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FILED
Clerk of the Superior Court

JUN 21 2019

By: C. Schaeffer, Deputy

8 Attorneys for Plaintiff, MARGARET ELIZABETH COON

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SAN DIEGO - CENTRAL**

11 MARGARET ELIZABETH COON,

12 Plaintiff,

13 v.

14 KAISER FOUNDATION HEALTH PLAN,
15 INC. doing business as Kaiser Permanente; and
16 DOES 1 -15, Inclusive.

17 Defendants.

Case No. 37-2019-00031982-CU-MC-CTL

[CIVIL - UNLIMITED]

Complaint for Preliminary and Permanent
Injunctive Relief and Damages Arising from
Personal Injury and Denial of Civil Rights by
Denial of Equal Access of Plaintiff a Disabled
Person Under Federal and California Law

18 Plaintiff alleges as follows:

19 1. Defendant KAISER FOUNDATION HEALTH PLAN, INC. is, and at all times herein
20 mentioned was, a corporation organized and existing under the laws of the State of California with
21 its principal place of business in the City of Oakland, Alameda County, State of California and does
22 business at various places in and about the County of San Diego, California including medical
23 offices located at 1302 Rocky Point Drive, Oceanside, California under the fictitious name Kaiser
24 Permanente.

1 2. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as DOES
2 1-15, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff will amend
3 this complaint to allege their true names and capacities when ascertained. Plaintiff is informed and
4 believes and thereon alleges that each of the fictitiously named Defendants is in some manner
5 responsible for the occurrences herein alleged, and that plaintiff's injuries as herein alleged were
6 proximately caused by the acts and omissions of these Defendants.

7 3. Plaintiff is informed and believes and thereon alleges that at all times mentioned each of
8 the Defendants, each according to their separate individual capacities and representative capacities,
9 were variously the masters, servants, employers, employee, officers, directors and managing agent of
10 one another, and that in acting and omitting to act as herein alleged were acting within the course
11 and scope of such agency and authority within the knowledge, notice, awareness, direction, and
12 subsequent ratification of one another.

13 4. At all times herein mentioned, Defendants, owned, maintained, controlled, managed, and
14 operated and offered goods and health care services to the public at the business premises known as
15 the Kaiser Permanente Oceanside Medical Offices located at 1302 Rocky Point Drive, Oceanside,
16 California 92056 ("the Medical Facility"). Plaintiff is informed and believes and thereon alleges that
17 the Medical Facility that was designed, permitted, and constructed with resulting first occupation
18 after March 15, 2012 and was completed in the year 2014 such that it was required to be designed
19 and constructed in compliance with the 2010 Americans With Disabilities Act Standards for
20 Accessible Design, Title 28 of the Code of Federal Regulations part 36, as required by 42 U.S.C.
21 §12183(a)(1), and Title 24 of the California Code of Regulations.

22 5. Plaintiff has, and at all times mentioned herein did have, a "disability" as defined by
23 California Civil Code § 51e(1) and 42 U.S.C. § 12102, and a "physical disability" as defined by
24 California Government Code §12926. As further described herein, Plaintiff has serious medical

1 issues that force her to use a walker for mobility purposes due, in whole or in part, to the injuries
2 suffered as a result of the access barriers she encountered at the subject facility. Plaintiff's condition
3 limits her major life activities, including but not limited to walking, exercising, socializing, and
4 working.

5 6. Plaintiff was, on June 22, 2017, a resident of the City of Vista in her own residence and
6 from after that date has been variously located in an acute care hospital, followed by a convalescent
7 hospital, or in a board and care facility capable of assisting her with the basic of functions of housing
8 keeping, cooking, hygiene, and walking all but the shortest of distances. Immediately prior to the
9 incident on June 22, 2017 which is hereafter alleged, Plaintiff was 87 years of age, in reasonably
10 good health, and was capable of tending to her own needs and the affairs of her household without
11 assistance except in so far as she suffered from several impairments that were causing substantial
12 limitation to her life activities in the form of limited walking stamina, lower limb pain from excess
13 red blood cells, episodic vertigo, and chronic asthma that had led her to be granted a disabled
14 parking placard.

15 7. The business located upon the Subject Property is a "public accommodation" as defined
16 by 42 U.S.C. § 12181(7) and California Health and Safety Code § 19955.

17 8. This Court has jurisdiction of this action pursuant to 28 USC § 1331 for violations of the
18 Americans with Disabilities Act of 1990, 42 USC §§ 12101 et seq., as well as for violations of
19 California Civil Code §§ 51, 52, 54, 54.1, 54.3 and 55; and Title 24 California Code of Regulations,
20 the Building Code; and arising out failure of the Defendants to take reasonable care to avoid
21 unreasonable risk of injury to persons foreseeably present at the Medical Facility parking lot.

22 9. On at least one (1) occasion, including but not limited to, June 22, 2017, Plaintiff
23 patronized or attempted to patronize the business upon the subject property with the intent to be a
24 customer, a patient of the Defendant business. At the time of the visit, Plaintiff personally

1 encountered each and every construction-related access barrier listed further herein, which prevented
2 Plaintiff's full and equal access to the business upon the subject property. These violations that are
3 explained further herein caused Plaintiff difficulty, discomfort, and embarrassment. The premises
4 violated the construction-related accessibility standards of Title 24 of the California Code of
5 Regulations and of 28 C.F.R. Part 36 – ADA Accessibility Guidelines (“ADAAG”).

6 10. Based upon the facts alleged herein, Plaintiff has been discriminated against on the basis
7 of Plaintiff's physical disability and will continue to be discriminated against unless and until
8 Defendant is enjoined and forced to cease and desist from discriminating against Plaintiff and others
9 similarly situated.

10 11. At the time of each of the visits by Plaintiff to the subject property, one or more of the
11 violations alleged herein denied the Plaintiff full and equal access to the business upon the subject
12 property by deterring the Plaintiff from accessing the business upon the subject property or by
13 causing Plaintiff difficulty, discomfort, or embarrassment because of these violation(s) that Plaintiff
14 personally encountered.

15 12. When Plaintiff arrived at the Medical Facility as a business invitee coming to the
16 property for a medical appointment she sought to avail herself of parking that was being offered to
17 all patrons of the Medical Facility, specifically sought out parking that as being provided for the
18 disabled, and found a vacant parking space situated close to the front entrance of the Defendant's
19 Medical Facility that was seemingly dedicated to the use of the disabled.

20 13. However, the seemingly available accessible space was not a proper disabled space
21 because the walking surface was not stable, firm, and with less and 2.1% slope in all direction and
22 free from changes in level and was so designed as to include a wheel stop that obstructed access to
23 the clear width of the adjacent accessible path (2010 ADAAG 208.2.1, 302 , 502.1, 502.2 502.4.
24 and 502.7, and 24 CCR 11B-502 et seq) and should, as the parking space allowing the most direct

1 approach to the entrance, have been configured as a van accessible space with a 12 foot width
2 offering a firm, stable and even transition to a safe path of travel to the entrance without excess
3 slopes, cross-slopes, and changes in level or perturbations to a natural gait.

4 14. When Plaintiff encountered these barriers she was caused to trip and fall and was
5 thereby deprived of free and equal access to the Medical Facility which has caused great difficulty,
6 discomfort, embarrassment, and actual physical and emotional injuries.

7 15. Any business that provides outpatient health facilities to the public is required to devote
8 10% of the spaces to the disabled and provide accessible paths of travel into and about the property
9 that are required to have walking surfaces that are stable, firm, and slip resistant and free of changes
10 in level. Further, they are required to provide at least one van accessible space for every six
11 required accessible spaces.

12 16. Here, failure to provide the required number of accessible spaces with the required
13 accessible characteristics is a violation of the law.

14 17. A public accommodation must maintain in operable working condition those features of
15 its facilities and equipment that are required to be readily accessible to and usable by persons with
16 disabilities [28 C.F.R. § 36.211(a)].

17 18. As a result of injuries sustained by Plaintiff as herein alleged, and a result of increased
18 lack of mobility caused by the condition of Defendant's Medical Facility, the Plaintiff will from time
19 to time need to return to the Medical Facility and will be required to have accessible parking for vans
20 that accommodate wheelchairs as Plaintiff can no longer walk reliably or safely more than a few
21 steps. Plaintiff is informed and believes that the Defendant's Medical Facility has no parking
22 spaces appropriately situated as near as possible to the front entrance to the facility that have the
23 correct space widths, correct access aisle widths, and that are free from excess running and crossing
24 slopes.

1 19. As a result of these barriers, the Plaintiff has been deterred and will continue to be
2 deterred from having access to the Defendant's medical facility unless and until the aforementioned
3 conditions have been corrected.

4 20. Defendants have failed to maintain in working and useable condition those features that
5 are required to be provided in order to allow Plaintiff to have access to and from their parking lot
6 and in so doing have violated the law and have never complied with the Americans with Disabilities
7 design and construction standards that were in place when the Medical Facility was constructed.

8 21. Plaintiff is informed and believes that, based on the lapse of time between the date when
9 the Medical Facility was erected and the continual failure to comply in respect to accessible parking,
10 that there is a strong implication that other failures in implementation of policies and procedures and
11 other failures to remove barriers would be disclosed upon later inspection.

12 22. The business upon the Subject Property is not "CASp-inspected" nor is it "CASp
13 determination pending," as those terms are defined by California Civil Code § 55.52(a). **If any
14 defendant or any defense counsel for any defendant wrongly claims that the business upon the
15 subject property is "CASp inspected" or "CASp determination pending" and applies for a stay
16 of the proceedings in this action, PLAINTIFF HEREBY GIVES NOTICE OF PLAINTIFF'S
17 INTENT TO REQUEST SANCTIONS AGAINST ANY SUCH PARTY AND/OR LEGAL
18 COUNSEL, WITHOUT FURTHER NOTICE, PURSUANT TO CALIFORNIA CIVIL CODE
19 § 55.54(e)(1).**

20 23. The modifications required to the subject property to remedy the discriminatory
21 violations alleged herein and thereby end discrimination by Defendant are "readily achievable" as
22 defined by 42 U.S.C. § 12181(9) because said modifications are easily accomplishable and able to be
23 carried out without much difficulty or expense.

24

1 **FIRST CAUSE OF ACTION**

2 (Violation of The Unruh Civil Rights Act – *California Civil Code §51.b*

3 *(Against all Defendants)*

4 24. Plaintiff incorporates all preceding paragraphs of this Complaint at this point.

5 25. California Civil Code § 51(b), *The Unruh Civil Rights Act*, provides in pertinent part:

6 “All persons within the jurisdiction of this state are free and equal, and
7 no matter what their sex, race, color, religion, ancestry, national origin,
8 disability, or medical condition is entitled to the full and equal
9 accommodations, advantages, facilities, privileges or services in all
10 business establishments of every kind whatsoever.”

11 26. Defendants have violated and continue to violate California Civil
12 Code § 51(b) by failing and refusing to provide full and equal access by the Plaintiff
13 to the business upon the Subject Property on the same basis as other persons who are
14 not similarly disabled.

15 27. The Violations of California Civil Code § 52(a) controls,
16 stating in relevant part:

17 “Whoever . . . makes any discrimination or distinction contrary to
18 Section 51 . . . is liable for each and every offense for the actual
19 damages, and any amount that may be determined by a jury, or a
20 court sitting without a jury, up to a maximum of three times the
21 amount of actual damage but in no case less than four thousand
22 dollars (\$4000), and any attorney’s fees that may be determined by
23 the court in addition thereto, suffered by any person denied the
24 rights provided in Section 51 . . .” (emphasis added).

25 28. Defendant’s discrimination against Plaintiff and those similarly situated has damaged
26 and continues to damage Plaintiff, and Plaintiff is therefore entitled to a damage award pursuant to
27 California Civil Code §52(a).

28 29. Plaintiff has suffered damages and continues to suffer damages in an amount to be
29 determined at trial, but in no event less than Four Thousand Dollars (USD \$4,000), per California

1 Civil Code §52(a) and Munson v. Del Taco, Inc., (2009) 46 Cal.4th 661, for each of the Plaintiff's
2 three or more visits to the business upon the Subject Property, for total minimum damages of Twelve
3 Thousand Dollars (USD \$12,000).

4 **SECOND CAUSE OF ACTION**

5 **(Violation of The Unruh Civil Rights Act – *California Civil Code § 51(f)*)**

6 **(Against All Defendants)**

7 30. Plaintiff incorporates all preceding paragraphs of this Complaint at this point.

8 31. California Civil Code § 51(f) states that “[a] violation of the right of any individual
9 under the American with Disabilities Act of 1990 (Public Law 101-336) shall also constitute a
10 violation of this section.”

11 32. Defendant has violated and continues to violate the Americans with Disabilities Act of
12 1990 (at times hereinafter “ADA”) at 42 U.S.C. § 12101, et. Seq. through Defendant’s
13 discriminatory actions, as alleged herein.

14 33. Under 28 C.F.R. § 36(201)(b) both the operator of the business upon the subject
15 property and the owner/landlord of the subject property are liable to Plaintiff under the ADA:
16 (b) Landlord and tenant responsibilities. Both the landlord who
17 owns the building that houses a place of public accommodation
18 and the tenant who owns or operates the place of public
19 accommodation are public accommodations subject to the
20 requirement of this part. As between the parties, allocation of
21 responsibility for complying with the obligations of this part may
22 be determined by lease or other contract.

23 34. The portion of the American with Disabilities Act containing the general prohibition
24 of discrimination against disabled persons by public accommodation is found at 42 U.S.C §
12182(a), which states:

No individual shall be discriminated against on the basis of
disability in the full and equal enjoyment of the goods, services,
facilities, privileges, advantages, or accommo-dations of any place
of public accommodation by any person who owns, leases (or
leases to), or operates a place of public accommodation.

1 35. Discrimination under 42 U.S.C. § 12182(a) specifically includes:

2 [A] failure to make reasonable modifications in policies, practices,
3 or procedures, when such modifications are necessary to afford
4 such goods, services, facilities, privileges, advantages, or
5 accommodations to individuals with disabilities, unless the entity
6 can demonstrate that making such modifications would
7 fundamentally alter the nature of such goods, services, facilities,
8 privileges, advantages, or accommodations. 42 U.S. C. §
9 12182(b)(2)(A)(ii).

10 36. Discrimination under 42 U.S.C. § 12182(a) also specifically includes “failure to
11 remove architectural barriers, and communication barriers that are structural in nature, in existing
12 facilities...where such removal is readily achievable.” 42 U.S. C. § 12182(b)(2)(A)(iv) (emphasis
13 added.) Thus, there is no “grandfather clause” under the ADA.

14 37. Removal of the construction-related access barriers encountered by Plaintiff as
15 alleged herein is readily achievable but Defendant has chosen not to remove the barriers, despite
16 being warned in writing of the barriers prior to the filing of this action and the ADA being in effect
17 for nearly two decades.

18 38. Plaintiff has suffered damages and continues to suffer damages in an amount to be
19 determined at trial, but in no event less than Four Thousand Dollars (USD \$4,000), per California
20 Civil Code § 52(a) and Munson v. Del Taco, Inc. (2009) 446 Cal.4th 661, for each of the Plaintiff’s
21 two or more visits to the business upon the Subject Property, for total minimum damages of at least
22 Twelve Thousand Dollars (USD \$12,000).

23 **THIRD CAUSE OF ACTION**

24 **(DECLARATORY RELIEF UNDER CALIFORNIA STATE LAW)**

(Against All Defendants)

39. Plaintiff incorporates all preceding paragraphs of this Complaint at this point.

40. An actual controversy now exists in that Defendant is presently in violation of the

1 disabled-accessibility laws of the State of California codified at California Civil Code § 51.

2 41. A declaration of Plaintiff's rights is necessary and appropriate in order for the parties
3 to this action to know their respective rights and duties under California law. According, the court
4 should make a declaration of the rights of the parties.

5 42. The declaratory relief sought in this action is premised upon California law only,
6 whether statutory or equitable, and is not sought pursuant to any federal state or cause of action.

7 **FOURTH CAUSE OF ACTION**

8 **(Action for Negligence Arising From Premises Liability)**

9 43. Plaintiff incorporates all preceding paragraphs of this Complaint at this point.

10 44. On or about June 22, 2017, Plaintiff came to the Medical Facility as a patient with a
11 scheduled appointment and sought, upon arrival, to use the parking lot provided at that Medical
12 Facility and specifically a parking space that was seemingly set aside for the use of the disabled by
13 reasons of posted signs and markings to that effect. The space in which she sought to park was
14 located nearest to the front entrance of the facility in the leftmost space of the parking bay situated
15 nearest to the front entrance to the Medical Facility.

16 45. At the time that the Plaintiff sought to use the aforementioned space, Defendants, and
17 each of them, negligently provided a parking space that was carelessly designed, constructed,
18 marked, maintained, managed, controlled, and operated because Defendants knew, or in the
19 exercise of reasonable care should have known, that parking space constituted a dangerous condition
20 and unreasonable risk of harm of about which Plaintiff was neither aware nor had she reason to
21 discover prior to parking in that space.

22 46. The aforementioned space was provided in an unreasonably hazardous condition
23 because, as a space located at the end of a parking bay bounded on its left side by a curb, the areas
24 where a driver might alight was effectively halved in comparison to other spaces bounded only by

1 painted line and because the space was so configured as to create a false sense of the existence of a
2 stable and even transition out of the parking space toward the sidewalk without changes in level or
3 latent hazards. Despite the appearance of an even transition to the sidewalk, the space was actually
4 sloped uphill, had uneven cross-slopes, and required a disabled driver to step over a wheel stop that
5 interfered with the transition onto the sidewalk at the very point where the space and sidewalk
6 appeared to blend without a change in level.

7 47. When a typical passenger vehicle is parked in the center of a 9-foot parking space
8 situated against a left-hand curb, the resultant distance between the curb and inside of the right-hand
9 painted stripe is 104 inches. Half the difference between that width and the typical mid-sized car
10 width of 73 inches leaves a maximum alighting space of 15.5 inches versus nearly double that space
11 for alighting within the straddle area between two typical parking spaces located bounded on the left
12 and right by painted stripes. The aforementioned narrowness of alighting space on the driver's side
13 was further aggravated by the tendency of a reasonably experienced driver, as was the case with
14 Plaintiff, to use the parking space wheel stop as guide to centering her vehicle in the space. Rather
15 than being centered, as would be reasonably expected, the wheel stop in the subject space was
16 located to the far left of the space with the result that Plaintiff was induced to park off center to the
17 left which further lessened the alighting space.

18 48. As the subject parking space invited use by persons with physical impairments,
19 including impairments to walking stability at the time of the above alleged incident, the Defendants
20 knew or should have known that the above described conditions posed unreasonable risks of injury
21 to Plaintiff, a person with disabilities in ambulation. This is because there was insufficient room to
22 alight and walk normally and safely with both feet on the paved space in normal gait. Instead,
23 navigation out of the space required either alternating on the curb and in the space or walking
24 entirely with the parking space while required to adopt a heel to toe gait up a narrow but seemingly

1 even transition to the side walk that disguised the rising slope and need for a final step over a wheel
2 stop to the sidewalk. This is contrast to statutes and regulations governing the design of parking
3 spaces offered to the disabled that are required to be firm, even textured, stable, slip resistant, nearly
4 level, free of changes in level and so designed so as to not obstruct the clear width of safe accessible
5 sidewalk path of travel.

6 49. As a proximate result of the negligence of Defendants, and each of them, Plaintiff was
7 caused to trip and fall while attempting to navigate her way out of the parking space and was thereby
8 injured in her health, strength, and activity, sustaining injury to her nervous system and person, with
9 injuries that include but are not limited to a hip fracture which required total artificial hip
10 replacement. These injuries have caused, and continue to cause Plaintiff great mental, physical, and
11 nervous pain and suffering and further impairment to her mobility. The consequences of being
12 caused to trip and fall have greatly degraded the quality of Plaintiff's life, activities, and capacity to
13 care for herself for the entire remainder of her foreseeable life expectancy. Plaintiff is informed and
14 believes and thereon alleges that such injuries have resulted in and will continue to result in
15 permanent impairment of her prior ability to live alone; to retain the personal dignity of attending to
16 her own affairs by performing her own household functions including shopping, cooking, personal
17 hygiene, bathing; and the ability to ambulate without nursing care and assistive devices. Plaintiff
18 has, since the falling incident herein alleged, been required to use a wheelchair or walker for
19 mobility for all but the shortest of distances. As a result of such injuries, Plaintiff has suffered
20 general damages in amounts to be established according to proof.

21 50. As a further proximate result of the negligence of Defendants, and each of them,
22 Plaintiff has incurred, and will continue to incur, medical, convalescent care, and residential nursing
23 care expenses in amounts to be established according to proof.

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WHEREFORE, Plaintiff prays judgment against Defendants, and each of them, as follows:

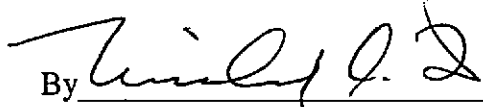
As and for her First and
Second Causes of Action:

1. For injunctive relief, compelling Defendants to comply with the Americans with Disabilities Act and the Unruh Civil Rights Act.
2. Damages under the Unruh Civil Rights Act, which provides for actual damages and a statutory minimum of \$4,000 and/or actual damages according to proof.
3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

As and for her Third Cause of Action:

1. For general damages according to proof;
2. For medical and related expenses according to proof;
3. For loss of earnings according to proof;
4. For costs of suit herein incurred; and
5. For such other and further relief as the court may deem proper.

Dated: June 21, 2019

By 

Michael A. Taibi
Attorney for Plaintiff,
Margaret Elizabeth Coon