

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

SCOTT JOHNSON,

No. 2:13-cv-01484-GEB-DAD

Plaintiff,

V.

KUO LIN, in his individual and representative capacity as Trustee, Kuo & Chiu Lin Family Trust; and CHIU LIN, in his individual and representative capacity as Trustee, Kuo & Chiu Lin Family Trust,

**ORDER DENYING PLAINTIFF'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT**

## Defendants.

Plaintiff Scott Johnson moves for partial summary judgment under Federal Rule of Civil Procedure ("Rule") 56 on his claims alleged under the federal Americans with Disabilities Act ("ADA") and the California Unruh Civil Rights Act ("UCRA"). Plaintiff seeks an injunction under the ADA and damages under the

<sup>1</sup> Plaintiff states he "stipulates to dismiss his Disabled Persons [Act] and [n]egligence [claims] . . . to ensure that this motion disposes of the entire case." (Mot. 3:10-12.)

1 UCRA concerning the following barriers he encountered at  
2 Defendants' restaurant, which he evinces violated the ADA  
3 Standards for Accessible Design: "[in]accessible parking, paths  
4 of travel, transaction counters, and restrooms." (Pl.'s Mot.  
5 Summ. J. ("Mot.") 1:5-6, ECF No. 17-1.) Defendants counter the  
6 motion, arguing Plaintiff's "calculation of damages [under the  
7 UCRA] . . . raise[s] [a] genuine [dispute] of material fact."  
8 (Defs.' Opp'n to Pl.'s Mot. for Summ. J. ("Opp'n") 2:1-2, ECF No.  
9 18.)

10 **I. LEGAL STANDARD**

11 A party is entitled to summary judgment if  
12 "the movant shows that there is no genuine  
13 dispute as to any material fact and the  
14 movant is entitled to judgment as a matter of  
law." . . . The moving party has the burden  
of establishing the absence of a genuine  
dispute of material fact.

15 City of Pomona v. SQM North Am. Corp., 750 F.3d 1036, 1049 (9th  
16 Cir. 2014) (quoting Fed. R. Civ. P. 56(a)) (citing Celotex Corp.  
17 v. Catrett, 477 U.S. 317, 323 (1986)). "A fact is 'material' when  
18 . . . it could affect the outcome of the case." Thrifty Oil Co.  
19 v. Bank of Am. Nat'l Trust & Sav. Ass'n, 322 F.3d 1039, 1046 (9th  
20 Cir. 2003) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S.  
21 242, 248 (1986)). "A[] [dispute] of material fact is "genuine"  
22 when "the evidence is such that a reasonable jury could return a  
23 verdict for the nonmoving party." Anderson, 477 U.S. at 248.

24 A party asserting that a fact cannot be or is  
25 genuinely disputed must support the assertion  
26 by . . . citing to particular parts of  
27 materials in the record . . . or . . .  
28 showing that the materials cited do not  
establish the absence or presence of a  
genuine dispute, or that an adverse party  
cannot produce admissible evidence to support  
the fact.

1 Fed. R. Civ. P. 56(c)(1)(A)-(B).

2 Summary judgment "evidence must be viewed in the light  
3 most favorable to the nonmoving party, and all reasonable  
4 inferences must be drawn in favor of that party." Sec. & Exch.  
5 Comm'n v. Todd, 642 F.3d 1207, 1215 (9th Cir. 2011) (citing  
6 Johnson v. Paradise Valley Unified Sch. Dist., 251 F.3d 1222,  
7 1227 (9th Cir. 2001)).

8 **II. UNCONTROVERTED FACTS**

9 The following averments in Plaintiff's declaration  
10 submitted in support of his motion are uncontroverted. Plaintiff  
11 ate

12 at [Defendants' restaurant] on . . . February  
13 15, 2013, February 21, 2013, February 22,  
14 2013, March 4, 2013, April 2, 2013, June 4  
15 2013, and June 5, 2013. On each of these  
16 occasions, [Plaintiff] faced . . .  
difficulties and discomforts due to . . .  
[the referenced] barriers [that hindered his  
full and equal access to the restaurant.]

17 (Decl. Scott Johnson ¶ 8; see also Defs.' Response & Objections  
18 to Pl.'s Separate Statement of Undisputed Material Facts,  
19 ("Defs.' SUF") Nos. 3, 5, 1-2, 5-8, 10-11 12-14, 15-16, ECF No.  
20 18-1.) It is uncontroverted that "[s]ometime [after] . . .  
21 [Plaintiff last ate at Defendants' restaurant], Defendants made  
22 alterations to the parking, ramp, transaction counter and  
23 restroom . . ." (Defs.' SUF No. 16.)

24 **III. DISCUSSION**

25 **a. Plaintiff's ADA Claims**

26 **i) Barriers Alleged in Plaintiff's Complaint**

27 Plaintiff seeks summary judgment on his ADA injunctive  
28 relief claims alleged in his Complaint; however, there is a

1 genuine dispute of material fact as to whether those barriers  
2 still exist since it is uncontroverted that Defendants made  
3 "alterations" to the barriers since Plaintiff last ate at  
4 Defendants' restaurant. (Defs.' SUF No. 16.) Therefore,  
5 Plaintiff's summary judgment motion on his ADA claims alleged in  
6 his Complaint is denied.

7 **ii) The Newly Installed Curb Ramp**

8 Plaintiff also argues in his motion that "[a] newly  
9 installed ramp from the sidewalk to the . . . restaurant . . .  
10 [violates the cross slope requirements prescribed in the ADA  
11 Standards for Accessible Design]." (Mot. 2:17-22.) Defendants  
12 rejoin that this is the "first time" Plaintiff has made this  
13 claim. (Opp'n 1:26-2:1.)

14 Plaintiff did not allege the existence of this barrier  
15 in his Complaint, nor has he sought leave to amend his Complaint  
16 to allege its existence. This pleading issue is governed by what  
17 is prescribed as follows in the November 19, 2013 Status  
18 (Pretrial Scheduling) Order: "No further . . . amendments to  
19 pleadings is permitted, except with leave of Court for good cause  
20 shown." (Status Order 2:4-6, ECF No. 9.) "The [status] order  
21 'control[s] the subsequent course of the action' unless modified  
22 by the court." Johnson v. Mammoth Recreations, Inc., 975 F.2d  
23 604, 608 (9th Cir. 1992) (alteration in original). Status orders  
24 "may be modified upon a showing of 'good cause.'" Id.

25 Since Plaintiff has not satisfied the good cause  
26 standard, this portion of his motion is disregarded.

27 **ii. Plaintiff's UCRA Claim**

28 Plaintiff argues since Defendants violated the ADA

1 standards referenced in his Complaint "there has been a per-se  
2 violation of [the UCRA]", and he is therefore entitled to  
3 "damages in the amount of \$8,000 . . . for one visit and one  
4 deterrence." (Mot. 10:22-23, 1:8, 11:16-18.)

5 The UCRA prescribes: "a violation of the right of any  
6 individual under the [ADA] shall also constitute a violation of  
7 [the UCRA]." Cal. Civ. Code § 51(f). A plaintiff may recover  
8 "actual damages . . . in no case less than four thousand dollars  
9 (\$4,000)" for "each offense" under the UCRA. Cal. Civ. Code §§  
10 52(a), 55.56(a).

11 [Further, the UCRA] provides that statutory  
12 damages . . . are available under two  
13 circumstances: (1) if a plaintiff encountered  
14 the violation on a particular occasion or (2)  
15 if a plaintiff was deterred from accessing a  
16 place of public accommodation on a particular  
17 occasion. As to the first circumstance, a  
18 violation may be sufficient to give rise to  
19 damages if the plaintiff experienced  
20 difficulty, discomfort, or embarrassment as a  
result of the violation. As to the second  
circumstance, a deterrence will only give  
rise to damages if (a) the plaintiff had  
actual knowledge of a violation and (b) the  
violation would have actually denied the  
plaintiff full and equal access if he  
attempted to access the place on a particular  
occasion.

21 Yates v. Vishal Corp., No. 11-CV-00643-JCS, 2013 WL 6073516, at  
22 \*3 (N.D. Cal. Nov. 18, 2013) (emphasis added) (internal quotation  
23 marks and citations omitted); see also Cal. Civ. Code § 55.56(b)-  
24 (d) (describing the circumstances under which a plaintiff may  
25 recover statutory damages).

26 Plaintiff has not provided facts evincing that he was  
27 deterred from visiting Defendants' restaurant on a "particular  
28 occasion." Therefore, this portion of his motion is denied.

## V. CONCLUSION

For the foregoing reasons, Plaintiff's partial motion for summary judgment is denied.

Dated: April 28, 2015

GARLAND E. BURRELL, JR.  
Senior United States District Judge