

**SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

**Department 3
Honorable William J. Monahan, Presiding**

Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: (408) 882-2130

DATE: 9/19/2024 TIME: 9:00 A.M.

TO CONTEST THE RULING: Before 4:00 p.m. today (9/18/2024) you must notify the:

- (1) Court by calling (408) 808-6856 and
- (2) Other side by phone or email that you plan to appear and contest the ruling.
(California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

TO APPEAR AT THE HEARING: The Court prefers in-person appearances or by Teams. If you must appear virtually, please use video.

FOR YOUR NEXT HEARING DATE: Please reserve your next hearing date using Court Schedule—an online scheduling tool that can be found on the Santa Clara County court website.

FINAL ORDERS: The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.) **Please Note:** Any proposed orders must be submitted with the Judicial Council Form EFS-020 Proposed Order (Cover Sheet). Please include the date, time, dept., and line number.

COURT REPORTERS: The Court no longer provides official court reporters. If any party wants a court reporter, the appropriate form must be submitted. See court website for policy and forms.

LINE #	CASE #	CASE TITLE	RULING
LINE 1	24CV435325	Balboa Capital Corporation, a California Corporation vs Hardeep Dehal	Hearing: Order of Examination enforcement of judgment to Hardeep Singh Dehel by Balboa Capital Corporation [**reset from 9/3/2024 per courtroom**] OFF CALENDAR. No proof of service.
LINE 2	23CV426083	N.R. WATERLOO, LLC et al vs FIRST COMMERCE, LLC et al	Motion: Quash service of summons by Berg Capital Corporation OFF CALENDAR [On 9/12/2024 Plaintiff dismissed defendant Berg Capital Corporation from the First Amended Complaint without prejudice. Therefore, the motion to quash by Berg Capital corporation is OFF CALENDAR.]

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LINE 3	24CV435133	ROGER SCHMITZ vs WHOLE FOODS MARKET CALIFORNIA, INC. et al	Hearing: Demurrer to Plaintiff's First Amended Complaint by Defendant WHOLE FOODS MARKET CALIFORNIA, INC. [**reset from 8/29/2024 per courtroom**] Ctrl Click (or scroll down) on Line 3 for tentative ruling. The court will prepare the order.
LINE 4	24CV439220	Calvin Yazzie vs CEDAR FAIR, LP	Hearing: Demurrer to Plaintiff's Complaint by Defendant Cedar Fair, LP Unopposed and SUSTAINED WITH 15 DAYS LEAVE TO AMEND. Moving party to submit order for signature by the court.
LINE 5	22CV395371	Christian Briscoe vs DEVCON CONSTRUCTION INCORPORATED et al	Motion: Summary Judgment/Adjudication by Defendant Redwood Electric Group, Inc. [**reset from 8/29/2024 per courtroom**] OFF CALENDAR. [On 9/16/2024, Plaintiffs dismissed defendant Redwood Electric Group, Inc from this action with prejudice. Therefore, the motion for summary judgment filed by defendant Redwood Electric Group, Inc, is taken OFF CALENDAR.]
LINE 6	23CV423278	William Fales vs Select Portfolio Servicing, Inc. et al	Motion: Compel Further Discovery Responses to Requests for Production of Document, Set One, and Form Interrogatories, Set One from Defendant Select Portfolio Servicing, Inc. by Plaintiff William Fales [**reset from 9/5/2024 per courtroom**] OFF CALENDAR. [Per Stip/order on 9/4/2024.]

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LINE 7	22CV400444	Jimmy Lee vs City of San Jose	<p>Motion: Stay to Continue to Stay the Action by Plaintiff Jimmy Lee</p> <p>[**Reset from 8/27/2024 per courtroom**]</p> <p>The motion to continue the stay for another 180 days pending appeal from case 20CV371303 by plaintiff Jimmy K. Lee. in pro per ("Plaintiff") is GRANTED. Good cause appearing, this action is stayed (pending the appeal from case 20CV371303) until Thursday March 13, 2025.</p> <p>The order to show case (OSC) re dismissal for Plaintiff's failure to serve set defendants for hearing on 12/2/2024 is continued to Thursday March 13, 2025, at 10:00 am in Dept. 3.</p> <p>The court will prepare the order.</p>
LINE 8	23CV423566	Muhammad Khan vs County Jail of Santa Clara et al	<p>Motion: Vacate Dismissal by Plaintiff</p> <p>[**reset from 8/27/2024 per courtroom**]</p> <p>Good cause appearing, plaintiff Muhammad Kahn, in pro per ("Plaintiff")'s motion to vacate the order of dismissal without prejudice of this case on 3/19/2024 is GRANTED.</p> <p>Plaintiff's 10/2/2023 complaint and 10/2/2023 summons are reinstated.</p> <p>The order for Plaintiff to show cause ("OSC") why the Plaintiff's complaint should not be dismissed for failure to serve defendants is continued to 3/6/2025 at 10:00 AM in Dept. 3. Plaintiff is ordered to promptly serve all defendants with the summons and complaint and to appear at that hearing by Teams.</p> <p>Plaintiff shall prepare any order needed for the prison to allow Plaintiff to appear for all future court dates by Teams and submit it to the court for signature by 30 days in advance of the hearing. (The Teams link is on the Santa Clara County Superior Court's website for Dept. 3.)</p> <p>Plaintiff's mailing address is updated to:</p> <p>MUHAMMAD KAHN P.O. Box 689 Soledad CA 93690</p> <p>The court clerk is ordered to mail Plaintiff a copy of Plaintiff's 10/2/2023 complaint and 10/2/2023 summons along with this order. Please include all 3 documents on the proof of service by mail.</p> <p>The court will prepare the order.</p>

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LINE 9	24CV440021	ALPHONSO RIVERA vs FORD MOTOR COMPANY et al	Motion: Compel Arbitration and Stay Action by Defendant JIM BURKE FORD LINCOLN [**reset from 8/27/2024 per courtroom**, **left message to vacate**] OFF CALENDAR. [A notice of withdrawal was filed for this motion on 9/12/2024.]
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Case Name: *Roger Schmitz v. Doe 1 et al.*

Case No.: 24CV435133

I. Factual and Procedural Background

Plaintiff Roger Schmitz (“Plaintiff”) brings this action against defendants Doe 1 and Whole Foods Market California, Inc. (“WFM”) (collectively, “Defendants”).

Plaintiff ¹ suffered from stage 4 pancreatic cancer, resulting in difficulty walking and moving. (First Amended Complaint (“FAC”), ¶ 6.) Due to his medical condition, Plaintiff had a colostomy bag. (*Ibid.*)

On February 13, 2024, Plaintiff entered the premises of the Whole Foods Market in Palo Alto, California. (FAC, ¶ 6.) While shopping, Plaintiff encountered Doe 1, a security guard employed by WFM. (*Ibid.*) Doe 1 harassed Plaintiff due to the odor related to his colostomy bag and refused to accommodate Plaintiff’s disability, despite requests for accommodation. (*Ibid.*) Thereafter, Defendants ordered Plaintiff to leave and not return. (*Ibid.*)

On May 24, 2024, Plaintiff filed his FAC, asserting the following causes of action:

- 1) Unruh Civil Rights Act; and
- 2) California Disabled Persons Act.

On July 5, 2024, WFM filed a demurrer to the FAC. Plaintiff opposes the motion and WFM filed a reply.

II. Demurrer

WFM demurs to the first and second causes of action on the ground they fail to state facts sufficient to constitute a cause of action.

a. Legal Standard

In ruling on a demurrer, the Court treats it “as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law.” (*Piccinini v. Cal. Emergency Management Agency* (2014) 226 Cal.App.4th 685, 688, citing *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) The only issue involved in a demurrer is whether the complaint, as it stands, unconnected with extraneous matters, states a cause of action. (*Griffith v. Department of Public Works* (1956) 141 Cal.App.2d 376, 381.)

b. First Cause of Action

The Unruh Civil Rights Act (“Unruh Act”) “provides: ‘All persons within the jurisdiction of this state ... no matter what their ... disability ... are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.’” (*Martin v. Thi E-Commerce, LLC* (2023) 95

¹ On September 6, 2024, Plaintiff’s counsel gave notice that on June 19, 2024, Plaintiff passed away.

Cal.App.5th 521, 527, quoting Civ. Code, § 51, subd. (b).) “A plaintiff can recover under the [Unruh Act] on two alternative theories: (1) a violation of the ADA; or (2) denial of access to a business establishment based on intentional discrimination.” (*Ibid.* [internal quotations and citations omitted].)

WFM argues the first cause of action fails because: 1) Plaintiff does not allege WFM violated the Americans with Disabilities Act (“ADA”) and 2) Plaintiff does not allege that WFM intentionally discriminated against him.

Plaintiff does not appear to dispute that he does not allege a violation of the ADA. Accordingly, the Court turns to WFM’s second argument regarding discriminatory intent.

WFM asserts that Plaintiff does not allege he told WFM he suffered from pancreatic cancer or used a colostomy bag and that if it did not know about the cancer or colostomy bag, it could not have intentionally discriminated against Plaintiff based on those conditions. (Demurrer, p. 4:1-5.)² In opposition, Plaintiff appears to argue that the conduct was intentional because there was an “*intentional eviction* of the Plaintiff from the Defendant’s stores” based on his disability. (Opposition, p. 5:25-28 [emphasis added].)

WFM is correct that Plaintiff must allege that the discrimination was intentional. The California Supreme Court has explained that “‘a plaintiff seeking to establish a case under the Unruh Act *must plead . . . intentional discrimination* in public accommodations in violation of the terms of the Act.” (*Koebke v. Bernardo Heights Country Club* (2005) 36 Cal.4th 824, 854 [emphasis added].)

Here, the FAC alleges Plaintiff was harassed by Doe 1 because of the odor related to his colostomy bag and that Doe 1 “refused to accommodate the Plaintiff’s disability and/or medical condition, despite the requests for accommodation.” (FAC, ¶ 6.) The FAC further alleges that Defendants ordered Plaintiff to leave WFM’s premises and not return based on his disability and/or medical condition. (*Ibid.*) Aside from these conclusory allegations, there are no facts to indicate if Doe 1 or WFM knew about Plaintiff’s disability or colostomy bag or if Plaintiff was asked not to return because of his disability or colostomy bag. (See *E-Fab, Inc. v. Accountants, Inc. Services* (2007) 153 Cal.App.4th 1308, 1319 [“conclusory allegations will not withstand demurrer.”]; see also *McKelvey v. Boeing N. Am.* (1999) 74 Cal.App.4th 151, 160 [superseded by statute on other grounds][stating same].) Moreover, the first cause of action is statutory and therefore must be pled with particularity. (See *Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 790 [“statutory causes of action must be pleaded with particularity”].) Accordingly, the FAC’s conclusory allegations of intent are insufficient to state a claim under the Unruh Act. Thus, the demurrer to the first cause of action is SUSTAINED with 15 days leave to amend.

c. Second Cause of Action – Disabled Persons Act

² WFM relies on a federal case to support a majority of its arguments regarding the first cause of action. (See Demurrer, p. 3:20, citing *Duronslet v. Cty. of L.A.* (C.D.Cal. 2017) 266 F. Supp. 3d 1213 (*Duronslet*).) “[W]hile federal authority may be regarded as persuasive, California courts are not bound by decisions of federal . . . courts of appeals.” (*People v. Uribe* (2011) 199 Cal.App.4th 836, 875.) The Court finds it unnecessary to rely on *Duronslet* in reaching its decision on this demurrer.

“The [Disabled Persons Act “DPA”] . . . guarantees protections for disabled persons: ‘Individuals with disabilities or medical conditions have the same rights as the general public to the full and free use of the . . . public buildings, . . . public facilities, . . . and other public places.’” (*Saurman v. Peter’s Landing Property Owner, LLC* (2024) 103 Cal.App.5th 1148, 1168, quoting Civ. Code, § 54, subd. (a).) Additionally, “[i]ndividuals with disabilities shall be entitled to full and equal access, as other members of the general public, to accommodations, advantages, facilities . . . and privileges of all . . . places of public accommodation . . . and other places to which the general public is invited.” (Civ. Code, § 54.1, subd. (a)(1).) “[The DPA’s] focus is upon physical access to public places[.]” (*Turner v. Association of American Medical Colleges* (2008) 167 Cal.App.4th 1401, 1412 (*Turner*).) *Turner* provides several examples of instances the DPA typically protects, including: a store not providing adequate pathways for a person using a wheelchair; a trash container blocking a restaurant entrance; lack of bathrooms on first floor for person with crutches; and lack of access to an ATM for wheelchair users. (*Ibid.*)

WFM demurs to the second cause of action on the ground the FAC does not allege Defendants denied Plaintiff access to the store based on his disability. (Demurrer, p. 5:3-4.) WFM contends that Plaintiff was able to physically enter the store and that because Defendants did not have knowledge of Plaintiff’s disability or use of a colostomy bag, they did not deny Plaintiff entry based on his disability. (Demurrer, p. 5:8-10.)³ Finally, WFM argues, the FAC contains only boilerplate allegations that Plaintiff requested an accommodation. (Demurrer, p. 5:20-24.) In opposition, Plaintiff does not address WFM’s arguments and instead recites the allegations contained in the FAC. (See *Schulster Tunnels/Pre-Con v. Traylor Brothers, Inc.* (2003) 111 Cal.App.4th 1328, 1345, fn. 16 [failure to address point is “equivalent to a concession”].) As noted above, the allegations of the FAC are insufficient to show that Defendants had knowledge of Plaintiff’s disability or that he requested an accommodation. Further, the FAC does allege that Plaintiff was able to access the WFM’s premises. (FAC, ¶ 6 [“Plaintiff . . . was lawfully on the premises of the Whole Foods Market”].) As such, the second cause of action fails to allege facts sufficient to constitute a cause of action under the DPA.

Therefore, the demurrer to the second cause of action is SUSTAINED with 15 days leave to amend.

III. Conclusion and Order

The demurrer to the first and second causes of action are SUSTAINED with 15 days leave to amend.

The Court shall prepare the final order.

³ The Court declines to rely on any of WFM’s arguments that depend on the Vernazza Declaration. (See *Tenet Healthsystem Desert, Inc. v. Blue Cross of California* (2016) 245 Cal.App.4th 821, 834 [“Because a demurrer challenges defects on the face of the complaint, it can refer to matters outside the pleading only if those matters are subject to judicial notice”].) Similarly, any argument that WFM had a policy regarding fecal order falls outside of the pleadings and will not be considered by the Court.

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