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**FILED**  
FEB 21 2002  
CLERK, U.S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION  
BY [Signature] DEPUTY

**UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

**DON WYATT,**  
  
**Plaintiff,**  
  
v.  
  
**RALPHS GROCERY COMPANY;  
TSC.,**  
  
**Defendants.**

**CASE NO. SA CV 00-1260 DOC (EEEx)**  
  
**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

**I.  
BACKGROUND**

This cause came for trial on February 19, 2002, before the Court sitting without a jury as to Plaintiff Don Wyatt's cause of action for discrimination under Title III of the Americans with Disabilities Act of 1990, the Unruh Civil Rights Act, and the California Disabled Person Act. The Court, having heard the testimony and having examined the proofs offered by the respective parties, the cause having been submitted for decision, and the Court being fully advised in the premises, makes its findings of fact and conclusions of law as follows:

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**II.**

**FINDINGS OF FACT**

1. Plaintiff Don Wyatt is an individual with a disability within the meaning of Title III of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12101 and 12182, the Unruh Civil Rights Act (Unruh Act), Cal. Civ. Code § 52, and the California Disabled Person Act (CDPA), Cal. Civ. Code § 54.

2. The grocery store operated by Ralphs located in the Towngate Shopping Center at 12625 Frederick Street in Moreno Valley (Store) is a place of public accommodation.

3. Defendant Ralphs Grocery Company is the operator of the Store.

4. Plaintiff patronized the Store once in November 1999, once in February 2001, once in January 2002 and once in February 2002.

5. Plaintiff filed this Complaint on December 21, 2000, which included claims premised on his November 1999 visit to the Store. The Complaint was amended according to proof at the trial to include claims premised on his February 2001 visit to the Store, and no objections were offered. Fed. R. Civ. P. 15(b).

6. On both the November 1999 and February 2001 visits to the Store, Plaintiff entered the Store using the west entrance, which is the entrance closest to the turnstile and the interior wheelchair access gate that is 42 inches in width (Gate).

7. There are seven checkout aisles in the Store: the two checkout aisles on the ends are 36 inches wide and wheelchair accessible. The middle five aisles are each 26 inches wide. All of the checkout aisles, except the one closest to the bank, have plastic cords that may be used to close off un-staffed checkout aisles. However, the Store does not have a policy of closing off un-staffed checkout aisles with cords or any other forms of blockage.

8. On both the November 1999 and February 2001 visits to the Store, Plaintiff was unable to gain access to the merchandise area of the Store using the Gate because it was blocked by merchandise displays and/or recycling receptacles, thus rendering the path of travel inaccessible to wheelchair users.

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1 9. On both the November 1999 and February 2001 visits to the Store, Plaintiff gained  
2 access to the merchandise area of the Store by entering against the flow of traffic through one of  
3 the 36 inch checkout aisles. Plaintiff did not have to ask anyone for assistance as he was able to  
4 clear the aisle in his 30 inch wide wheelchair.

5 10. Fully ambulatory customers access the merchandise area of the Store by means other  
6 than the turnstile and Gate, such as through one of the security pylons inside the east entrance  
7 near the bank or by entering against the flow of traffic through un-staffed checkout aisles.

8 11. The security pylon closest to the bank is 32 inches wide, and the other one is 33  
9 inches wide; thus, the pylons are wheelchair accessible in accordance with the door width  
10 specifications required by the ADA. 28 C.F.R. Part 36, app. A §4.13.

11 12. On his January 2002 visit to the Store, Plaintiff was unable to gain access to the  
12 merchandise area of the Store using the Gate because it was blocked by merchandise displays  
13 and/or recycling receptacles, thus rendering the path of travel inaccessible to wheelchair users.  
14 Plaintiff was unable to access the merchandise area of the store through the checkout aisle, as he  
15 had done on his November 1999 and February 2001 visits, because the aisle was blocked by a  
16 merchandise display. Subsequently, Plaintiff accessed the merchandise area of the Store by  
17 cutting across the front of the store pass the east entrance, maneuvering around the line of people  
18 waiting for banking services, and passing through one of the security pylons. The distance from  
19 the Gate to the security pylons is 106-108 feet.

20 13. In January 2002, the Gate was replaced with a new wheelchair accessible gate.

21 14. The new wheelchair accessible gate (New Gate) had an audible alarm attached to it  
22 and a red sign on both sides that read, "WARNING ALARM! Emergency Exit Only."

23 15. On his February 2002 visit, Plaintiff was able to gain access to the merchandise area  
24 of the Store using the New Gate. However, when Plaintiff entered the New Gate, an audible  
25 alarm sounded and there was a red sign on the gate indicating that it was an emergency exit.

26 16. On February 15, 2002, Ralphs removed the alarm and red signs on the New Gate.

27 17. Within the last two months, Ralphs has adopted a Disabled Patrons Access Policy.

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**III.**

**CONCLUSIONS OF LAW**

1. Plaintiff is an individual with a disability and has standing to sue under Title III of the ADA, the Unruh Act, and the CDPA.

2. The Store located at 1265 Frederick Street, Moreno Valley, California is a “place of public accommodation” as defined at 42 U.S.C. § 12181(7)(E) and California Civil Code section 54.1(a)(1). Therefore, the Store is subject to Title III of the ADA and the CDPA. The Store is also a “business establishment” as that term is used at California Civil Code section 51(b) and, therefore, subject to the provisions of the Unruh Act.

3. Defendant Ralphs Grocery Company is the owner and operator of the Store and, therefore, is required to comply with Title III of the ADA; the Unruh Act, and the CDPA.

4. On both the November 1999 and February 2001 visits to the Store, Plaintiff was unable to use the interior wheelchair access gate adjacent to the turnstile because the Gate was blocked by merchandise displays and/or recycling receptacles in violation of the ADA Accessibility Guidelines (ADAAG). 28 C.F.R. §36.211. The ADAAG requires that an “accessible gate or door shall be provided adjacent to the turnstile . . . and shall be so designed to facilitate the same use pattern.” 28 C.F.R. § 36, app. A § 4.13.2. Therefore, the Store violated the ADA by failing to provide an accessible gate adjacent to the turnstile.

5. On both the November 1999 and February 2001 visits, Plaintiff was able to gain access to the merchandise area of the Store through one of the 36 inch checkout aisles. Although admittedly used in this manner by some patrons to gain access to the merchandise area of the Store, going against the flow of traffic through a checkout aisle denied Plaintiff “reasonable access” and is not “consistent with the public policy interest in providing physically handicapped persons with equal access” to public accommodation. *Boemio v. Love’s Restaurant*, 954 F. Supp. 204, 208 (S.D. Cal 1997). Checkout aisles are not meant to be used as access routes into the merchandise area of a store for the general public, and thus do not “coincide with the route for the general public.” 28 C.F.R. § 36, app. A § 4.3.2 . The standard is not whether access was achievable in “some manner,” rather the focus is on the equality of

1 access. *Boemio*, 954 F. Supp. at 208. Therefore, access through a checkout aisle does not  
2 constitute “full and equal” access to its facilities as required by the ADA. 42 U.S.C. § 12182(a).

3 6. Although the security pylons are wheelchair accessible, and Plaintiff had in fact gained  
4 access through the security pylons on his January 2002 visit, such access is not in accordance  
5 with the ADAAG as it does not “facilitate same use pattern.” 28 C.F.R. § 36, app. A § 4.13.2.  
6 Plaintiff, who entered the Store through the west entrance, had to go 106-108 feet to the other  
7 side of the store to access the merchandise area through the security pylons. Fully ambulatory  
8 patrons, who entered through the west entrance, could gain access to the merchandise area  
9 through the turnstile which was only 9-10 feet from the entrance. These two very different  
10 means of access indicate that the Store did not “facilitate [a] same use pattern.” 28 C.F.R. § 36,  
11 app. A § 4.13.2. This not equal access.

12 7. Because Defendant Ralphs has violated provisions of Title III of the ADA, it has  
13 necessarily violated the Unruh Act and CDPA. “[A] violation of the right of any individual  
14 under the Americans With Disabilities Act of 1990 shall also constitute a violation of this  
15 section . . . .” Cal. Civ. Code § 51. “[A] violation . . . under the ADA of 1990 also constitutes a  
16 violation of this section . . . .” Cal. Civ. Code § 54.1(d).

17 8. Plaintiff’s recovery for purported damage or injury premised upon Plaintiff’s visit to  
18 the Store in November 1999 is time-barred as a matter of law insofar as the complaint was filed  
19 in December 2000 and the Unruh Act has a one year statute of limitations. *West Shield*  
20 *Investigations & Security Consultants v. Superior Court*, 82 Cal. App. 4th 935, 952-53, 98 Cal.  
21 Rptr. 2d 612 (2000); *Mitchell v. Sung*, 816 F. Supp. 597, 602 (N.D. Cal. 1993); Cal. Civ. Code §  
22 340(3) (claims for civil rights violations brought under the Unruh Act are governed by the one  
23 year statute of limitations applicable to personal injury rather than the three year period  
24 applicable to actions based on statutory liability).

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1 9. Plaintiff's recovery for purported damage or injury premised upon Plaintiff's visit to  
2 the Store in January of 2002 and February of 2002 is also barred because such injuries occurred  
3 after the discovery in this case had closed, and it was too late to amend the pleadings.<sup>1</sup> Thus, the  
4 only injuries remaining that are relevant to the Unruh Act claims are those based on Plaintiff's  
5 February 2001 visit.

6 10. Remedies available under Title III of the ADA include an order to enjoin Ralphs  
7 from blocking its wheelchair accessible entrance. 42 U.S.C. § 12188(a).

8 11. The ADA states that an injunctive relief for violations of sections 12182(b)(2)(A)(iv)  
9 and 12183(a) shall include an order to alter facilities so as to make them "readily accessible to  
10 and usable by individuals with disabilities" and requiring "modification of a policy, or provision  
11 of alternative methods." 42 U.S.C. §12188(a)(2). However, such an injunction is not necessary  
12 in this case because the Store has altered the New Gate by removing the emergency exit signs  
13 and alarm, thereby maintaining an "accessible gate or door . . . adjacent to the turnstile . . . so  
14 designed to facilitate the same use pattern" pursuant to the ADAAG. 28 C.F.R. § 36, app. A §  
15 4.13.2. Additionally, Ralphs has since adopted a Disabled Patrons Access Policy that provides  
16 for the modifications required pursuant to §36.304 of the ADAAG.

17 12. The Supreme Court has addressed the issue of whether a private litigant has satisfied  
18 the prerequisites for seeking injunctive relief in the federal district court and has held that  
19 injunctive relief is not available unless there is a "sufficiently real and immediate" threat  
20 showing that there is still a controversy. *City of Los Angeles v. Lyons*, 461 U.S. 95, 103, 103 S.  
21 Ct. 1660, 1665 (1983) (quoting *O'Shea v. Littleton*, 414 U.S. 488, 495-96, 94 S. Ct. 669, 675  
22 (1974)). "Past exposure to illegal conduct does not itself show a present case or controversy  
23 regarding injunctive relief . . . if unaccompanied by any continuing present adverse effects."  
24 *O'Shea*, 414 U.S. at 495-96, 94 S. Ct. at 675. There are presently no barriers to disabled access  
25 on the interior of the Store since Ralphs has made modifications to the New Gate by removing  
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27 <sup>1</sup>Plaintiff's only recourse would be to file a new action for the claims premised on  
28 his January 2002 and February 2002 visits to the Store.

1 the emergency exit signs and the alarm and taken steps to ensure ADA compliance by adopting a  
2 Disabled Patrons Access Policy. Because Plaintiff has failed to establish the requisites of the  
3 issuance of injunctive relief, “the likelihood of substantial and immediate irreparable injury, and  
4 the inadequacy of remedies at law,” injunctive relief is not appropriate. *O’Shea*, 414 U.S. at  
5 502, 94 S. Ct. at 679. Therefore, as there are no “present adverse effects,” Plaintiff is not  
6 entitled to pursue his claims for injunctive relief. *Id.*

7 13. Additionally, under the Unruh Act, the Plaintiff is entitled to two separate categories  
8 of damages: (1) his “actual” damages and (2) a penalty assessment that can be up to three times  
9 his actual damages “but in no case less than \$1,000.”<sup>2</sup> Cal. Civ. Code § 52(a); *Botosan v. Paul*  
10 *McNally Realty*, 216 F.3d 827 (9th Cir. 2000). Actual damages means compensatory damages  
11 and include general damages for emotional distress. *Boemio*, 954 F. Supp. 204. However, proof  
12 of actual damage is not a prerequisite to the recovery of the penalty assessment under the Unruh  
13 Act. *McNally*, 216 F.3d at 835.

14 14. Compensatory damages are awarded to Plaintiff in the amount of \$1.

15 15. As for the penalty assessment, the fact that Ralphs took steps to comply with the  
16 ADA on the eve of trial does not sufficiently alleviate the Court’s concern. Although  
17 recognizing that Ralphs has a legitimate interest in preventing theft by controlling access to the  
18 store, such control may not violate the provisions of the ADA. Therefore, although the Store  
19 may have narrowly escaped the need for an injunction by implementing a Disabled Patrons  
20 Access Policy and modifying the New Gate, the Court admonishes the Store for its unpalatably  
21 late compliance and makes a penalty assessment of \$1,000 pursuant to the Unruh Act. Cal. Civ.  
22 Code § 52(a).

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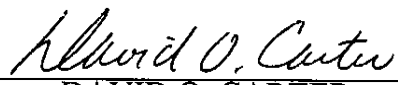
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26 <sup>2</sup> Plaintiff was denied equal access to the Store in February 2001, thus the  
27 applicable statutory minimum penalty amount, pursuant to the Unruh Act, Cal. Civ. Code  
28 § 52(a), is \$1,000 and not the increased statutory minimum of \$4,000 as the 2001  
amendment provides. Cal. Gov. Code §9600(a).

1           16. Any conclusion of law erroneously labeled herein as a finding of fact shall be deemed  
2 a conclusion of law. Any finding of fact erroneously labeled herein as a conclusion of law shall  
3 be deemed a finding of fact.

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6 IT IS SO ORDERED.

7 DATED: FEBRUARY 21, 2002

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DAVID O. CARTER  
11 United States District Judge  
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