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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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SCOTT JOHNSON,
Plaintiff,
v.
AMRAT K. PATEL; and DAMYANTI
A. PATEL,
Defendants.

NO. CIV. 2:14-02078 WBS DAD
MEMORANDUM AND ORDER RE: MOTION
FOR SUMMARY JUDGMENT

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Plaintiff Scott Johnson, a wheelchair-bound quadriplegic, brought this action under the Americans With Disabilities Act, 42 U.S.C. § 12101 et seq. ("ADA"), and related California laws, and now seeks summary judgment pursuant to Federal Rule of Civil Procedure 56.

I. Factual and Procedural Background

Plaintiff uses a wheelchair for mobility and owns a specially equipped van with a lift that deploys from the

1 passenger side to accommodate his wheelchair. (Johnson Decl. ¶¶
2 2-3 (Docket No. 25-4).) On March 27, 2014 and on four additional
3 occasions within a two-month period, plaintiff visited the
4 American's Best Value Inn ("Inn"), a hotel in Stockton,
5 California owned and operated by defendants Amrat K. Patel and
6 Damyanti A. Patel. (Id. ¶¶ 4, 11; Pl.'s Mem. at 1.)

7 Plaintiff found that the two handicap parking spaces
8 had handicap logos painted over them but did not have a tow away
9 or fine warning near the spaces. (Johnson Decl. ¶¶ 6, 8.) Only
10 one of the spaces had a pole-mounted sign indicating that it was
11 a "Van Accessible Space" and the other did not have any kind of
12 signage. (Id. ¶ 6.) The outline of the spaces and the stripes
13 in the access aisle between the spaces were painted white or
14 yellow instead of blue. (Id. ¶¶ 6-8.) The access aisle also did
15 not contain the required "No Parking" lettering or a blue border.
16 (Id. ¶ 7.) The handicap parking spaces and access aisles were
17 not level with each other due to a built up curb ramp. (Id.
18 ¶ 9.) The slope of the ramp was greater than 2.2%. (Id. ¶ 21.)

19 When plaintiff returned to the Inn on April 18 and 21,
20 2014 in order to rent a room, plaintiff was forced to leave the
21 ramp of his van open and down for fear of being blocked by
22 another vehicle. (Id. ¶ 13.) He then encountered a ramp leading
23 from the parking lot to the entrance that had a very steep slope.
24 (Id. ¶ 14.) The entrance doorway to the business office of the
25 Inn had panel style handles that required plaintiff to grasp and
26 twist with his wrist, which is extremely difficult for plaintiff
27 due to his disability. (Id. ¶ 15.)

28 Upon entering, plaintiff found the transaction counter

1 was too high and he was unable to see the top of the counter.
2 (Id. ¶ 16.) There was no lowered section of the counter for use
3 by people in wheelchairs. (Id.) When plaintiff requested a
4 wheelchair accessible room, he was told none were available.
5 (Id. ¶ 17.) Plaintiff took photographs of the parking spaces,
6 access aisle, entrance ramp, and door handle during his various
7 visits. (Id. Ex. 3.)

8 Plaintiff indicates he has visited Stockton in order to
9 shop, eat, and stay overnight on a number of occasions over the
10 past two years and plans to continue to do so in the future.

11 (Id. ¶ 24.) Stockton is a convenient stopping point on the drive
12 from plaintiff's home in Carmichael to Fresno, where plaintiff's
13 son attends school. (Johnson Suppl. Decl. ¶ 2). Plaintiff says
14 he would like to stay at the Inn in the future, when the
15 violations have been remedied. (Johnson Decl. ¶¶ 24-25.)

16 Plaintiff's lawsuit asserts four claims: (1) violations
17 of the ADA, 42 U.S.C. § 12101 et seq.; (2) violations of
18 California's Unruh Civil Rights Act ("UCRA"), Cal. Civ. Code
19 §§ 51(f), 52(a); (3) violations of the California Disabled
20 Persons Act, Cal. Civ. Code §§ 54-54.8; and (4) common-law
21 negligence. (Compl. at 5-9 (Docket No. 1).) Plaintiff now moves
22 for summary judgment on his first two claims and states in his
23 motion that he will stipulate to dismiss his California Disabled
24 Persons Act and negligence claims if the court grants summary
25 judgment on his ADA and UCRA claims.¹ (Pl.'s Mem. at 3.)

26 ¹ Plaintiff has not yet presented the court with a
27 stipulation to this effect signed by both parties. As the court
28 has previously explained in another case involving the same
plaintiff, Federal Rule of Civil Procedure 15 governs the

1 Plaintiff seeks injunctive relief ordering defendants
2 to make their facility readily accessible to and usable by
3 individuals with disabilities to the extent required by the ADA.
4 (Id. at 11.) He also seeks \$8,000 in statutory damages under the
5 UCRA, \$4,000 of which is for his first five visits to the Inn and
6 \$4,000 of which is for the many times he was deterred from
7 visiting. (Id. at 12.)

8 II. Discussion

9 Summary judgment is proper "if the movant shows that
10 there is no genuine dispute as to any material fact and the
11 movant is entitled to judgment as a matter of law." Fed. R. Civ.
12 P. 56(a). A material fact is one that could affect the outcome
13 of the suit, and a genuine issue is one that could permit a
14 reasonable jury to enter a verdict in the non-moving party's
15 favor. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248
16 (1986). The party moving for summary judgment bears the initial
17 burden of establishing the absence of a genuine issue of material
18 fact and can satisfy this burden by presenting evidence that
19 negates an essential element of the non-moving party's case.
20 Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986).

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

24
25 unilateral withdrawal of claims. See Johnson v. Wayside Prop.,
26 Inc., 41 F. Supp. 3d 973, 975 n.2 (E.D. Cal. 2014) (citing Hells
27 Canyon Preservation Council v. U.S. Forest Serv., 403 F.3d 683,
28 687 (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 Id.

2 Once the moving party meets its initial burden, the
3 burden shifts to the non-moving party to "designate 'specific
4 facts showing that there is a genuine issue for trial.'" Id. at
5 324 (quoting then-Fed. R. Civ. P. 56(e)). To carry this burden,
6 the non-moving party must "do more than simply show that there is
7 some metaphysical doubt as to the material facts." Matsushita
8 Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986).
9 "The mere existence of a scintilla of evidence . . . will be
10 insufficient; there must be evidence on which the jury could
11 reasonably find for the [non-moving party]." Anderson, 477 U.S.
12 at 252.

13 In deciding a summary judgment motion, the court must
14 view the evidence in the light most favorable to the non-moving
15 party and draw all justifiable inferences in its favor. Id. at
16 255. "Credibility determinations, the weighing of the evidence,
17 and the drawing of legitimate inferences from the facts are jury
18 functions, not those of a judge . . . ruling on a motion for
19 summary judgment" Id.

20 Defendants do not dispute that the barriers to access
21 plaintiff identified violate the ADA. (Defs.' Opp'n at 1 (Docket
22 No. 27).) Accordingly, because there is no genuine dispute
23 regarding the existence of the barriers to access, the court will
24 grant plaintiff's motion for summary judgment on the issue of
25 liability under the ADA and the UCRA.²

26 ² The UCRA "incorporates the substantive standards of the
27 ADA and creates a private right of action as a matter of state
28 law." Dep't of Fair Emp't & Hous. v. Law School Admission
Council Inc., 896 F. Supp. 2d 849, 865 (N.D. Cal. 2012). The law

1 Defendants contest only the amount of monetary damages
2 plaintiff should receive under the UCRA. (Id. at 1-2.) Unlike
3 the ADA, the UCRA permits a plaintiff aggrieved by barriers to
4 access to recover monetary damages. Cal. Civ. Code § 52(a);
5 Munson v. Del Taco, Inc., 46 Cal. 4th 661, 669 (2009). The UCRA
6 generally provides for a minimum of \$4,000 in statutory damages
7 for each occasion a plaintiff has been denied full and equal
8 access to a place of public accommodation. See Cal. Civ. Code
9 §§ 52(a), 55.56(a).

10 A plaintiff is denied full and equal access if a
11 plaintiff has "personally encountered" a violation or has been
12 "deterred from accessing a place of public accommodation" on a
13 particular occasion. Cal. Civ. Code § 55.56(b); Freezor v. Del
14 Taco, Inc., 431 F. Supp. 2d 1088, 1090 (S.D. Cal. 2005) ("[I]n
15 expanding UCRA's reach beyond denial of equal access upon actual
16 visitation to include liability for incidents of deterrence,
17 courts have assumed that disabled plaintiffs remain entitled to
18 damages for each time he or she has actually visited the
19 offending establishment."). To demonstrate that the plaintiff
20 was deterred, the plaintiff must establish both of the following:

21 (1) The plaintiff had actual knowledge of a violation
22 or violations that prevented or reasonably dissuaded
23 the plaintiff from accessing a place of public
accommodation that the plaintiff intended to use on a
particular occasion.

24 (2) The violation or violations would have actually
25 denied the plaintiff full and equal access if the
plaintiff had accessed the place of public
accommodation on that particular occasion.

26 provides that "[a] violation of the right of any individual under
27 the federal Americans with Disabilities Act of 1990 . . . shall
28 also constitute a violation of [the UCRA]." Cal. Civ. Code
§ 51(f).

1 Cal. Civ. Code §§ 55.56(d)(1)-(2).

2 When a plaintiff is alleging multiple claims for
3 statutory damages, the UCRA requires the court to consider the
4 reasonableness of the plaintiff's conduct in light of his duty to
5 mitigate damages. Section 55.56(h) applies to deterrence claims
6 and provides: "In assessing liability under subdivision (d), in
7 an action alleging multiple claims for the same construction-
8 related accessibility violation on different particular
9 occasions, the court shall consider the reasonableness of the
10 plaintiff's conduct in light of the plaintiff's obligations, if
11 any, to mitigate damages." Cal. Civ. Code § 55.56(h).

12 In several cases in which a plaintiff was seeking
13 damages for multiple visits to a facility, the issue of
14 mitigation has precluded summary judgment. For example, in
15 Johnson v. Wayside Property, Inc., 41 F. Supp. 3d 973, 981
16 (2014), the same plaintiff contended that he was entitled to an
17 award of \$8,000 for his two visits to Wayside Lumber. This court
18 denied summary judgment on the issue of damages because there was
19 a genuine issue of fact as to whether the plaintiff mitigated
20 damages: plaintiff provided "no evidence that indicates he
21 alerted defendants to the barriers he encountered before he made
22 a second visit or that he expected the barriers to be removed
23 before he returned."

24 Similarly, in Ramirez v. Sam's for Play Café, Civ. No.
25 11-1370 MEJ, 2013 WL 4428858, at *8-9 (N.D. Cal. Aug. 15, 2013),
26 the court denied the plaintiffs' motion for summary judgment due
27 to a factual dispute over whether the plaintiffs mitigated
28 damages. The court questioned whether the plaintiffs acted

1 reasonably when they chose to visit the Café three times in
2 thirty days despite the likelihood that they would continue to
3 encounter barriers to access.

4 Both of the above cases are distinguishable because
5 they dealt with a plaintiff seeking \$4,000 for each visit, not
6 \$4,000 for all visits and an additional \$4,000 for deterrence as
7 the plaintiff requests in this case. Assessing the
8 reasonableness of a plaintiff's conduct when the plaintiff seeks
9 damages for deterrence, not return visits, is slightly less
10 straightforward. At a minimum, the statute suggests that the
11 plaintiff must identify a particular occasion on which the
12 plaintiff was reasonably dissuaded from visiting the facility due
13 to his actual knowledge of the violation. See Johnson v. Kuo
14 Lin, Civ. No. 2:13-01484 GEB-DAD, 2015 WL 1956532, at *3 (E.D.
15 Cal. Apr. 29, 2015) (denying plaintiff's motion for partial
16 summary judgment because plaintiff did not provide "facts
17 evincing that he was deterred from visiting [d]efendants'
18 restaurant on a 'particular occasion'").³

19 Here, plaintiff presents evidence that he had actual
20 knowledge of violations at the Inn from his five visits.
21 (Johnson Decl. ¶¶ 5-23.) He personally observed the noncompliant
22 parking spaces and access lane, the steep entrance ramp, the high
23 transaction counter, and the panel style door handle on five

24
25 ³ Plaintiff argues that California Civil Code subsection
26 55.56(h) applies only when a plaintiff seeks more than one
27 deterrence penalty award, not when a plaintiff seeks damages for
28 a single encounter and a single deterrence claim. (Pl.'s Reply
at 5 (Docket No. 28).) Even if this interpretation of the
statute is correct, it would not change the outcome under the
facts of this case.

1 separate occasions. (Id.) Plaintiff states he was deterred from
2 additional attempts at patronage on a number of occasions in 2014
3 because of the violations:

4 Although I live in Carmichael, I drive down to the
5 Stockton area on a constant and ongoing basis. I have
6 shopped, stayed, eaten and otherwise visited Stockton
7 on scores of occasions over the last two years and
8 will continue to do so in the future. The Inn is
conveniently located and in close proximity to the
areas I frequent. Once the barriers are fixed, I will
return and continue to patronize the Inn on a regular
and ongoing basis.

9 (Id. ¶¶ 24-25). Plaintiff has thus satisfied the initial burden
10 of establishing the absence of a genuine issue of material fact
11 as to deterrence and the reasonableness of his conduct.


12 Defendants have not presented a single piece of
13 evidence to the contrary. Defendants did not, for example,
14 provide evidence suggesting plaintiff had any reason to believe
15 barriers had been remediated or that his deterrence was
16 unreasonable for some other reason. As a result, defendants
17 failed to meet their burden of showing that there is a genuine
18 issue of material fact for trial. Accord Yates v. Vishal Corp.,
19 Civ. No. 11-00643 JCS, 2013 WL 6073516, at *6 (N.D. Cal. Nov. 18,
20 2013) (awarding \$4,000 for deterrence after the bench trial when
21 the plaintiff "stated that he decided not to stay at the Hotel on
22 at least one occasion because of [his] knowledge" of the
23 architectural barriers at the Hotel and the defendant "presented
24 no evidence to the contrary"); Langer v. GTAC, Inc., Civ. No. 14-
25 1071 BTM WVG, 2015 WL 3492475, at *3 (S.D. Cal. June 3, 2015)
26 (awarding \$4,000 on a motion for default judgment because the
27 plaintiff "states that due to the lack of a single functioning
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1 compliant handicap parking space, he was deterred from
2 patronizing" the defendants' facility and "[t]his is sufficient
3 evidence to support an award of statutory damages in the amount
4 of \$4,000").

5 Accordingly, because defendants conceded liability
6 under the ADA and the UCRA and failed to raise a genuine issue of
7 material fact regarding the amount of statutory damages owed to
8 plaintiff, the court will grant plaintiff's motion with respect
9 to liability and damages.

10 IT IS THEREFORE ORDERED that plaintiff's motion for
11 summary judgment be, and the same hereby is, GRANTED. Plaintiff
12 is hereby granted an injunction requiring defendants to make
13 their facility readily accessible to and usable by individuals
14 with disabilities to the extent required by the Americans With
15 Disabilities Act of 1990. The court also awards plaintiff
16 statutory damages in the amount of \$8,000.

17 Dated: September 21, 2015

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19 WILLIAM B. SHUBB
20 UNITED STATES DISTRICT JUDGE
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