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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

TONY MARTINEZ,

Case No. 2:08-cv-02484-JAM-JFM

Plaintiff,

ORDER DENYING PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT

v.

PETCO ANIMAL SUPPLIES STORES,  
INC., dba PETCO; DONAHUE  
SCHRIBER REALTY GROUP, LP,

Defendants.

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This matter comes before the Court on Plaintiff Tony  
Martinez's motion for summary judgment pursuant to Rule 56(c) of  
the Federal Rules of Civil Procedure.<sup>1</sup> Defendant Donahue  
Schriber Realty Group, LP ("Donahue Schriber") opposes the

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<sup>1</sup> Because oral argument will not be of material assistance,  
the Court orders this matter submitted on the briefs. E.D. Cal.  
L.R. 78-230(h).

1 motion. For the reasons set forth below, Plaintiff's motion is  
2 DENIED.

3 I. FACTUAL AND PROCEDURAL BACKGROUND

4 Plaintiff Tony Martinez is a person with disabilities who  
5 requires an electric wheelchair for mobility. Pl's Mot., Doc. #  
6 14, at 3. After encountering a number of barriers to access at  
7 the the Petco Store and the property surrounding it located at  
8 1917 Douglas Boulevard in Roseville, California, Plaintiff  
9 sought injunctive relief under the ADA and damages under the  
10 Unruh Civil Rights Act, Cal. Civ. Code § 51, *et seq.* Plaintiff  
11 has settled with Defendant Petco Animal Supplies Stores, Inc.  
12 dba Petco. Plaintiff's remaining and only allegation against  
13 Defendant Donahue Schriber is that the accessible parking stalls  
14 in the parking lot of the Roseville Center lack accessible  
15 aisles. Since Plaintiff initiated his lawsuit, Defendant  
16 Donahue Schriber has remedied the parking stalls in the parking  
17 lot of the Roseville Center in an effort to remove the barriers  
18 to access. Doc # 16, Ex A-C. Specifically, Defendant has  
19 restriped the parking lot so all accessible parking spaces have  
20 access isles. Id.

21 In the instant motion, Plaintiff seeks an injunction under  
22 the ADA and Unruh Act and statutory minimum damages under the  
23 Unruh Act in the amount of \$4,000. Defendant Donahue Schriber  
24 argues its remedial efforts have rendered Plaintiff's ADA claim  
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1 for injunctive relief moot and therefore, the Court should  
2 decline to exercise jurisdiction over Plaintiff's state law  
3 claims. Def's Opp., Doc. # 16, at 2.  
4

## 5 II. OPINION

### 6 A. Legal Standard

7 Summary judgment is proper "if the pleadings, depositions,  
8 answers to interrogatories, and admissions on file, together  
9 with affidavits, if any, show that there is no genuine issue of  
10 material fact and that the moving party is entitled to judgment  
11 as a matter of law." Fed. R. Civ. P. 56(c). The purpose of  
12 summary judgment "is to isolate and dispose of factually  
13 unsupported claims and defenses." Cleotex v. Catrett, 477 U.S.  
14 317, 323-324 (1986).  
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16 The moving party bears the initial burden of demonstrating  
17 the absence of a genuine issue of material fact for trial.  
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19 Anderson v. Liberty Lobby, Inc., 447 U.S. 242, 248-49 (1986).

20 If the moving party meets its burden, the burden of production  
21 then shifts so that "the non-moving party must set forth, by  
22 affidavit or as otherwise provided in Rule 56, 'specific facts  
23 showing that there is a genuine issue for trial.'" T.W. Elec.  
24 Serv., Inc. v. Pacific Elec. Contractors Ass'n, 809 F.2d 626,  
25 630 (9th Cir. 1987) (quoting Fed. R. Civ. P. 56(e) and citing  
26 Celotex, 477 U.S. at 323). The Court must view the facts and  
27  
28 draw inferences in the manner most favorable to the non-moving

1 party. United States v. Diebold, Inc., 369 U.S. 654, 655  
2 (1962).

3 The mere existence of a scintilla of evidence in support of  
4 the non-moving party's position is insufficient: "There must be  
5 evidence on which the jury could reasonably find for [the non-  
6 moving party]." Anderson, 477 U.S. at 252. This Court thus  
7 applies to either a defendant's or plaintiff's motion for  
8 summary judgment the same standard as for a motion for directed  
9 verdict, which is "whether the evidence presents a sufficient  
10 disagreement to require submission to a jury or whether it is so  
11 one-sided that one party must prevail as a matter of law." Id.

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14 B. A Genuine Issue of Material Fact Remains As To Whether The  
15 Parking Stalls Are Now In Compliance With ADA Standards

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17 Plaintiffs are unable to demonstrate the absence of a  
18 genuine issue of material fact. The one claim that Plaintiff  
19 has asserted against Donahue Schiber is that the parking stalls  
20 in the parking lot of the Roseville Center lack accessible  
21 aisles. Defendant contends this deficiency has been remedied.  
22 Def's Opp. at 2. In support of their argument, Donahue Schiber  
23 has submitted evidence of a contract with Jones Construction to  
24 restripe the accessible parking stalls and copies of photographs  
25 depicting the current parking stalls at the Roseville Center.  
26 Doc. # 16, Exh. A-C. In addition, Defendant claims that all  
27 parking stalls have accessible aisles. Def's Opp. at 2.  
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1 Defendant however, has failed to offer any measurement or  
2 declaration supporting that the actual size of the newly  
3 installed aisles are compliant with the ADA Accessibility  
4 Guidelines. Defendant has failed to comply with their Rule 26  
5 obligations, failed to respond to interrogatories, and failed to  
6 produce documentation under Rule 34. In the absence of such  
7 disclosures this Court is unable to (1) declare this matter moot  
8 and (2) grant Plaintiff's motion for summary judgment.  
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11 The only remedy available under the ADA is injunctive  
12 relief which "shall include an order to alter facilities to make  
13 such facilities readily accessible to and usable by individuals  
14 with disabilities to the extent required by this title." 42  
15 U.S.C. § 12188(a)(2). Claims for injunctive relief are moot "if  
16 it is absolutely clear that the allegedly wrongful behavior  
17 could not reasonably be expected to occur." Friends of the  
18 Earth, Inc. v. Laidlaw Environmental Services, 528 U.S. 167,  
19 190. "The burden of demonstrating mootness 'is a heavy one.'" County of Los Angeles v. Davis, 440 U.S. 625, 631  
20 (1979)(quoting United States v. W.T. Grant Co., 345 U.S. 629,  
21 632-33 (1953)).  
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25 Here, there remains a genuine issue of fact as to whether  
26 the parking stalls, as reconfigured in October 2008, are  
27 accessible parking stalls to the extent required by 42 U.S.C. §§  
28 12188, *et. seq.* If, as Defendant Donahue Schriber argues, there

1 is not currently a violation of the ADA Accessibility  
2 Guidelines, then Plaintiff's ADA claim against Defendant is moot  
3 and this Court lacks jurisdiction. At this juncture, the Court  
4 cannot declare this matter moot because Defendant has failed to  
5 offer any evidence that the remedied parking stalls are in  
6 compliance with the ADA Accessibility Guidelines. Until  
7 Defendant complies with their Rule 26 obligations, answers  
8 interrogatories, and fully cooperates with Plaintiff's discovery  
9 requests and/or allows inspection of the parking stalls, this  
10 Court is unable to determine whether the matter is moot. As  
11 such, it is not "absolutely clear" to the Court that the  
12 allegedly wrongful behavior will not reoccur. See Friends of  
13 the Earth, Inc., 528 U.S. at 190. Until Defendant proffers  
14 evidence of compliance with the ADA Accessibility Guidelines,  
15 this Court refuses to order this matter moot.  
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19 Accordingly, there remains a genuine issue of material fact  
20 as to whether Donahue Schriber is currently in violation of the  
21 ADA. This Court will not reach the Unruh Civil Rights Act claim  
22 for damages at this juncture because the same standards of  
23 liability apply under both Acts. See Presta v. Peninsular  
24 Corridor Joint Powers Bd., 16 F. Supp. 2d 1143, 1135 (D. Cal.  
25 1998). The Unruh Act provides, in full, "[a] violation of the  
26 right of any individual under the Americans with Disabilities  
27 Act of 1990 (Public Law 101-336) shall also constitute a  
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1 violation of this section." Cal. Civil Code § 51. Because  
2 Defendant has raised the question of whether this matter is  
3 moot, this Court declines to reach Plaintiff's state law damages  
4 claim. Accordingly, Plaintiff has failed to meet his initial  
5 burden of demonstrating the absence of a genuine issue of  
6 material fact and thus, Plaintiff's motion for summary judgment  
7 is DENIED.  
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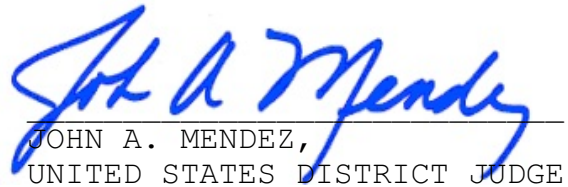
9 As to Plaintiff's allegations that Defendant has not  
10 complied with previous discovery requests and disclosures under  
11 Rule 26, Plaintiff can obtain such discovery through the filing  
12 of a motion to compel as discovery is still open. The Court  
13 further strongly encourages the parties to cooperate with each  
14 other with respect to Plaintiff's need for a site inspection and  
15 informal request to obtain information from Defendant's  
16 contractors who performed the work in the parking lot at issue  
17 in this case. Such cooperation could, and should, lead to an out  
18 of court resolution of this case.  
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21 III. ORDER

22 For the reasons set forth above, Plaintiff's motion for  
23 summary judgment is DENIED.  
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25 IT IS SO ORDERED.

26 Dated: October 2, 2009

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JOHN A. MENDEZ,  
UNITED STATES DISTRICT JUDGE  
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