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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MICHAEL MCCUNE,)	Case No. 2:10-CV-02207 JAM-GGH
)	
Plaintiff,)	<u>ORDER GRANTING PLAINTIFF'S</u>
)	<u>UNOPPOSED MOTION FOR SUMMARY</u>
v.)	<u>JUDGMENT AND ORDER TO SHOW</u>
)	<u>CAUSE</u>
SATNAM SINGH,)	
)	
Defendant.)	
)	
)	

This matter is before the Court on Plaintiff Michael McCune's ("Plaintiff") Motion for Summary Judgment or Partial Summary Judgment in the Alternative (Doc. ## 41-42).¹ Plaintiff seeks summary judgment on his claims under the Americans With Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12111-12300; California's Unruh Civil Rights Act ("Unruh Act"), Cal. Civ. Code § 51, et. seq.; and the California Disabled Persons Act ("CDPA"), Cal. Civ. Code § 54, et seq. Defendant Satnam Singh ("Defendant") did not file an opposition to Plaintiff's motion.

¹This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for July 11, 2012.

1 I. BACKGROUND

2 A. Procedural History

3 This action originated when Plaintiff filed his Complaint in
4 this Court on August 17, 2010 (Doc. # 1). In response to an
5 intervening decision issued by the Ninth Circuit Court of Appeals,
6 Plaintiff was given leave to amend his Complaint, and he filed a
7 First Amended Complaint ("FAC") on June 20, 2011 (Doc. # 21). See
8 Chapman v. Pier 1 Imports (U.S.) Inc., 631 F.3d 939, 954 (9th Cir.
9 2011) (requiring an ADA plaintiff to indicate what barriers he or
10 she encountered and how the barriers affected the plaintiff's
11 disability such that he or she was denied full and equal access to
12 the public accommodation).

13 On November 28, 2011, the Clerk entered the default of
14 Defendant for failure to respond to the FAC (Doc. # 27). Defendant
15 subsequently obtained counsel, and the entry of default was set
16 aside based upon Defendant's showing of good cause on January 27,
17 2012 (Doc. # 36). On February 29, 2012, the parties filed a joint
18 status report wherein Defendant indicated his desire for a
19 settlement conference and Plaintiff indicated that he intended to
20 move for summary judgment (Doc. # 39). Plaintiff then filed the
21 instant motion on May 24, 2012.

22 B. Factual Background

23 The Court has reviewed all of the affidavits and exhibits
24 submitted in support of Plaintiff's unopposed motion and finds that
25 the undisputed facts are as follows. The factual basis for this
26 lawsuit arose when Plaintiff and his wife visited a shopping plaza
27 owned by Defendant located at 3950-3960 Cambridge Road, Cameron
28 Park, California (the "Plaza"). The Plaza contains several small

1 businesses including a liquor store, hardware store, and dry
2 cleaner. Plaintiff, who is a C5-C6 quadriplegic and requires the
3 use of an electric wheelchair when traveling in public, found that
4 the Plaza was not accessible because of his disability.

5 On May 4, 2010 Plaintiff went to the liquor and hardware
6 stores located in the Plaza. Plaintiff was unable to find a van-
7 accessible parking space to accommodate his wheelchair-lift
8 equipped van. Plaintiff parked his van in a disabled parking space
9 that was not designated as van accessible and exited the van. Once
10 he exited the van, Plaintiff was unable to find an unobstructed
11 pathway to the stores he intended to visit. The walkway to the
12 stores was obstructed by a newspaper dispenser, a propane tank
13 cage, and parked cars that encroached into the walkway. Plaintiff
14 returned to the parking lot and traveled behind parked cars to
15 enter the liquor store.

16 The Plaza's parking lot is divided into a Northern section and
17 a Southern section by an area filled with pallets of gardening
18 supplies. The Southern section was constructed in 1979, and the
19 Northern section was constructed in 1988. Plaintiff was forced to
20 travel through the parking lot, travelling around the pallet area,
21 in order to reach the walkway in the North side of the parking lot
22 after leaving the liquor store located in the South side. Once
23 Plaintiff reached the North side walkway, he discovered that the
24 walkway on that side of the plaza was also obstructed, and he was
25 forced to travel to the hardware store entrance through the North
26 side parking lot.

27 On May 17 and 27, 2010, Plaintiff returned to the Plaza to
28 visit the dry cleaning business located in the South side of the

1 Plaza. When Plaintiff returned, he observed the same obstacles he
2 encountered on his May 4 visit and opted to remain in the car
3 rather than navigate the obstacles to enter the dry cleaner's
4 store. Finally, Plaintiff returned to the Plaza on August 19, 2010
5 to visit the hardware store on the North side of the Plaza,
6 encountering the same access difficulties that he experienced on
7 the May 4 visit.

8 Plaintiff's characterization of the access issues he
9 encountered are verified by two reports attached as exhibits to
10 declarations submitted by Plaintiff in support of his motion.
11 First, Plaintiff's expert Joe Card provided a declaration supported
12 by a detailed report of accessibility issues at the Plaza. Mr.
13 Card has over 30 years of experience in the construction business
14 and significant training specific to ADA compliance. Mr. Card was
15 also found to be a qualified expert witness in at least five
16 federal lawsuits. Plaintiff also submitted a report prepared at
17 Defendant's request by Ronald P. Armstrong, the CEO of CASP
18 Masters, LLC.

19 The Court finds that Mr. Card, by virtue of his extensive
20 personal experience with ADA compliance and specialized knowledge
21 related to ADA compliance, to be a qualified expert pursuant to
22 Federal Rule of Evidence 702(a) for the purposes of this motion.
23 Mr. Armstrong's credentials are not presently before the Court, so
24 he is not an expert. Mr. Armstrong's report, however, corroborates
25 Mr. Card's, so there is no dispute as to the physical condition of
26 the Plaza as it relates to Plaintiff's access. Accordingly, based
27 on the evidence before the Court, the Court finds the following
28 related to the physical condition of the Plaza when Plaintiff

1 visited:

2 1. The tow away signage posted in the parking lot did not
3 contain information about where to retrieve a towed vehicle;

4 2. Tow away signage was posted at the entrances to the
5 parking lot such that an exiting vehicle could block it from the
6 view of entering vehicles;

7 3. The disabled parking spaces were not designated with
8 accessible signage;

9 4. There were no parking spaces designated as van
10 accessible;

11 5. The disabled parking spaces had slopes and cross slopes
12 exceeding 2.0% grade;

13 6. The access aisles had slopes and cross slopes that
14 exceeded 2.0% grade;

15 7. There were no level landings at the entrances to the
16 stores within the Plaza;

17 8. None of the parking spaces had wheel stops preventing
18 parking cars from encroaching onto the walkways in front of the
19 Plaza and reducing the passable route to less than 36 inches in
20 width;

21 9. The sidewalks throughout the Plaza had slopes and cross
22 slopes that exceeded 2.0% grade; and

23 10. The accessible routes from the disabled parking spaces to
24 the store entrances were blocked at multiple points and
25 inaccessible to Plaintiff's wheelchair.

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1 II. OPINION

2 A. Legal Standard for Summary Judgment

3 Summary judgment is proper "if the pleadings, depositions,
4 answers to interrogatories, and admissions on file, together with
5 affidavits, if any, show that there is no genuine issue of material
6 fact and that the moving party is entitled to judgment as a matter
7 of law." Fed. R. Civ. P. 56(c). The purpose of summary judgment
8 "is to isolate and dispose of factually unsupported claims or
9 defenses." Celotex v. Catrett, 477 U.S. 317, 323-324 (1986).

10 The moving party bears the initial burden of demonstrating the
11 absence of a genuine issue of material fact for trial. Anderson v.
12 Liberty Lobby, Inc., 477 U.S. 242, 248-49 (1986). If the moving
13 party meets its burden, the burden of production then shifts so
14 that "the non-moving party must set forth, by affidavit or as
15 otherwise provided in Rule 56, 'specific facts showing that there
16 is a genuine issue for trial.'" T.W. Electrical Services, Inc. v.
17 Pacific Electric Contractors Ass'n, 809 F.2d 626, 630 (9th Cir.
18 1987) (quoting Fed. R. Civ. P. 56(e)). The Court must view the
19 facts and draw inferences in the manner most favorable to the non-
20 moving party. United States v. Diebold, Inc., 369 U.S. 654, 655
21 (1962). "[M]ere disagreement or bald assertion that a genuine issue
22 of material fact exists will not preclude the grant of summary
23 judgment". Harper v. Wallingford, 877 F. 2d 728, 731 (9th Cir.
24 1987).

25 The mere existence of a scintilla of evidence in support of
26 the non-moving party's position is insufficient: "There must be
27 evidence on which the jury could reasonably find for [the non-
28 moving party]." Anderson, 477 U.S. at 252. This Court thus

1 applies to either a defendant's or plaintiff's motion for summary
2 judgment the same standard as for a motion for directed verdict,
3 which is "whether the evidence presents a sufficient disagreement
4 to require submission to a jury or whether it is so one-sided that
5 one party must prevail as a matter of law." Id.

6 B. Discussion

7 For the purposes of the present motion, Defendant does not
8 oppose summary judgment and thus does not attempt to create a
9 genuine issue of material fact. Plaintiff, therefore, must only
10 meet his burden of showing the absence of a genuine issue of
11 material fact. Accordingly, if the undisputed facts as found by
12 the Court in the preceding section support an entry of judgment as
13 a matter of law, then Plaintiff is entitled to judgment.

14 1. ADA Claim

15 In order to prevail on an ADA discrimination claim, a
16 plaintiff must show: (1) he is disabled within the meaning of the
17 ADA; (2) the defendant is a private entity that owns, leases, or
18 operates a place of public accommodation; and (3) he was denied
19 public accommodations by the defendant because of his disability.
20 Molski v. M.J. Cable, Inc., 481 F.3d 724, 730 (9th Cir. 2007).

21 a. Disabled Within the Meaning of the ADA

22 Plaintiff is a C5-C6 quadriplegic, which meets the definition
23 of disabled for purposes of the ADA. 42 U.S.C. § 12102; see
24 Molski, 481 F.3d at 732 (holding that a paraplegic person is
25 disabled under the ADA).

26 b. Defendant Owns, Leases, or Operates a Public
27 Accommodation

28 Defendant is the current owner of the Plaza, and the Plaza as

1 a shopping center is a public accommodation for purposes of the
2 ADA. 42 USCA § 12181(7)(e). This element is not subject to
3 reasonable dispute.

4 c. Plaintiff Was Denied Access Because of His
5 Disability

6 The Americans with Disabilities Act Accessibility Guidelines
7 (the "ADAAG") provides guidelines for compliance with the ADA.
8 Since the ADAAG "establishes the technical standards required for
9 full and equal enjoyment, if a barrier violating these standards
10 relates to a plaintiff's disability, it will impair the plaintiff's
11 full and equal access, which constitutes discrimination under the
12 ADA." Chapman v. Pier 1 Imports (U.S.) Inc., 631 F.3d 939, 947
13 (9th Cir. 2011) (internal quotations omitted). In order for a
14 plaintiff to have standing to bring suit, a violation of the ADAAG
15 must relate to the plaintiff's actual disability such that his
16 access would be limited. Id.

17 In this case, the evidence shows that Plaintiff encountered
18 the following conditions:

19 1. The disabled parking spaces were not designated with
20 accessible signage in violation of ADAAG § 4.6.4;

21 2. There were no parking spaces designated as van accessible
22 in violation of ADAAG § 4.1.2(5)(b);

23 3. None of the parking spaces had wheel stops preventing
24 parking cars from encroaching onto the walkways in front of the
25 Plaza and reducing the passable route to less than 36 inches in
26 width in violation of ADAAG §§ 4.3.3, 4.6.3, 4.7.2;

27 4. The sidewalks throughout the Plaza had slopes and cross
28 slopes that exceeded 2.0% grade in violation of ADAAG § 4.3.7;

1 5. The disabled parking spaces in the Plaza's parking lot
2 had slopes and cross slopes exceeding 2.0% in violation of ADAAG
3 § 4.6.3; and

4 6. The accessible routes from the disabled parking spaces to
5 the store entrances were blocked at multiple points and
6 inaccessible to Plaintiff's wheelchair in violation of ADAAG
7 § 4.3.2; and

8 7. There were no level landings at the entrances to the
9 stores within the Plaza in violation of ADAAG § 4.13.6.

10 Plaintiff also declared that the above conditions all relate
11 to his disability because they make it difficult or impossible for
12 him to safely navigate the plaza in his electric wheelchair.
13 McCune Decl. ¶¶ 9, 14, 19, 26.

14 Based on the uncontroverted evidence of multiple violations of
15 the ADAAG at the Plaza, owned and operated by Defendants, that
16 specifically relate to Plaintiff's disability, the Court finds that
17 entry of judgment on Plaintiff's ADA claim is appropriate.
18 Plaintiff's motion on this claim is therefore granted.

19 Plaintiff does not specify what type of relief he seeks in his
20 motion. His FAC mentions declaratory relief, injunctive relief,
21 and attorney's fees. FAC § 10. The Court, however, is not
22 presented with sufficient information to issue an injunction or
23 award attorney's fees. Accordingly, the Court only enters a
24 declaratory judgment at this time in Plaintiff's favor on the ADA
25 claim. 28 U.S.C. § 2201.

26 2. Unruh Act AND CDPA Claims

27 Pursuant to Cal. Civil Code §§ 51(f) and 54(c), a violation of
28 the ADA is also a violation of the Unruh Act and the CDPA. Moeller

1 v. Taco Bell Corp., 220 F.R.D. 604, 606-607 (N.D. Cal. 2004). The
2 Unruh Act provides for statutory minimum damages of \$4,000 for each
3 instance of discrimination. Grove v. De La Cruz, 407 F.Supp.2d
4 1126, 1133 (C.D. Cal. 2005). The CDPA provides for minimum damages
5 of \$1,000 per instance of discrimination. Cal. Civil Code
6 § 54.3(a). Plaintiff visited the Plaza four times to patronize its
7 stores and encountered barriers to access each time in violation of
8 the ADA, and he is therefore entitled to \$16,000 in damages under
9 the Unruh Act, \$4,000 for each visit. Judgment is accordingly
10 entered in Plaintiff's favor on the Unruh Act and CDPA claims, and
11 he is awarded \$16,000 in damages.

12 13 III. DEFENDANT'S NON-OPPOSITION

14 Defendant did not file an opposition or statement of non-
15 opposition to Plaintiff's Motion for Summary Judgment. Local Rule
16 230(c) requires a non-moving party to file either an opposition to
17 the motion or a statement of non-opposition no less than fourteen
18 (14) days preceding the noticed hearing date. Local Rule 110
19 authorizes the Court to impose sanctions for "failure of counsel or
20 of a party to comply with these Rules." Therefore, the Court will
21 sanction Defendant's counsel, Moton B. Holt, Jr., \$150.00 unless he
22 shows good cause for his failure to comply with the Local Rules.

23 24 IV. ORDER

25 For the reasons stated above, the Court issues the following
26 order:

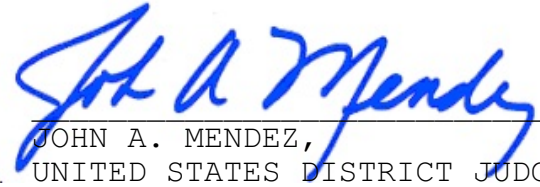
27 1. Plaintiff's Motion for Summary Judgment on his ADA, Unruh
28 Act, and CDPA claims is GRANTED;

1 2. Plaintiff is awarded \$16,000 in statutory damages
2 pursuant to the Unruh Act's statutory damages provision; and

3 3. Defendant's Counsel, Morton B. Holt, Jr., is ordered to
4 either (1) submit a statement of good cause for failing to comply
5 with the local rules or (2) pay sanctions of \$150.00 to the Clerk
6 of Court.

7 IT IS SO ORDERED.

8 Dated: July 18, 2012



JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE

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