for violation of the ADA.

#### 12 IV. MOTION IN LIMINE NO. 1

13 O'Reilly filed a Motion in Limine to exclude any evidence Fernandez gathered  
14 during his December 15, 2020 visit to the Store, which O'Reilly claims was in  
15 violation of Magistrate Judge Karen L. Stephenson's discovery order. (ECF Nos. 46,  
16 61.) At trial, Fernandez did not attempt to introduce any evidence stemming from this  
17 visit. Accordingly, O'Reilly's Motion in Limine is **DENIED AS MOOT**. (ECF  
18 Nos. 46, 61.)

#### 19 V. CONCLUSION

20 In light of the Court's findings of fact and conclusions of law, the Court  
21 **ORDERS** O'Reilly to submit a Proposed Judgment no later than August 10, 2021.

22  
23 **IT IS SO ORDERED.**

24 August 3, 2021

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28 **OTIS D. WRIGHT, II**  
**UNITED STATES DISTRICT JUDGE**