

1 paraplegic who uses a wheelchair for mobility. (Defs.' Resp. to
2 Pl.'s Statement of Uncontroverted Facts ("PSUF") at No. 1 (Docket
3 No. 41-4).) On December 2, 2018, plaintiff visited the Gas
4 Station at 4507 Howard Road, Westley, California. (Id. at Nos.
5 2, 6.) Defendant Mehrabi has owned and defendant Stars Holding
6 has leased and operated the Gas Station at all relevant times in
7 this suit, including today. (Id. at Nos. 4-5.)

8 Plaintiff needs parking with an access aisle to safely
9 deploy his vehicle ramp. (Decl. of Rafael Arroyo ("Arroyo
10 Decl.") ¶ 6 (Docket No. 40-3).) Without an accessible aisle,
11 plaintiff runs the risk of getting struck by another car or
12 having another vehicle park next to him and block him from re-
13 entering. (Id. ¶¶ 7, 9.) When he arrived at the Gas Station on
14 December 2, 2018, plaintiff alleges he did not find any parking
15 space designated for persons with disabilities. (Id. ¶ 4.) Nor
16 did he find any parking space with an adjacent access aisle or
17 signage indicating disabled parking. (Id.)² Plaintiff alleges
18 that defendants violated the ADA by not providing an ADA-
19 complaint accessible parking space, restroom mirror, and toilet
20 paper dispenser.³

21 ² Plaintiff notes that it appeared that there used to be
22 an accessible parking space in the parking lot, however, the
23 surface markings seemed faded or paved over. (Arroyo Decl. ¶ 5.)

24 ³ Plaintiff did not actually enter the restroom at the
25 Gas Station, and therefore, did not personally encounter the
26 restroom mirror or the toilet paper dispenser. Nevertheless, the
27 Ninth Circuit allows "[a]n ADA plaintiff who has standing as a
28 result of at least one barrier . . . [to] challenge all barriers
in that public accommodation that are related to his or her
specific disability." Doran v. 7-Eleven, 524 F.3d 1034, 1047
(9th Cir. 2008). Here, it is undisputed that plaintiff
personally encountered the alleged inaccessible parking. The

1 I. ADA Liability

2 A. Inaccessible Parking

3 Any business that provides parking spaces must provide
4 them in accordance with the ADA Accessibility Guidelines
5 ("ADAAG"). 36 C.F.R, pt. 1191, App. B § 208.1. For parking lots
6 with one to 25 parking spaces, it is required that there is one
7 accessible parking space. Id. at § 208.2. Because the Gas
8 Station had "around 15 parking spaces," defendants were required
9 to include one accessible parking space. (See Decl. of Tim
10 Wegman ("Wegman Decl.") ¶ 4 (Docket No. 40-5).) The accessible
11 parking spot must comply with specific measurements, 36 C.F.R.,
12 pt. 1191, App. D § 502, and be properly identified with required
13 markings and signage. Id. at § 502.3.3, 502.6.

14 Plaintiff has submitted photographs of the parking lot
15 taken by his investigator on December 22, 2018. (See Pl.'s Mot.
16 for. Summ. J., Ex. 4, 12-17 (Docket No. 40-6).) The photographs
17 do not show an accessible parking space in the Gas Station
18 parking lot. Defendants have also submitted photographs, taken
19 by an employee of the Gas Station in 2015, showing a designated
20 accessible parking space. (Decl. of Azad Amiri ("Amiri Decl.") ¶
21 8 (Docket No. 41-1)); (Id., Ex. B, photos of parking space
22 (Docket No. 41-3).) Plaintiff's submitted photos do not show a
23 clear, close-up of the area which defendants' photos capture.
24 (See Pl.'s Mot. for. Summ. J., Ex. 4, 12-17.) The contradicting

25
26 restroom mirror and toilet paper dispenser are barriers related
27 to plaintiff's paraplegic status. Accordingly, plaintiff also
28 has standing to challenge the restroom mirror and toilet paper
dispenser under the ADA.

1 photo evidence provided by the parties creates a genuine dispute
2 of material fact as to whether an accessible parking space
3 existed at the time of plaintiff's visit to the Gas Station.

4 Further, plaintiff's own declaration creates a genuine
5 dispute of material fact. Plaintiff claims he "did not find any
6 parking space designated for use by persons with disabilities."

7 (Arroyo Decl. ¶ 4.) However, in the next paragraph, plaintiff
8 states that "[i]t appeared that there used to be an accessible
9 parking space" but that it was faded or paved over. (Id. ¶ 5.)

10 It is not clear from plaintiff's statements whether no designated
11 spot for persons with disabilities existed, or whether the spot
12 existed but was not properly identified using visible markings
13 and signage. Therefore, the court cannot determine as a matter
14 of law whether an accessible parking space needs to be created,
15 or whether the accessible parking space exists but needs to be
16 "maintained" in a usable manner. See 28 C.F.R., pt. 36, App. C §
17 36.211 ("[a] public accommodation shall maintain in operable
18 working condition those features of facilities . . . that are
19 required to be readily accessible to and usable by persons with
20 disabilities").⁴

21 Accordingly, plaintiff's motion for summary judgment on
22 the ADA claim for accessible parking will be denied.

24 ⁴ Plaintiff also states that he "chose to leave without
25 attempting to further patronize the Gas Station." (Arroyo Decl.
26 ¶ 10.) As part of the same declaration, plaintiff submits a copy
27 of his receipt from the Gas Station visit. (Id., Ex. 2.)
28 Plaintiff provides no explanation for how he patronized the Gas
Station when he claims no accessible parking existed and he chose
to leave.

1 B. Restroom Mirror

2 Pursuant to the ADAAG, "mirrors located above
3 lavatories or countertops shall be installed with the bottom edge
4 of the reflecting surface 40 inches [] maximum above" the floor.
5 36 C.F.R., pt. 1191, App. D § 603.3. Photos taken by plaintiff's
6 investigator show a mirror located above a sink in the restroom,
7 meaning the mirror's bottom edge must be no higher than 40 inches
8 from the floor. (See Pl.'s Mot. for. Summ. J., Ex. 4, 4.) One
9 of these photos includes a measuring device at the bottom edge of
10 the mirror and reads 55 and 1/4 inches. (Id. at 5.) Defendants
11 do not offer any evidence that the bottom edge of the mirror was
12 40 inches or less from the floor. Lowering of the mirror is also
13 "readily achievable" as it will not require much of defendants'
14 resources. See 42 U.S.C. § 12182(b)(2)(A)(iv).

15 There is no genuine dispute of material fact pertaining
16 to the height of the mirror. Plaintiff has proven that
17 defendants failed to comply with the ADA requirement for mirror
18 height. Accordingly, the court will grant partial summary
19 judgment for plaintiff on the issue of ADA liability for the
20 restroom mirror.

21 C. Toilet Paper Dispenser

22 The ADAAG requires that toilet paper dispensers be
23 seven to nine inches in front of the toilet fixture "measured to
24 the centerline of the dispenser." 36 C.F.R., pt. 1191, App. D §
25 604.7. Plaintiff claims, based on a photo of a measurement taken
26 by his investigator, that the toilet paper dispenser was mounted
27 at 21 inches in front of the toilet fixture. (Pl.'s MSJ at 12.)
28 Defendants do not offer any evidence or argument that plaintiff's

1 measurement is incorrect. Modification of the distance of the
2 toilet paper dispenser from the toilet fixture is also "readily
3 achievable" as it will not require much of defendants' resources.
4 See 42 U.S.C. § 12182(b)(2)(A)(iv).

5 As no genuine dispute of material fact exists regarding
6 the toilet paper dispenser, and plaintiff has shown that
7 defendants failed to comply with the ADA requirement for toilet
8 paper dispensers, the court will grant partial summary judgment
9 for plaintiff on the issue of ADA liability for the toilet paper
10 dispenser.

11 II. Unruh Civil Rights Act

12 The Unruh Act provides in relevant part that every
13 person is "entitled to the full and equal accommodations,
14 advantages, privileges, or services in all business
15 establishments of every kind whatsoever" notwithstanding his or
16 her disability. Cal. Civ. Code § 51(b). "A violation of the
17 right of any individual under the federal Americans with
18 Disabilities Act of 1990 shall also constitute a violation of
19 [the Unruh Act]." Cal. Civ. Code § 51(f) (internal citations
20 omitted).

21 Plaintiff does not allege a violation of the Unruh Act
22 independent from his claims under the ADA. (Compl. at 7.) As
23 discussed above, there are genuine issues of material fact
24 regarding plaintiff's ADA claim for inaccessible parking.
25 Therefore, the court will not grant summary judgment for
26 plaintiff on his Unruh Act claim based on an inaccessible parking
27 violation.

28 Unlike the ADA, under the Unruh Act, for every alleged


1 violation plaintiff must "personally encounter[] the violation"
2 or be "deterred from accessing a place of public accommodation on
3 a particular occasion." See Cal. Civ Code §55.56(a-b). The
4 record does not establish that plaintiff personally encountered
5 the restroom mirror or the toilet paper dispenser. The record
6 also does not establish that plaintiff was deterred from
7 accessing the Gas Station due to knowledge of the restroom
8 violations because plaintiff did not become aware of the
9 violations until his investigator visited the restroom weeks
10 later, after which plaintiff did not attempt to visit the Gas
11 Station on "a particular occasion." Id.

12 Therefore, the court cannot grant summary judgment for
13 plaintiff on his Unruh Act claim based on the restroom mirror or
14 toilet paper dispenser violation.

15 IT IS THEREFORE ORDERED that plaintiff's motion for
16 summary judgment (Docket No. 40) be, and the same hereby, is
17 GRANTED IN PART on the issue of liability on plaintiff's ADA
18 claim based upon inaccessibility of the restroom mirror and
19 toilet paper dispenser. The final judgment in this action will
20 include an injunction requiring defendants to provide an
21 accessible restroom mirror and toilet paper dispenser.

22 IT IS FURTHER ORDERED that in all other respects
23 plaintiff's motion for summary judgment be, and the same hereby
24 is, DENIED.

25 Dated: February 23, 2022


WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE

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