

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF CALIFORNIA
3

4 MICHAEL TATER-ALEXANDER,
5 Plaintiff,
6
7 v.
8 LONNIE R. AMERJAN, CITY OF
9 CLOVIS, TINA STIRLING, COMMUNITY
10 REGIONAL MEDICAL CENTER, DR.
11 THOMAS E. MANSFIELD, MARY JO
12 GREENE, and DOES 1 through 100.
13
14 Defendants.

1:08-cv-00372 OWW SMS

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

Complaint Filed: March 14, 2008
Trial: May 3 - 11, 2011
Courtroom: 3
Judge: Hon. Oliver W. Wanger

13
14 I. INTRODUCTION

15 Plaintiff Michael Tater-Alexander ("Plaintiff") proceeds
16 with this action against Defendant Fresno Community Hospital and
17 Medical Center, dba Community Regional Medical Center
18 ("Defendant") and operator of Clovis Community Medical Center
19 for alleged violation of the Americans with Disabilities Act
20 ("ADA"), California Disabled Persons Act ("DPA") and Unruh Civil
21 Rights Act. The case was tried before an advisory jury over six
22 days from May 3 to 11, 2011. Nine witnesses were called: (1)
23 David M. Arguito; (2) Mary Lee Contreras, R.N.; (3) Michael
24 Tater-Alexander; (4) Marilyn Jo Greene, R.N.; (5) Kathryn
25 Kawaguchi, R.N.; (6) Corporal Lonnie Amerjan; (7) Thomas
26 Mansfield, M.D.; (8) Charles William Mitchell; and (9) Niel
27
28

1 Bianco. After hearing the evidence and arguments of counsel and
2 being duly instructed by the court, the jury signed and returned
3 the verdict after answering "No" to the first question:

4 At the time of this occurrence, was plaintiff disabled as
5 that term is defined by the Americans with Disabilities
6 Act?

7 Doc. 335.

8 II. FINDINGS OF FACT

9 A. The Incident

10 1. Shortly before 7:00 p.m. on Saturday, March 17, 2007,
11 Plaintiff drove himself to Clovis Community Medical Center.
12 Plaintiff registered for treatment in the Emergency Department
13 for a complaint of abdominal pain at approximately 18:48 (6:48
14 p.m.).

15
16 2. Clovis Community Medical Center was at all relevant
17 times a hospital operated by Defendant. Defendant concedes that
18 it operates a place of public accommodation under the ADA.

19
20 3. Clovis Community Medical Center's Emergency Department
21 was busy the night of March 17, 2007.

22 4. According to the medical record, the triage nurse saw
23 Plaintiff at 7:02 p.m. The triage nurse noted that Plaintiff's
24 pain level was 9 on a scale of 1 to 10, with 10 being the
25 highest/severe pain. The triage nurse noted Plaintiff's past
26 medical history as: "Pancreatitis. Peptic ulcer disease. Back
27 problems. Three beers over past two weeks."
28

1 5. Marilyn Jo Greene, R.N., the supervisory nurse in the
2 Emergency Department that evening, noted at 7:10 p.m. that
3 Plaintiff was ambulating without help.

4 6. Plaintiff testified that he had to sit and wait for a
5 couple of hours between the time he saw the triage nurse and the
6 time he was taken to a room. The medical record and the
7 testimony of Nurse Greene show that triage occurred at 7:02 p.m.
8 and Plaintiff ambulated to a room in the Emergency Department at
9 7:29 p.m., twenty-seven minutes after triage.
10

11 7. There were two blankets in the Emergency Department
12 exam room. Plaintiff covered himself with one blanket and put
13 another blanket over his feet. Plaintiff was wearing thermals,
14 sweats, a T-shirt, and hoodie.
15

16 8. At 7:40 p.m., Nurse Greene noted in Plaintiff's chart
17 that Plaintiff refused to change into a hospital gown, refused
18 physical assessment, and was educated on the hospital's need to
19 be able to complete a physical exam of Plaintiff, who continued
20 to refuse.
21

22 9. Defendant had an unwritten practice of having patients
23 in the Emergency Department wear a gown to facilitate
24 examination and treatment.
25

26 10. At 9:15 p.m. Nurse Greene noted in the chart that
27 Plaintiff "[c]ontinues to refuse to cooperate with this nurse.
28

1 Stated: 'I don't want to be here any more than you want me here
2 so just give me what I want and I will leave.'"

3 11. Thomas Mansfield, M.D., an emergency physician, made
4 his first notes in Plaintiff's chart at 9:55 p.m.

5 12. Dr. Mansfield was an independent contractor and not an
6 employee or agent of Defendant or Clovis Community Medical
7 Center.
8

9 13. Plaintiff was loud and profane. Security was called at
10 approximately 10:14 p.m. Security Officer Charles Mitchell, an
11 employee of the hospital, arrived at approximately 10:21 p.m.
12

13 14. At 10:24 p.m., Dr. Mansfield noted: "Security with
14 patient. Refuses to comply with removing T-shirt for IV and CT
15 scan. Wants police called. Police and supervisor talked at
16 length with patient and finally agreed to take shirt off for IV
17 and CT. Patient continued antics. Refused to take PO contrast.
18 The oral contrast for the CT scan. Then wouldn't lie down for
19 the CT."
20

21 15. At 10:25 p.m. Nurse Greene noted in Plaintiff's chart:
22 "Dr. Mansfield at bedside. Patient refusing to cooperate with
23 M.D. for physical assessment. "
24

25 16. Security Officer Mitchell attempted to get Plaintiff
26 to calm down, cooperate, and put on a hospital gown.

27 17. Plaintiff told Security Officer Mitchell that he was
28 not putting on "a fucking dress."

1 18. The Clovis Police were called. Officer Tina Stirling
2 of the Clovis Police Department arrived at approximately 10:30
3 p.m. A few minutes after Officer Stirling's arrival, Corporal
4 Lonnie Amerjan of the Clovis Police Department arrived.

5 19. Corporal Amerjan spoke with Dr. Mansfield, who
6 requested Corporal Amerjan's assistance with Plaintiff.
7

8 20. Corporal Amerjan attempted to obtain Plaintiff's
9 cooperation. Plaintiff told Corporal Amerjan that he did not
10 want to be treated by Dr. Mansfield or Nurse Greene. Corporal
11 Amerjan asked Plaintiff why he would not put on a gown and
12 Plaintiff responded that the doctor could see him as he was.
13 Plaintiff requested a patient advocate.
14

15 21. Kathryn Kawaguchi, R.N., the House Supervisor, came to
16 the Emergency Department, spoke with Plaintiff, and got him to
17 cooperate, put on a gown over his clothing, and allow her to put
18 in an IV.
19

20 22. Plaintiff took the hospital gown off and put his
21 jacket back on as soon as the nurse left.

22 23. Plaintiff calmed down and discontinued his disruptive
23 conduct. Security Officer Mitchell and the two Clovis Police
24 Officers left around 11:35 p.m.
25

26 24. At 4:00 a.m. on March 18, 2007, Plaintiff was given
27 Ativan, a relaxation agent that decreases pain by decreasing
28 spasm.

1 25. The nurse's notes indicate that at 4:20 a.m. Plaintiff
2 could not keep down the oral contrast for the CT scan.

3 26. At 4:40 a.m. Nurse Greene noted that Plaintiff was
4 refusing to cooperate with the CT technician and the House
5 Supervisor was present to talk with Plaintiff.

6 27. At 5:45 a.m. Dr. Mansfield ordered Dilaudid, a pain
7 medication, for Plaintiff.
8

9 28. At 5:50 a.m., Plaintiff returned from the CT scan and
10 was resting quietly.

11 B. Plaintiff's Condition

12 29. Plaintiff alleges that he has an environmental
13 sensitivity to cold that aggravates longstanding shoulder and
14 back pain. Plaintiff claims that he refused to put on a hospital
15 gown because he would be cold if he wore a gown, which would
16 increase his shoulder and back pain.
17

18 30. Plaintiff testified that he told Nurse Greene that
19 being cold aggravates his disability and causes him pain.
20

21 31. Nurse Greene testified that Plaintiff did not tell her
22 that he was sensitive to the cold. Nurse Greene testified that
23 if Plaintiff had told her he did not want to wear a hospital
24 gown because he has an environmental sensitivity to cold which
25 aggravates the pain in his shoulders and spine, then she would
26 have offered him warm blankets.
27

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1 32. No witness testified that they heard Plaintiff say on
2 the night of March 17, 2007 that he had sensitivity to cold, or
3 any disability, which needed to be accommodating by permitting
4 Plaintiff to not wear a hospital gown.

5 33. Plaintiff introduced a copy of a 1994 decision of an
6 Administrative Law Judge for the Office of Hearings and Appeals,
7 Social Security Administration. The document, which is non-
8 authenticated hearsay and more than sixteen years old, was
9 admitted for the limited purpose of showing notice to Clovis
10 Community Medical Center and on the issue of whether Clovis
11 Community Medical Center used any reference from the record to
12 diagnose or treat Plaintiff. The document was in Clovis
13 Community Medical Center's medical file on Plaintiff from an
14 earlier visit. Sensitivity to cold is not mentioned anywhere in
15 the decision.
16
17

18 34. No medical or other evidence was introduced that
19 Plaintiff had a sensitivity to cold which aggravated pain in his
20 shoulders and back except the testimony of Plaintiff.
21

22 35. Plaintiff testified that he wore a gown at Clovis
23 Community Medical Center when he was there for treatment in
24 August 2005.
25

26 36. No medical expert was offered to provide testimony to
27 support that Plaintiff had any disability, including a cold
28 sensitivity.

1 37. Plaintiff testified to his current use of medications,
2 but no doctor who prescribed any of those medications was named
3 or testified. No other evidence of Plaintiff's use or of need
4 for medication was offered.

5 38. Plaintiff testified to the following limitations and
6 need for assistive devices:

7 a. Plaintiff has had extreme pain in his shoulders,
8 lower back, and left leg, all the time since an automobile
9 accident in April 1987.

10 b. Plaintiff has used a cane for approximately
11 twenty years. Plaintiff has used two canes, when necessary, for
12 the last ten years.

13 c. Plaintiff has used a walker for the last five to
14 seven years, when necessary.

15 d. Plaintiff has used a wheelchair for the last
16 seven to eight years. Plaintiff has used an electric wheelchair
17 since August 2009.

18 e. Plaintiff needs a cane to assist in walking due
19 to pain in his lower back where the disc is located. Plaintiff's
20 disc moves and pinches on an area and usually affects the left
21 leg all the way down to the toe, causing numbness and tingling.
22 It gets to where Plaintiff's leg feels numb from the calf down
23 and he falls.
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1 f. Plaintiff does not use a cane all the time, e.g.,
2 around the house where there is thick carpeting and the walls
3 are close enough so Plaintiff can keep himself balanced.
4 Plaintiff uses a cane when he goes out in public, on concrete,
5 hard surfaces, and asphalt.

6 g. On a good day Plaintiff could probably walk a few
7 blocks without an assistive device, but that would take hours
8 and would be incredibly painful. Plaintiff would have to stop,
9 lean against something, and sit down. Plaintiff uses canes to
10 distribute most of his weight.

11 h. Plaintiff's shoulder issues have "absolutely"
12 been consistent from 1987 to the present. Plaintiff testified:
13 "I can't open the refrigerator without pain. I can't pour a
14 gallon of milk without putting my arm, elbow against my body and
15 turning. It's difficult to push and pull anything." "Just the
16 magnet trim around double door refrigerator, I have to use my
17 weight and usually two hands or the other hand to push off of
18 the freezer door to get the door open."

19 i. When going outside Plaintiff must ensure he
20 dresses according to the weather. "If it's raining, damp,
21 barometric pressure rises, it hurts, everything hurts. It
22 affected my joints, my bones. Even if it's just cold, below 70
23 degrees, everything starts hurting."

1 j. During football season, Plaintiff shoots videos
2 of high school football games. The games are usually in
3 September or October, there is not a lot of wind, and the
4 weather is in the 70's, 80's, or even 90's. Plaintiff tries to
5 get in the press box or an area that is shielded from the wind.
6

7 k. Plaintiff's strength in gripping and pushing and
8 pulling has not improved since the Social Security Decision.
9 Plaintiff stated that he can lift only seven to eight pounds and
10 has trouble gripping objects.

11 l. In December, January and February Plaintiff's
12 body is at its worst shape. "Sort of a bear in half hibernation,
13 yeah, spend pretty much the majority of my day in bed."
14

15 39. Plaintiff's testimony as to his physical limitations
16 and Plaintiff's credibility were materially impeached by a video
17 of Plaintiff taken on January 17, 2010 by Niel Bianco, an
18 investigator, and entered as Exhibit 214 ("Video").
19

20 40. The severe limitations on Plaintiff referenced in No.
21 38, above, and the severe limitations on Plaintiff's movement in
22 court, are in stark contrast to Plaintiff's ability to walk
23 without any assistive device, get on and off a motorcycle, move
24 a gate, and ride the motorcycle in damp weather with temperature
25 in the mid 50's depicted in the Video.
26

27 41. Plaintiff did not retake the witness stand after the
28 Video was shown to explain the material inconsistency between

1 his physical abilities and limitations as shown in the Video,
2 and those he demonstrated in court and described in his
3 testimony.

4 42. Plaintiff frequently went beyond what was necessary to
5 answer questions put to him to argue his position, demonstrating
6 bias. For example, when asked whether he made a demand for a
7 substantial amount of money he answered, "Absolutely. For
8 punishment. Absolutely. Saying I'm sorry isn't going to change
9 it. That's why we're here." Plaintiff was also asked whether he
10 raised his voice at the hospital. His response: "Not any more so
11 then we're talking right now. In fact, the only loud voices were
12 once the police were called and they were in and out of the
13 hallway and in and out of the room and they brought in security.
14 They're the ones creating the disturbance. I was laying in the
15 bed curled up in a ball in pain from hell. Not getting
16 treatment. As punishment for not putting on a gown. For 14
17 hours."
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21 43. Plaintiff's demeanor on cross-examination was hostile
22 toward Defendant.

23 44. The court finds that Plaintiff was not a believable
24 witness, based on attitude, demeanor, frequency and extent of
25 impeachment, interest in outcome of the case, and bias against
26 Defendant.
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28

1 45. Plaintiff testified that after his Social Security
2 decision in 1994 he "saw them like five years after the initial
3 one. And then they told me we probably won't see you again until
4 2010, which was like ten years." He said he got a notice from
5 them in November of last year, but thinks the appointment they
6 scheduled conflicted with a doctor's appointment so it was
7 rescheduled to sometime in January or February of this year.
8 Whether Plaintiff had a recent evaluation by someone associated
9 with the Social Security Administration is unclear. No one
10 associated with an examination for the Social Security
11 Administration testified.
12

13
14 46. Plaintiff testified to his current use of medications,
15 but no doctor who prescribed any of those medications was named
16 or testified.

17 47. The advisory jury was properly instructed, heard the
18 evidence, and rendered a unanimous verdict that Plaintiff was
19 not disabled as defined by the ADA.
20

21 48. The court, having heard the same evidence as the jury,
22 respects the jury's decision and independently concludes that
23 the Plaintiff has not carried his burden to prove that he was
24 disabled as that term is defined by the ADA.
25

26 III. CONCLUSIONS OF LAW.

27 1. Title III of the ADA prohibits discrimination in
28 public accommodations. It provides:

1 No individual shall be discriminated against on the basis
2 of disability in the full and equal enjoyment of the goods,
3 services, facilities, privileges, advantages, or
4 accommodations of any place of public accommodation by any
5 person who owns, leases (or leases to), or operates a place
6 of public accommodation.

7 42 U.S.C. § 12182(a).

8 2. Discrimination under the ADA includes:

9 failure to make reasonable modifications in policies,
10 practices, or procedures, when such modifications are
11 necessary to afford such goods, services, facilities,
12 privileges, advantages, or accommodations to individuals
13 with disabilities, unless the entity can demonstrate that
14 making such modifications would fundamentally alter the
15 nature of such goods, services, facilities, privileges,
16 advantages, or accommodations.

17 42 U.S.C. § 12182(b)(2)(A)(ii). It is also discriminatory "to
18 subject an individual or class of individuals on the basis of a
19 disability or disabilities . . . to a denial of the opportunity
20 of the individual or class to participate in or benefit from the
21 goods, services, facilities, privileges, advantages, or
22 accommodations of an entity." 42 U.S.C. § 12182(b)(1)(A)(i).

23 3. An individual alleging discrimination under the ADA
24 must show:

25 (1) he is disabled as that term is defined by the ADA; (2)
26 the defendant is a private entity that owns, leases, or
27 operates a place of public accommodation; (3) the defendant
28 employed a discriminatory policy or practice; and (4) the
defendant discriminated against the plaintiff based upon
the plaintiff's disability by (a) failing to make a
requested reasonable modification that was (b) necessary to
accommodate the plaintiff's disability.

Fortyune v. Amer. Multi-Cinema, Inc., 364 F.3d 1075, 1082 (9th

1 Cir. 2004).

2 4. The ADA defines "disability" as: "(A) a physical or
3 mental impairment that substantially limits one or more major
4 life activities of such individual; (B) a record of such an
5 impairment; or (C) being regarded as having such an impairment."

6 42 U.S.C. § 12102(1). "Physical or mental impairment" means:

7
8 (A) Any physiological disorder or condition, cosmetic
9 disfigurement, or anatomical loss affecting one or more of
10 the following body systems: Neurological, musculoskeletal,
11 special sense organs, respiratory (including speech
12 organs), cardiovascular, reproductive, digestive,
13 genitourinary, hemic and lymphatic, skin, and endocrine;
(B) Any mental or psychological disorder such as mental
retardation, organic brain syndrome, emotional or mental
illness, and specific learning disabilities.

14 28 C.F.R. § 35.104. Physical and mental impairments include:

15 such contagious and noncontagious diseases and conditions
16 as orthopedic, visual, speech and hearing impairments,
17 cerebral palsy, epilepsy, muscular dystrophy, multiple
18 sclerosis, cancer, heart disease, diabetes, mental
19 retardation, emotional illness, specific learning
20 disabilities, HIV disease (whether symptomatic or
21 asymptomatic), tuberculosis, drug addiction, and
22 alcoholism.

23 Id. "Major life activities means functions such as caring for
24 one's self, performing manual tasks, walking, seeing, hearing,
25 speaking, breathing, learning, and working." Id.

26 5. The definition of disability is "construed in favor of
27 broad coverage of individuals under [the ADA], to the maximum
28 extent permitted by the terms of [the ADA]." 42 U.S.C. §
12102(4) (A). The ADA, however, "defines 'disability' with

1 specificity as a term of art. Hence, a person may be 'disabled'
2 in the ordinary usage sense, or even for purposes of receiving
3 disability benefits from the government, yet still not be
4 'disabled' under the ADA. The converse may sometimes be true as
5 well." *Sanders v. Arneson Prod., Inc.*, 91 F.3d 1351, 1354 n.2
6 (9th Cir. 1996); see also *Thornton v. Fed. Express Corp.*, 530
7 F.3d 451, 455 (6th Cir. 2008) (holding that a disability
8 determination by the Social Security Administration, even if
9 substantiated, would not be controlling to prove that an
10 individual is disabled within the meaning of the ADA).
11

12
13 6. The Unruh Civil Rights Act provides:

14 All persons within the jurisdiction of this state are free
15 and equal, and no matter what their sex, race, color,
16 religion, ancestry, national origin, disability, medical
17 condition, marital status, or sexual orientation are
18 entitled to the full and equal accommodations, advantages,
19 facilities, privileges, or services in all business
20 establishments of every kind whatsoever.

21 Cal. Civ. Code § 51(b). A violation of the ADA constitutes a
22 violation of the Unruh Civil Rights Act. Cal. Civ. Code § 51(f).

23 7. The DPA guarantees that "[i]ndividuals with
24 disabilities shall be entitled to full and equal access, as
25 other members of the general public, to accommodations,
26 advantages, facilities, medical facilities, including hospitals,
27 clinics, and physicians' offices." Cal. Civ. Code § 54.1(a)(1).
28 "Full and equal access" means access that meets the standards of

1 the ADA. Cal. Civ. Code § 54.1(a)(3). A violation of the ADA
2 constitutes a violation of the DPA. Cal. Civ. Code § 54.1(d).

3 8. Plaintiff concedes that to find a violation of the
4 Unruh Civil Rights Act or the DPA he must establish an ADA
5 violation.

6 9. The advisory jury was properly instructed, heard the
7 evidence, and rendered a unanimous verdict that Plaintiff was
8 not disabled within the meaning of the ADA.
9

10 10. Plaintiff has not carried his burden to prove that he
11 was disabled within the meaning of the ADA.

12 11. Plaintiff presented no medical testimony or other
13 expert evidence of his physical and mental condition.
14

15 12. Plaintiff's description of his alleged physical and
16 mental impairments was contradicted by the Video. As trier of
17 fact, the jury made the decision that Plaintiff did not suffer
18 from a disability. There is no basis to find to the contrary.
19

20 13. Defendant and its employees did not discriminate
21 against Plaintiff by reason of a disability within the meaning
22 of the ADA.

23 14. Defendant is not responsible for the conduct of Thomas
24 Mansfield, M.D., who was an independent contractor and not an
25 agent or an employee of Clovis Community Medical Center or
26 Defendant.
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15. Defendant did not violate the ADA, DPA, or Unruh Civil Rights Act.

16. Defendant is not liable to Plaintiff and is entitled to judgment in its favor.

17. Defendant may submit a cost bill in accordance with the requirements of law.

18. The court has fully considered the voluminous proposed findings and conclusions submitted by both parties and their respective objections. To the extent any finding of fact can be interpreted as a conclusion of law or the converse, it is so intended.

III. ORDER

For the reasons stated, it is ORDERED that:

- 1. Defendant is not liable to Plaintiff and Defendant is entitled to judgment against Plaintiff on all claims.
- 2. Defendant may submit a cost bill in accordance with the requirements of law.
- 3. Defendant shall submit a form of judgment consistent with this Order within five (5) days following service of these findings.

SO ORDERED.

DATED: August 12, 2011.

/s/ Oliver W. Wanger
Oliver W. Wanger
United States District Judge