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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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SCOTT JOHNSON,  
Plaintiff,

v.

LEONCIO NATERAS RUIZ; MARIA  
ISABEL RUIZ; ROBERT DEVITA;  
and DOES 1-10,  
Defendants.

NO. CIV. 2:14-1663 WBS AC

MEMORANDUM AND ORDER RE: MOTION  
FOR SUMMARY JUDGMENT

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Plaintiff Scott Johnson, a wheelchair-bound quadriplegic, brought this action against defendants Leoncio Nateras Ruiz, Maria Isabel Ruiz, and Robert Devita, who own and operate a store called Valley Trading Post. Plaintiff alleges that he visited Valley Trading Post and encountered barriers to access that violate the Americans With Disabilities Act, 42 U.S.C. § 12101 et seq. ("ADA"), and related California laws. Plaintiff now moves for summary judgment pursuant to Federal Rule of Civil Procedure 56. (Docket No. 12.)

1 Plaintiff is a quadriplegic who uses a wheelchair for  
2 mobility and owns a specially equipped van with a lift that  
3 deploys from the passenger side to accommodate his wheelchair.  
4 (Decl. of Scott Johnson ("Johnson Decl.") ¶¶ 2-3 (Docket No. 12-  
5 3).) On April 8, 2014, plaintiff visited Valley Trading Post, a  
6 store owned and operated by defendants in Stockton, California.  
7 (Id. ¶ 5; Defs.' Answer ¶ 2 (Docket No. 5).) The store's single  
8 disabled parking space and access aisle was outlined with faded,  
9 white paint instead of blue. (See Johnson Decl. ¶ 7, Ex. 4.)  
10 Several pieces of store merchandize were also placed in the  
11 disabled parking space, preventing plaintiff from parking there.  
12 (Id.) Plaintiff therefore parked in an undesignated, non-  
13 accessible parking space. (Id. ¶ 5.)

14 Inside the store, plaintiff found a transaction counter  
15 that measured fifty inches in height. (See id. ¶ 6, Ex. 4.)  
16 There was no lowered counter, and plaintiff could not see the top  
17 of the transaction counter or use it from his wheelchair. (Id. ¶  
18 6.)

19 Plaintiff states that he attempted to visit the store  
20 at least five additional times during the month of April 2014,  
21 including on April 11, April 14, April 18, and two separate  
22 occasions on April 21. (Id. ¶ 7, 9.) Each time he found the  
23 disabled parking space blocked by store inventory, including  
24 boats, motorbikes, bicycles, lawnmowers, and other merchandize.  
25 (Id. ¶ 7, Ex. 4.) Plaintiff took photographs of the parking  
26 space on each occasion. (See id. Ex. 4.)

27 Plaintiff's lawsuit asserts four claims: (1) violations  
28 of the ADA, 42 U.S.C. § 12101 et seq.; (2) violations of

1 California's Unruh Civil Rights Act ("UCRA"), Cal. Civ. Code  
2 §§ 51 et seq.; (3) violations of the California Disabled Persons  
3 Act, Cal. Civ. Code § 54-54.8; and (4) common-law negligence.  
4 (Compl. ¶¶ 14-26 (Docket No. 1).) Plaintiff moves for summary  
5 judgment as to his first two claims and states in his motion that  
6 he will stipulate to dismiss his California Disabled Persons Act  
7 and negligence claims if the court grants summary judgment as to  
8 his claims under the ADA and UCRA.<sup>1</sup> (Pl.'s Mem. at 3.)

9 Plaintiff requests injunctive relief ordering  
10 defendants to make their facilities readily accessible to and  
11 usable by individuals with disabilities to the extent required by  
12 the ADA. (See Compl. at 7; Pl.'s Mem. at 10.) He also seeks  
13 \$8,000 in statutory damages. (See Pl.'s Mem. at 10-11.)

14 Summary judgment is proper "if the movant shows that  
15 there is no genuine dispute as to any material fact and the  
16 movant is entitled to judgment as a matter of law." Fed. R. Civ.  
17 P. 56(a). A material fact is one that could affect the outcome  
18 of the suit, and a genuine issue is one that could permit a  
19 reasonable jury to enter a verdict in the non-moving party's  
20 favor. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248  
21 (1986). The party moving for summary judgment bears the initial

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22 <sup>1</sup> Plaintiff has not yet presented the court with a  
23 stipulation to this effect signed by both parties. As the court  
24 has previously explained in another case involving the same  
25 plaintiff, Federal Rule of Civil Procedure 15 governs the  
26 unilateral withdrawal of claims. See Johnson v. Wayside Prop.,  
27 Inc., 41 F. Supp. 3d 973, 975 n.2 (E.D. Cal. 2014) (citing Hells  
28 Canyon Preservation Council v. U.S. Forest Serv., 403 F.3d 683,  
687 (9th Cir. 2005)). If plaintiff intends to withdraw his third  
and fourth claims, he must either explain why dismissal is  
appropriate under Rule 15 or submit a stipulation signed by both  
parties.

1 burden of establishing the absence of a genuine issue of material  
2 fact and can satisfy this burden by presenting evidence that  
3 negates an essential element of the non-moving party's case.

4 Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986).

5 Alternatively, the moving party can demonstrate that the non-  
6 moving party cannot produce evidence to support an essential  
7 element upon which it will bear the burden of proof at trial.

8 Id.

9           Once the moving party meets its initial burden, the  
10 burden shifts to the non-moving party to "designate 'specific  
11 facts showing that there is a genuine issue for trial.'" Id. at  
12 324 (quoting then-Fed. R. Civ. P. 56(e)). To carry this burden,  
13 the non-moving party must "do more than simply show that there is  
14 some metaphysical doubt as to the material facts." Matsushita  
15 Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986).

16 "The mere existence of a scintilla of evidence . . . will be  
17 insufficient; there must be evidence on which the jury could  
18 reasonably find for the [non-moving party]." Anderson, 477 U.S.  
19 at 252.

20           In deciding a summary judgment motion, the court must  
21 view the evidence in the light most favorable to the non-moving  
22 party and draw all justifiable inferences in its favor. Id. at  
23 255. "Credibility determinations, the weighing of the evidence,  
24 and the drawing of legitimate inferences from the facts are jury  
25 functions, not those of a judge . . . ruling on a motion for  
26 summary judgment . . . ." Id.

27           Defendants do not dispute that their property was not  
28 fully ADA compliant, and they offer no evidence to refute the

1 alleged violations. (Defs.' Opp'n at 1 (Docket No. 13).)  
2 Accordingly, because there is no genuine dispute regarding the  
3 existence of barriers to access, the court will enter summary  
4 judgment for plaintiff on the issue of liability under the ADA  
5 and the UCRA.<sup>2</sup>

6 Defendants challenge goes only to the amount of  
7 monetary damages due to plaintiff under the UCRA. (Defs.' Opp'n  
8 at 2-3.) Unlike the ADA, the UCRA permits plaintiffs aggrieved  
9 by barriers to access to recover monetary damages. Cal. Civ.  
10 Code § 52(a); Munson v. Del Taco, Inc., 46 Cal. 4th 661, 669  
11 (2009). Even if a defendant has removed barriers to access and  
12 thereby mooted the plaintiff's ADA claim, those remedial measures  
13 will not moot a UCRA claim for damages. Wilson v. Pier 1 Imports  
14 (US), Inc., 439 F. Supp. 2d 1054, 1069 (E.D. Cal. 2006) (Karlton,  
15 J.) (citing Grove v. De La Cruz, 407 F. Supp. 2d 1126, 1131 (C.D.  
16 Cal. 2005)).

17 The UCRA provides statutory damages for each occasion a  
18 plaintiff is denied full and equal access. Cal. Civ. Code  
19 §§ 52(a), 55.56(e). Plaintiff has presented undisputed evidence  
20 that he visited Valley Trading Post a total of six times, and  
21 each time he found the accessible parking spot obstructed by  
22 defendants' inventory.<sup>3</sup> The minimum statutory damages available

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24 <sup>2</sup> The UCRA "incorporates the substantive standards of the  
25 ADA and creates a private right of action as a matter of state  
26 law." Dep't of Fair Emp't & Hous. v. Law School Admission  
27 Council Inc., 896 F.Supp.2d 849, 865 (N.D. Cal. 2012). The law  
28 provides that "[a] violation of the right of any individual under  
the federal Americans with Disabilities Act of 1990 . . . shall  
also constitute a violation of [the UCRA]." Cal. Civ. Code  
§ 51(f).

<sup>3</sup> Plaintiff has provided date-stamped photographs of the

1 for each visit is \$4,000. See Cal. Civ. Code § 52(a).

2           However, "in an action alleging multiple claims for the  
3 same construction-related accessibility violation on different  
4 particular occasions," California law requires the trier of fact  
5 to "consider the reasonableness of the plaintiff's conduct in  
6 light of the plaintiff's obligation, if any, to mitigate  
7 damages." Id. § 55.56(h). Plaintiff initially requested \$8,000  
8 or the equivalent of two visits. However, he has presented no  
9 evidence of any effort to mitigate damages. For example, there  
10 is no evidence that plaintiff alerted defendants to the barriers  
11 he encountered before returning to their store, and plaintiff has  
12 not suggested any reason why he may have expected the barriers to  
13 be removed upon his return visits. See Yates v. Vishal Corp.,  
14 Civ. No. 11-00643 JCS, 2013 WL 6073516, at \*4 (N.D. Cal. Nov. 18,  
15 2013) ("One way that plaintiffs may fail to meet their duty [to  
16 mitigate damages] is to make multiple visits to the same facility  
17 before they could reasonably expect that the barrier was  
18 corrected; this is sometimes referred to as stacking.")

19           Rather than argue the point, plaintiff's reply brief  
20 further limited his requested relief to \$4,000--the minimum  
21 damages available for a single occasion he was denied full and  
22 equal access. (Pl.'s Reply at 2 (Docket No. 14).) This  
23 concession eliminates the obstacle of mitigation. The court will  
24 therefore grant summary judgment for plaintiffs in the amount of  
25 \$4,000.

26           At oral argument, the court noted--and the parties

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28 parking space from each visit. (Johnson Decl. Ex. 4.)

1 agreed--that this case could have been settled much earlier for  
2 the same amount. Counsel for both sides represented that similar  
3 disability-related cases filed by this same plaintiff routinely  
4 settle for \$4,000 before the filing of a dispositive motion. In  
5 those cases, counsel agree that the plaintiff's attorney's fees  
6 generally amount to no more than \$6,000 to \$8,000. Yet,  
7 plaintiff's decision to hold out for a damage award of \$8,000  
8 until the last minute has caused him to incur seemingly  
9 unnecessary attorneys' fees that he may later seek to recover  
10 from defendants. Accordingly, the court cautions counsel to  
11 seriously take this fact into account in deciding how much to ask  
12 for in attorney's fees in this case.

13 IT IS THEREFORE ORDERED that plaintiff's motion for  
14 summary judgment be, and the same hereby is, GRANTED. Plaintiff  
15 is hereby granted an injunction requiring defendants to provide a  
16 lowered transaction counter and adequate accessible parking that  
17 is not blocked by inventory in compliance with the Americans with  
18 Disabilities Act of 1990 and the Americans with Disabilities Act  
19 Accessibility Guidelines contained in 28 C.F.R. Part 36. The  
20 court further awards plaintiff statutory damages in the amount of  
21 \$4,000.

22 Dated: June 29, 2015

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24 WILLIAM B. SHUBB  
25 UNITED STATES DISTRICT JUDGE  
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