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12 UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF CALIFORNIA

14 **Amanda Rutherford,**

15 Plaintiff,

16 v.

17 **Kaiser Foundation Hospitals** and
18 Does 1-10, Inclusive,

19 Defendants.

Case No.

**Complaint for Injunctive Relief
and Damages for Violations of:**

1. Title III of the American's With Disabilities Act, 42 U.S.C. §12182 et seq.;
2. Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 et seq.;
3. California's Unruh Civil Rights Act, Cal. Civ. Code § 51 et seq.; and
4. California's Disabled Persons Act, Cal. Civ. Code § 54.1 et seq.

INTRODUCTION

1
2 1. Plaintiff Amanda Rutherford (“Plaintiff”) brings this lawsuit
3 alleging that Defendants Kaiser Foundation Hospitals and Does 1-10
4 (“Defendants”) have failed to ensure that individuals with disabilities who
5 use service dogs have full and equal access to the goods, facilities, programs,
6 services and activities offered to members of the public at the Kaiser
7 Permanente Hospital in Sacramento, California.

8 2. As a result of Defendants’ discriminatory acts and omissions as
9 alleged herein, Plaintiff has suffered, and will continue to suffer, damages,
10 and has been, and will continue to be, prevented and deterred from accessing
11 the goods, facilities, programs, services and activities offered at Kaiser
12 independently and in a manner equal to individuals without disabilities.

13 3. Through this lawsuit, Plaintiff seeks an injunction requiring
14 Defendants to provide her, and similarly situated persons, “full and equal”
15 access to Defendants’ public facilities as required by law. Plaintiff also seeks
16 to be compensated for her damages and for Defendants to pay her reasonable
17 attorneys’ fees, and the costs and litigation expenses incurred in enforcing
18 her civil rights.

PARTIES

19
20
21 5. Plaintiff Amanda Rutherford is, and at all times relevant herein
22 was, a California resident with physical disabilities. Plaintiff has rheumatoid
23 arthritis, nerve impingement and damage to her back and hip. Plaintiff’s
24 physical conditions cause her to be significantly impaired with regard to her
25 ability to: (a) lift/pick up items; (b) walk, stand and bend; and (3) work.
26 Plaintiff is, and at all times relevant herein was, a “qualified individual with a
27 disability” and person with a “physical disability” as those terms are defined
28 under the Americans with Disabilities Act and its implementing regulations

1 (42 U.S.C. § 12102; 28 C.F.R. § 36.104), Section 504 of the Rehabilitation
2 Act and its implementing regulations (29 U.S.C. § 794; 45 C.F.R. § 84.3); and
3 California law (Cal. Gov. Code § 12926).

4 6. Defendant Kaiser Foundation Hospitals is, and at all times
5 relevant to herein was, the owner, operator, lessor and/or lessee of Kaiser
6 Permanente Hospital, located at 2016 Morse Avenue in the City of
7 Sacramento, California (hereinafter “Kaiser”).

8 7. Plaintiff is currently unaware of the true identities of DOES 1-
9 10, inclusive, and will seek leave to amend when their true names, capacities,
10 connections, and responsibilities are ascertained.

11 8. Plaintiff is informed and believes that each of the Defendants is
12 the agent, ostensible agent, alter ego, master, servant, trustor, trustee,
13 employer, employee, representative, franchiser, franchisee, lessor, lessee,
14 joint venturer, parent, subsidiary, affiliate, related entity, partner, and/or
15 associate, or such similar capacity, of each of the other Defendants, and was
16 at all times acting and performing, or failing to act or perform, within the
17 course and scope of such similar aforementioned capacities, and with the
18 authorization, consent, permission or ratification of each of the other
19 Defendants, and is personally responsible in some manner for the acts and
20 omissions of the other Defendants in proximately causing the violations and
21 damages complained of herein, and have participated, directed, and have
22 ostensibly and/or directly approved or ratified each of the acts or omissions of
23 each of the other Defendants, as herein described.

24
25 **JURISDICTION & VENUE**

26 9. This Court has subject matter jurisdiction over this action
27 pursuant to 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the
28 ADA and Section 504.

1 10. Pursuant to pendant jurisdiction, attendant and related causes
2 of action arising from the same facts are also brought under California law,
3 including the Unruh Civil Rights Act, Cal. Civ. Code § 51 et seq. and
4 Disabled Persons Act, Cal. Civ. Code § 54.1 et seq., both of which expressly
5 incorporate the ADA. Cal. Civ. Code §§ 51(f), 54.1(d).

6 11. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b)
7 and is founded on the fact that the events or omissions giving rise to
8 Plaintiff's claims arose in this district.

9
10 **FACTUAL ALLEGATIONS**

11 12. Plaintiff uses a service dog that has been individually trained to
12 do work or perform tasks for her, related to her disability.

13 13. Plaintiff's service dog assists Plaintiff with her balance and
14 mobility, helps her to balance/brace to get up when she falls, and picks up
15 dropped items.

16 14. Plaintiff's service dog is a Yellow Labrador.

17 15. Plaintiff's service dog is, and at all times relevant herein was, up
18 to date on its vaccinations.

19 16. Plaintiff's service dog is, and at all times relevant herein was,
20 licensed through the County of Sacramento.

21 17. Plaintiff's service dog is, and at all times relevant herein was,
22 certified as a qualified service dog through the County of Sacramento.

23 18. On December 2, 2014, at approximately 7:30 a.m., Plaintiff
24 accompanied her mother to Kaiser with her service dog. Plaintiff's mother
25 was scheduled to undergo knee replacement surgery.

26 19. Prior to December 2, 2014, Plaintiff had accompanied her
27 mother to approximately six (6) other surgery appointments at Kaiser with
28 her service dog, without incident.

1 20. Plaintiff and her service dog waited in the pre-operative holding
2 area with Plaintiff's mother on December 2, 2014, as they had for every prior
3 surgery.

4 21. At all times relevant herein Plaintiff's service dog was under
5 Plaintiff's control, on a leash and well behaved.

6 22. The preoperative holding area at Kaiser is not sterile.

7 23. The preoperative holding area at Kaiser is open to surgical
8 patients and their family members.

9 24. The preoperative holding area at Kaiser is where surgical
10 patients and their family members have direct contact with perioperative
11 staff members. It provides the environment for calming, informative
12 interactions intended to help patients prepare for their surgical procedures.

13 25. The primary responsibility of nurses in the preoperative holding
14 area at Kaiser is to provide information and emotional support for patients
15 and their family members and to ensure that all preoperative data have been
16 accumulated.

17 26. While waiting in the preoperative holding area with her mother
18 and service dog on December 2, 2014, Plaintiff was approached by a male
19 nurse and another individual.

20 27. The male nurse told Plaintiff she had to leave the preoperative
21 holding area because of her service dog.

22 28. Plaintiff explained to the male nurse that her dog was a service
23 dog and not a pet, but the male nurse insisted that Plaintiff still had to leave.

24 29. At no time did the male nurse or any Kaiser staff offer Plaintiff
25 the option of removing her service dog so that she could continue to wait with
26 her mother in the preoperative holding area and participate in her
27 preoperative care.

28

1 30. At no time did the male nurse or any Kaiser staff offer to conduct
2 preoperative care for Plaintiff's mother in another location so that Plaintiff
3 could participate while accompanied by her service animal.

4 31. Plaintiff and her service dog were escorted out of the
5 preoperative holding area and were directed to a common waiting area.

6 32. Plaintiff asked to speak with the supervisor of the male nurse but
7 was informed that the supervisor was not available.

8 33. Another individual who identified himself as a supervisor at
9 Kaiser spoke with Plaintiff and showed her a written policy he represented to
10 be Kaiser's "revised" policy with regard to service dogs.

11 34. The Kaiser supervisor advised Plaintiff that under the Kaiser
12 policy, individuals with service dogs are permitted "reasonable access" to the
13 preoperative holding area at Kaiser.

14 35. The Kaiser supervisor then advised Plaintiff that she was being
15 denied access to the preoperative holding area with her service dog because
16 providing her with such access was deemed not "reasonable." The basis for
17 this determination was not explained to Plaintiff.

18 36. After her mother's surgery on December 2, 2014, Plaintiff was
19 informed by Kaiser staff that she could not visit her mother with her service
20 dog because her mother was assigned to a shared room.

21 37. At no time did Kaiser staff offer Plaintiff the option of removing
22 her service dog so that she could visit her mother in her shared patient room.

23 38. At no time did Kaiser staff offer to relocate Plaintiff's mother to
24 a single room so that Plaintiff could visit her while accompanied by her
25 service animal.

26 39. Plaintiff subsequently lodged a formal complaint with Kaiser
27 regarding the above-described incidents. That complaint was responded to in
28 writing by a Kaiser representative who concluded that Kaiser staff acted

1 appropriately and Kaiser's policies regarding service animals conformed to
2 the law.

3 40. Plaintiff has been deterred from returning to Kaiser since the
4 December 2, 2014 incident.

5 41. Plaintiff would like to be able to visit Kaiser in the future with
6 her service dog, to support and visit family and friends. Until Defendants'
7 discriminatory policies are modified, however, Plaintiff will continue to be
8 denied full and equal access to Kaiser, and will suffer ongoing discrimination
9 by being excluded and deterred from going there.

10 42. The nature of Defendants' discrimination, as alleged herein,
11 constitutes an ongoing violation, and unless enjoined by this Court, will result
12 in ongoing and irreparable injury to Plaintiff and other similarly disabled
13 persons.

14
15 **FIRST CAUSE OF ACTION**

16 **Title III of the Americans with Disabilities Act**

17 **42 U.S.C. § 12101 et seq.**

18 43. Plaintiff re-pleads the allegations contained in each of the
19 foregoing paragraphs, and incorporates them herein as if separately re-pled.

20 44. Title III of the ADA provides that "No individual shall be
21 discriminated against on the basis of disability in the full and equal
22 enjoyment of the goods, services, facilities, privileges, advantages, or
23 accommodations of any place of public accommodation by any person who
24 owns, leases (or leases to), or operates a place of public accommodation." 42
25 U.S.C. § 12182(a).

26 45. Among the "private entities" which are considered "public
27 accommodations" for purposes of this title includes a hospital or other
28 service establishment. 42 U.S.C. § 12181(7)(F).

1 46. Kaiser is a hospital, and therefore a place of “public
2 accommodation” under Title III of the ADA.

3 47. The ability of family members to participate in the preoperative
4 care of a family member is a good, service, privilege, advantage,
5 accommodation, and/or opportunity, Kaiser provides to members of the
6 public.

7 48. The ability of family members to visit family members who have
8 been admitted for medical care is a good, service, privilege, advantage,
9 accommodation, and/or opportunity Kaiser provides to members of the
10 public.

11 49. Defendants have discriminated against Plaintiff on the basis of
12 her disability in violation of Title III of the ADA. Defendant’s discriminatory
13 conduct includes, inter alia:

- 14 a. Directly, or through contractual, licensing, or other
15 arrangements, excluding or denying Plaintiff goods,
16 services, facilities, privileges, advantages,
17 accommodations, and/or opportunities, on the basis of
18 her disability. 42 U.S.C. § 12182(b)(1)(A)(i), 28 C.F.R. §
19 36.202(a);
- 20 b. Providing Plaintiff goods, services, facilities, privileges,
21 advantages, and/or accommodations that are not equal to
22 those afforded non-disabled individuals. 42 U.S.C. §
23 12182(b)(1)(A)(ii), 28 C.F.R. § 36.202(b);
- 24 c. Failing to make reasonable modifications in policies,
25 practices, or procedures, when such modifications are
26 necessary to afford such goods, services, facilities,
27 privileges, advantages, or accommodations to Plaintiff,
28 unless the entity can demonstrate that making such

1 modifications would fundamentally alter the nature of
2 such goods, services, facilities, privileges, advantages, or
3 accommodations. 42 U.S.C. § 12182(b)(2)(A)(ii), 28
4 C.F.R. § 36.302(a);

5 d. Failing to modify policies, practices, or procedures to
6 permit the use of a service animal by Plaintiff. 28 C.F.R. §
7 36.302(c)(1);

8 e. Failing to permit Plaintiff to be accompanied by her
9 service animals in all areas of Kaiser where members of
10 the public, program participants, clients, customers,
11 patrons, or invitees, as relevant, are allowed to go. 28
12 C.F.R. § 36.302(c)(7); and

13 f. *Assuming arguendo* that the exclusion of Plaintiff's service
14 animal was proper, failing to give Plaintiff the opportunity
15 to obtain goods, services, and accommodations without
16 having the service animal on the premises. 28 C.F.R. §
17 36.302(c)(3).

18 50. Pursuant to the remedies, procedures, and rights set forth in 42
19 U.S.C. § 12188 and 42 U.S.C. § 12205, Plaintiff prays for judgment as set
20 forth below.

21
22 **SECOND CAUSE OF ACTION**

23 **Section 504 of the Rehabilitation Act of 1973**

24 **29 U.S.C. § 794**

25 51. Plaintiff re-pleads the allegations contained in each of the
26 foregoing paragraphs, and incorporates them herein as if separately re-pled

27 52. Section 504 of the Rehabilitation Act provides that "no
28 otherwise qualified individual with a disability in the United States . . . shall,

1 solely by reason of his or her disability, be excluded from the participation in,
2 be denied the benefits of, or be subjected to discrimination under any
3 program or activity receiving federal financial assistance.” 29 U.S.C. §
4 794(a).

5 53. Defendants are recipients of “federal financial assistance” in
6 the form of Medicaid and Medicare.

7 54. Defendants’ acts and omissions as herein alleged have excluded
8 and/or denied Plaintiff the benefit of and/or participation in the programs
9 and activities offered by Defendants to members of the public, in violation of
10 Section 504 and its implementing regulations.

11 55. Defendants’ duties under Section 504 are mandatory and long-
12 established. Defendants are deemed to have had knowledge of their duties at
13 all times relevant herein; their failure to carry out said duties as alleged
14 herein was willful and knowing and/or the product of deliberate indifference.

15 56. Pursuant to 29 U.S.C. § 794a, Plaintiff prays for judgment as set
16 forth below.

17
18 **THIRD CAUSE OF ACTION**

19 **Unruh Civil Rights Act**

20 **California Civil Code § 51 et seq.**

21 57. Plaintiff re-pleads the allegations contained in each of the
22 foregoing paragraphs, and incorporates them herein as if separately re-pled.

23 58. Defendants are a business establishment and, as such, must
24 comply with the provisions of the Unruh Civil Rights Act, Cal. Civ. Code §
25 51 et seq.

26 59. The Unruh Act guarantees, inter alia, that persons with
27 disabilities are entitled to full and equal accommodations, advantages,
28 facilities, privileges, or services in all business establishments of every kind

1 whatsoever within the jurisdiction of the State of California. Cal. Civ. Code §
2 51(b).

3 60. The Unruh Act also provides that a violation of the ADA is a
4 violation of the Unruh Act. Cal. Civ. Code § 51(f).

5 61. Defendants have violated the Unruh Act by, inter alia, denying,
6 or aiding or inciting the denial of, Plaintiff's rights to full and equal use of the
7 accommodations, advantages, facilities, privileges, or services offered at
8 Kaiser.

9 62. Defendants have also violated the Unruh Act by denying, or
10 aiding or inciting the denial of, Plaintiff's right to equal access arising from
11 the provisions of the ADA.

12 63. Defendants' duties under the Unruh Act are mandatory and
13 long-established. Defendants are deemed to have had knowledge of its duties
14 at all times relevant herein; its failure to carry out said duties as alleged herein
15 was willful and knowing and/or the product of deliberate indifference. Treble
16 damages are warranted.

17 64. Pursuant to the remedies, procedures, and rights set forth in Cal.
18 Civ. Code § 52, Plaintiff prays for judgment as set forth below.

19
20 **THIRD CAUSE OF ACTION**

21 **California Disabled Persons Act**

22 **California Civil Code § 54 et seq.**

23 ***(Statutory damages and attorneys' fees only)***

24 65. Plaintiff re-pleads the allegations contained in each of the
25 foregoing paragraphs, and incorporates them herein as if separately re-pled.

26 66. The Disabled Persons Act ("CDPA") provides that "Individuals
27 with disabilities shall be entitled to full and equal access, as other members of
28 the general public, to accommodations, advantages, facilities, medical

1 facilities, including hospitals, clinics, and physicians' offices, and privileges of
2 all ... places of public accommodation, ... , and other places to which the
3 general public is invited” Cal. Civ. Code § 54.1(a)(1).

4 67. A violation of the ADA is also a violation of the CDPA. See Cal.
5 Civ. Code, § 54.1(d).

6 68. Defendants have violated the CDPA by, inter alia, denying
7 and/or interfering with Plaintiff’s admittance to or enjoyment of the public
8 facilities at Kaiser.

9 69. Defendants have also violated the CDPA by denying, or aiding
10 or inciting the denial of, Plaintiff’s right to equal access arising from the
11 provisions of the ADA.

12 70. Defendants’ duties under the CDPA are mandatory and long-
13 established. Defendants are deemed to have had knowledge of their duties at
14 all times relevant herein; their failure to carry out said duties as alleged, was
15 willful and knowing and/or the product of deliberate indifference. Treble
16 damages are warranted.

17 71. Pursuant to the remedies, procedures, and rights set forth in Cal.
18 Civ. Code § 54.3(a), Plaintiff prays for statutory damages and attorneys’ fees
19 as set forth below.

20
21 **PRAYER**

22 WHEREFORE, Plaintiff respectfully requests that this Court:

- 23 1. Issue an injunction pursuant to the ADA, Section 504 and the Unruh
24 Act:
- 25 a. Ordering Defendants to modify its policies and practices to
 - 26 avoid discrimination based on an individual’s disability-related
 - 27 use of a service dog;
- 28

- 1 b. Ordering Defendants to develop and adopt non-discrimination
- 2 policies;
- 3 c. Ordering Defendants to develop and adopt policies pertaining to
- 4 the rights of individuals with disabilities to be accompanied by
- 5 their service dogs while using Kaiser's public facilities; and
- 6 d. Ordering Defendants to train its staff and management
- 7 regarding the rights of people with disabilities who use service
- 8 dogs.

9 **Note:** *the Plaintiff is not invoking section 55 of the California Civil*
10 *Code and is not seeking injunctive relief under the CDPA.*

- 11 2. Award Plaintiff general, compensatory, and statutory damages in an
- 12 amount within the jurisdiction of this court;
- 13 3. Award Plaintiff attorneys' fees, litigation expenses and costs of suit, as
- 14 provided by law; and
- 15 4. Award such other and further relief as the Court may deem just and
- 16 proper.

17
18
19
20 Dated: August 31, 2016

CENTER FOR DISABILITY ACCESS

21 By: Michelle Uzeta

22 Michelle Uzeta

23 Attorneys for Plaintiff