

1 CENTER FOR DISABILITY ACCESS  
 2 Chris Carson, Esq., SBN 280048  
 3 Raymond Ballister Jr., Esq., SBN 111282  
 4 Phyl Grace, Esq., SBN 171771  
 5 Dennis Price, Esq., SBN 279082  
 6 Mail: PO Box 262490  
 7 San Diego, CA 92196-2490  
 8 Delivery: 9845 Erma Road, Suite 300  
 9 San Diego, CA 92131  
 10 (858) 375-7385; (888) 422-5191 fax  
 11 phylg@potterhandy.com

Attorneys for Plaintiff

12 UNITED STATES DISTRICT COURT  
 13 CENTRAL DISTRICT OF CALIFORNIA

14 **Juan Garibay,**  
 15 Plaintiff,

v.

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

**Case No.**

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

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

**PARTIES:**

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

27 2. Defendant Kaiser Foundation Health Plan, Inc. owned the real property  
 28

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,

1 Appendix "D."

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

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

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

17 33. If controls, dispensers, receptacles or other equipment is provided, they  
18 must be on an accessible route and be mounted so that their highest operable  
19 parts are no greater than 54 inches above the floor. 1991 Standards § 4.22.7;  
20 4.27.

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

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

25 36. Hot water and drain pipes under lavatories must be insulated or  
26 otherwise configured to protect against contact. 1991 Standards § 4.19.4;  
27 2010 Standards §606.5.

28 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