

CENTER FOR DISABILITY ACCESS
Chris Carson, Esq., SBN 280048
Raymond Ballister Jr., Esq., SBN 111282
Phyl Grace, Esq., SBN 171771
Dennis Price, Esq., SBN 279082
Mail: PO Box 262490
San Diego, CA 92196-2490
Delivery: 9845 Erma Road, Suite 300
San Diego, CA 92131
(858) 375-7385; (888) 422-5191 fax
phylg@potterhandy.com

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Juan Garibay,
Plaintiff,

v.

**Kaiser Foundation Health Plan,
Inc.,** a California Corporation;
Circle K Stores Inc., a Texas
Corporation; and Does 1-10,
Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Juan Garibay complains of Defendants Kaiser Foundation Health Plan, Inc., a California Corporation; Circle K Stores Inc., a Texas Corporation; and Does 1-10 ("Defendants"), and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He suffers from a T-12 spinal cord injury. He cannot walk. He uses a wheelchair for mobility.

2. Defendant Kaiser Foundation Health Plan, Inc. owned the real property

1 located at or about 1150 W. Pacific Coast Hwy., Harbor City, California, in
2 July 2018.

3 3. Defendant Kaiser Foundation Health Plan, Inc. owns the real property
4 located at or about 1150 W. Pacific Coast Hwy., Harbor City, California,
5 currently.

6 4. Defendant Circle K Stores Inc. owned Circle K located at or about 1150
7 W. Pacific Coast Hwy., Harbor City, California, in July 2018.

8 5. Defendant Circle K Stores Inc. owns Circle K gas station ("Gas Station")
9 located at or about 1150 W. Pacific Coast Hwy., Harbor City, California,
10 currently.

11 6. Plaintiff does not know the true names of Defendants, their business
12 capacities, their ownership connection to the property and business, or their
13 relative responsibilities in causing the access violations herein complained of,
14 and alleges a joint venture and common enterprise by all such Defendants.
15 Plaintiff is informed and believes that each of the Defendants herein,
16 including Does 1 through 10, inclusive, is responsible in some capacity for the
17 events herein alleged, or is a necessary party for obtaining appropriate relief.
18 Plaintiff will seek leave to amend when the true names, capacities,
19 connections, and responsibilities of the Defendants and Does 1 through 10,
20 inclusive, are ascertained.

21
22 **JURISDICTION & VENUE:**

23 7. The Court has subject matter jurisdiction over the action pursuant to 28
24 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
25 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

26 8. Pursuant to supplemental jurisdiction, an attendant and related cause
27 of action, arising from the same nucleus of operative facts and arising out of
28 the same transactions, is also brought under California's Unruh Civil Rights

1 Act, which act expressly incorporates the Americans with Disabilities Act.

2 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
3 founded on the fact that the real property which is the subject of this action is
4 located in this district and that Plaintiff's cause of action arose in this district.

5
6 **FACTUAL ALLEGATIONS:**

7 10. Plaintiff went to the Gas Station in July 2018.

8 11. The Gas Station is a facility open to the public, a place of public
9 accommodation, and a business establishment.

10 12. Paths of travel are one of the facilities, privileges, and advantages
11 offered by defendants to persons of the Gas Station.

12 13. Some wheelchair users, including plaintiff, travel onto the site from the
13 exterior public sidewalks. Here, there was no safe wheelchair accessible route
14 of travel from the boundary of the site to the accessible entrance. The public
15 sidewalks terminate after entering the boundary of the property and there is
16 no safe path of travel after that point.

17 14. The plaintiff was forced to travel in the vehicular drive paths to gain
18 access to the Gas Station. This was dangerous for plaintiff.

19 15. Plaintiff personally encountered these barriers.

20 16. This inaccessible facility denied the plaintiff full and equal access and
21 caused him difficulty, discomfort, and embarrassment.

22 17. Card readers at the fuel pumps are another one of the facilities,
23 privileges, and advantages offered by Defendants to patrons of the Gas
24 Station.

25 18. Meanwhile, and even though plaintiff did not personally confront the
26 barriers, at each of the fuel dispenser pumps there are buttons next to the LCD
27 screens for use by customers. The controls and operating mechanisms for the
28 transaction screen are located 59 inches to 64 inches above the finish floor.

1 They exceed the maximum height/reach requirements of the law.

2 19. Restrooms are also one of the facilities, privileges, and advantages
3 offered by Defendants to patrons of the Gas Station.

4 20. The paper towel dispenser is mounted so that its highest operable part
5 is greater than 54 inches above the finish floor and inaccessible to wheelchair
6 users. In fact, the paper towel dispenser is 59 inches high.

7 21. The plumbing underneath the sink is not wrapped to protect against
8 burning contact.

9 22. Plaintiff plans to return and patronize the Gas Station but is deterred
10 from visiting until the defendants remove the barriers.

11 23. The defendants have failed to maintain in working and useable
12 conditions those features required to provide ready access to persons with
13 disabilities.

14 24. The barriers identified above are easily removed without much
15 difficulty or expense. They are the types of barriers identified by the
16 Department of Justice as presumably readily achievable to remove and, in fact,
17 these barriers are readily achievable to remove. Moreover, there are numerous
18 alternative accommodations that could be made to provide a greater level of
19 access if complete removal were not achievable.

20 25. The restroom dispenser could be lowered to a compliant height for little
21 to no cost.

22 26. Insulation can be installed under the sink at a cost of no more than \$25.

23 27. Plaintiff is deterred from returning and patronizing the Gas Station
24 because of his knowledge of the barriers that exist. Plaintiff will, nonetheless,
25 return to assess ongoing compliance with the ADA and will return to patronize
26 the Gas Station as a customer once the barriers are removed.

27 28. Given the obvious and blatant nature of the violations and barriers
28 alleged herein, the plaintiff alleges, on information and belief, that there are

1 other violations and barriers on the site that relate to his disability. Plaintiff will
 2 amend the Complaint to provide proper notice regarding the scope of this
 3 lawsuit once he conducts a site inspection. However, please be on notice that
 4 the plaintiff seeks to have all barriers related to his disability remedied. See
 5 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
 6 encounters one barrier at a site, he can sue to have all barriers that relate to his
 7 disability removed regardless of whether he personally encountered them).

8
 9 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
 10 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
 11 Defendants.) (42 U.S.C. section 12101, et seq.)

12 29. Plaintiff re-pleads and incorporates by reference, as if fully set forth
 13 again herein, the allegations contained in all prior paragraphs of this
 14 complaint.

15 30. Under the ADA, it is an act of discrimination to fail to ensure that the
 16 privileges, advantages, accommodations, facilities, goods and services of any
 17 place of public accommodation is offered on a full and equal basis by anyone
 18 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
 19 § 12182(a). Discrimination is defined, inter alia, as follows:

- 20 a. A failure to make reasonable modifications in policies, practices,
 21 or procedures, when such modifications are necessary to afford
 22 goods, services, facilities, privileges, advantages, or
 23 accommodations to individuals with disabilities, unless the
 24 accommodation would work a fundamental alteration of those
 25 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
 26 b. A failure to remove architectural barriers where such removal is
 27 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
 28 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,

Appendix “D.”

- c. A failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs or to ensure that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities. 42 U.S.C. § 12183(a)(2).

31. Under the ADA, there must be an accessible route of travel from the boundary of the site, i.e., from the public street and public sidewalks at the “site arrival points” to the building entrances on the site. 1991 Standards (1991 Standards) § 4.1.2(1); 2010 Standards (ADAAS) § 206.2.1.

32. Here, the plaintiff is forced to travel in the vehicular drive paths once he gains access to the property from the public sidewalks. This is dangerous for plaintiff.

33. If controls, dispensers, receptacles or other equipment is provided, they must be on an accessible route and be mounted so that their highest operable parts are no greater than 54 inches above the floor. 1991 Standards § 4.22.7; 4.27.

34. Here, the failure to ensure that the highest operable parts at the fuel pumps met the height requirement is a violation of the ADA.

35. Here, the failure to ensure that the wall mounted accessories at the restroom met the height requirement is a violation of the ADA.

36. Hot water and drain pipes under lavatories must be insulated or otherwise configured to protect against contact. 1991 Standards § 4.19.4; 2010 Standards § 606.5.

37. Here, the failure to wrap the plumbing underneath the sink is a violation

1 of the ADA.

2 38. A public accommodation must maintain in operable working condition
3 those features of its facilities and equipment that are required to be readily
4 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

5 39. Here, the failure to ensure that the accessible facilities were available
6 and ready to be used by the plaintiff is a violation of the law.

7 40. Given its location and options, plaintiff will continue to desire to
8 patronize the Gas Station but he has been and will continue to be discriminated
9 against due to the lack of accessible facilities and, therefore, seeks injunctive
10 relief to remove the barriers.

11
12 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
13 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
14 Code § 51-53.)

15 41. Plaintiff repleads and incorporates by reference, as if fully set forth
16 again herein, the allegations contained in all prior paragraphs of this
17 complaint. The Unruh Civil Rights Act ("Unruh Act") guarantees, inter alia,
18 that persons with disabilities are entitled to full and equal accommodations,
19 advantages, facilities, privileges, or services in all business establishment of
20 every kind whatsoever within the jurisdiction of the State of California. Cal.
21 Civ. Code § 51(b).

22 42. The Unruh Act provides that a violation of the ADA is a violation of the
23 Unruh Act. Cal. Civ. Code, § 51(f).

24 43. Defendants' acts and omissions, as herein alleged, have violated the
25 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff's
26 rights to full and equal use of the accommodations, advantages, facilities,
27 privileges, or services offered.

28 44. Because the violation of the Unruh Civil Rights Act resulted in difficulty,

1 discomfort or embarrassment for the plaintiff, the defendants are also each
2 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
3 (c).)

4
5 **PRAYER:**

6 Wherefore, Plaintiff prays that this Court award damages and provide
7 relief as follows:

8 1. For injunctive relief, compelling Defendants to comply with the
9 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
10 plaintiff is not invoking section 55 of the California Civil Code and is not
11 seeking injunctive relief under the Disabled Persons Act at all.

12 2. Damages under the Unruh Civil Rights Act, which provides for actual
13 damages and a statutory minimum of \$4,000.

14 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
15 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

16
17 Dated: August 16, 2018

CENTER FOR DISABILITY ACCESS

18
19
20 By: 

21 _____
22 Chris Carson, Esq.
23 Attorney for plaintiff
24
25
26
27
28