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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

CHRISTOPHER OLIVER,

Plaintiff and Respondent,

v.

ALTA LOS ANGELES  
HOSPITALS, INC.,

Defendant and Appellant.

B271206

(Los Angeles County  
Super. Ct. No. BC540348)

APPEAL from judgment of the Superior Court of Los Angeles County, Ralph W. Dau, Judge. Affirmed.

McGuireWoods, John A. Van Hook; Lewis Brisbois Bisgaard & Smith, George E. Nowotny and Judith M. Tishkoff, for Defendant and Appellant.

Caskey & Holzman, Marshall A. Caskey, Daniel M. Holzman, N. Cory Barari, for Plaintiff and Respondent.

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Defendant and appellant Alta Los Angeles Hospitals, Inc. (Alta) contends it was error to award statutory damages and attorney fees to plaintiff and respondent Christopher Oliver under the Unruh Civil Rights Act (the Unruh Act) (Civ. Code, § 51 et seq.),<sup>1</sup> where the jury found Alta denied Oliver full and equal services, but Alta's conduct was not a substantial factor in causing Oliver harm. Oliver contends that because harm is presumed, the court correctly awarded him statutory damages and attorney fees under section 52, subdivision (a). We affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### **Facts**

Oliver has been deaf since birth. He visited Alta seeking medical treatment for back pain at Alta on two separate occasions in 2013. During his visits, he communicated with Alta staff in writing. Alta did not provide an American Sign Language (ASL) interpreter.<sup>2</sup>

On March 25, 2014, Oliver sued Alta, alleging violations of the Unruh Act and the Disabled Persons Act (§ 54.1) based on Alta's failure to provide him with an ASL

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<sup>1</sup> All further statutory references are to the Civil Code unless otherwise stated.

<sup>2</sup> There is conflicting evidence of whether Oliver requested an ASL interpreter.

interpreter. He sought actual damages, general damages, reasonable attorney fees, statutory damages, costs, and an injunction.

Several weeks before the January 2016 trial, the parties submitted proposed jury instructions, as well as joint proposed jury instructions, a joint statement of the case, and a joint proposed special verdict form. Oliver also filed a trial brief entitled “Plaintiff’s Memorandum of Law for Trial.” The trial spanned six days. Oliver’s counsel called twelve witnesses, including Oliver himself, as well as a number of staff and physicians at Alta. Alta called two witnesses. In describing the harm he suffered based on the absence of an ASL interpreter, Oliver testified he felt upset, hurt, humiliated, frustrated, and that the experience was emotionally painful.

Neither party made any objection to the jury instructions or the special verdict form that the court gave to the jury. The court instructed the jury before closing arguments with a modified version of CACI No. 3060 that “Christopher Oliver claims that [Alta] denied him full and equal services because of his disability. To establish this claim, Christopher Oliver must prove all of the following:

“1. That [Alta] denied full and equal services to Christopher Oliver;

“2. That Christopher Oliver was harmed.

“3. That [Alta]’s conduct was a substantial factor in causing Christopher Oliver’s harm.”

During closing argument, Oliver's counsel reviewed the testimony and reminded the jury that by failing to provide Oliver with an ASL interpreter, Alta denied him the right to understand his medical treatment, which left him feeling "hurt, frustrated, put upon, humiliated. He wanted to know what was going on. Does Mr. Oliver have to say anything more than that?" The attorney argued Oliver was harmed, and asked the jury to award emotional distress damages of \$25,000 for each visit to Alta, plus a \$150,000 penalty, representing three times Oliver's emotional distress damages.

### **Jury Verdict**

The jury returned with a completed special verdict form. The first question on the form asked, "Did [Alta] deny full and equal services to Christopher Oliver?" The jury responded, "Yes." The form stated, "If your answer to question 1 is yes, then answer question 2." Question 2 stated, "Was [Alta]'s conduct a substantial factor in causing harm to Christopher Oliver?" The jury responded, "No." Following the instructions, the jury did not complete the remainder of the form, which contained additional questions about damages and an award of a penalty.

### **Statutory damages and attorney fees award**

After the jury's verdict was entered, Oliver requested that the court award him \$4,000 in statutory damages under section 52. Alta's counsel countered that Alta was the prevailing party because the jury found no causal connection to any harm. After some discussion about case law construing section 52, the court permitted the parties to brief the question of whether the jury's verdict supported an award of statutory damages. After considering the submitted briefs, the court entered judgment, awarding Oliver \$4,000 statutory damages, and attorney fees to be determined upon motion to the court. Alta filed a notice of appeal, and the court later awarded Oliver attorney fees in the amount of \$147,000.

## **DISCUSSION**

### **Standard of review**

Questions of statutory interpretation are subject to independent review on appeal. (*People ex rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 432.) A de novo standard of review applies to the question of whether statutory language authorizes an award of attorney fees and costs. (*Conservatorship of Whitley* (2010) 50 Cal.4th 1206, 1213–1214.)

## **The Unruh Act**

The Unruh Act ensures to all persons “full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever” without regard to, among other matters, “race, color, religion, ancestry, [or] national origin.” (§ 51, subd. (b).) The California Supreme Court has described the sweeping nature of the act’s protections as follows: “Its provisions were intended as an active measure that would create and preserve a nondiscriminatory environment in California business establishments by ‘banishing’ or ‘eradicating’ arbitrary, invidious discrimination by such establishments. [Citations.] [¶] The Act stands as a bulwark protecting each person’s inherent right to ‘full and equal’ access to ‘all business establishments.’ [Citations.] The Act, like the common law principles upon which it was partially based, imposes a compulsory duty upon business establishments to serve all persons without arbitrary discrimination. [Citations.] The Act serves as a preventive measure, without which it is recognized that businesses might fall into discriminatory practices. [Citation.]” (*Angelucci v. Century Supper Club* (2007) 41 Cal.4th 160, 167.)

Any violation of the federal Americans with Disabilities Act (ADA) is also a violation of the Unruh Act. (§ 51, subd. (f).) When the Legislature added subdivision (f)

to section 51 in 1992, its “express intent was ‘to strengthen California law in areas where it is weaker than the [ADA] and to retain California law when it provides more protection for individuals with disabilities than the [ADA].’ (Stats. 1992, ch. 913, § 1, p. 4282; see also *Munson v. Del Taco, Inc.* (2009) 46 Cal.4th 661, 668–669 (*Munson*).)” (*Turner v. Association of American Medical Colleges* (2011) 193 Cal.App.4th 1047, 1057–1058.) “Congress specifically intended the ADA to remedy ‘the discriminatory effects of . . . communication barriers’ for individuals with hearing disabilities.” (*Argenyi v. Creighton Univ.* (8th Cir. 2013) 703 F.3d 441, 448, quoting 42 U.S.C. 12101(a)(5); see also 42 U.S.C. § 12182(b)(2)(A)(iii); 28 C.F.R. §§ 36.202(a) and (c) [discrimination in services], and 36.303(a) and (c) [auxiliary aids and services].)

Section 52, subdivision (a), describes the remedies available when a defendant “makes any discrimination or distinction contrary to section 51 . . . .” Such a defendant “is liable for each and every offense for the actual damages, and any amount that may be determined by a jury, or a court sitting without a jury, up to a maximum of three times the amount of actual damage but in no case less than four thousand dollars (\$4,000), and any attorney’s fees that may be determined by the court . . . .” (§ 52, subd. (a).) “While section 51’s statement of the substantive scope of protections afforded and section 52’s statement of the remedies available have both changed over the course of time, section 51 has always provided substantive protection against invidious

discrimination in public accommodations, without specifying remedies, and section 52 has always provided remedies, including a private action for damages, for violations of section 51.” (*Munson, supra*, 46 Cal.4th at p. 667, fn. omitted.)

### **Essential elements for a statutory damages award**

Alta contends that Oliver did not prevail on his Unruh Act claim because the jury found he had not proven the essential elements of causation and harm. We reject Alta’s contention. Neither causation nor harm is an essential element to support a claim for statutory damages under section 52.

A plaintiff seeking statutory damages for a violation of the Unruh Act does not need to demonstrate causation or harm, because the Legislature has determined that arbitrary discrimination by businesses “is per se injurious. Section 51 provides that all patrons are entitled to equal treatment. Section 52 provides for minimum statutory damages . . . for every violation of section 51, regardless of the plaintiff’s actual damages.” (*Koire v. Metro Car Wash* (1985) 40 Cal.3d 24, 33 (*Koire*), fn. and italics omitted.) In *Koire*, a male plaintiff sought statutory damages from several businesses that offered promotional discounts to women. (*Id.* at p. 27.) The defendants argued that the discounts did not injure the plaintiff, nor men or women in general. The California Supreme Court rejected those arguments, pointing out that



the businesses were charging the male plaintiff a higher price, and that “in addition to the economic impact, the price differentials made him feel that he was being treated unfairly.” (*Id.* at p. 34, fn. omitted.) The court also emphasized that “differential pricing based on sex may be generally detrimental to both men and women, because it reinforces harmful stereotypes. [Citations.] [¶] Men and women alike suffer from the stereotypes perpetrated by sex-based differential treatment.” (*Ibid.*) Based on this reasoning, causation and harm are presumed for a statutory damages claim.

For Unruh Act claims based on disability discrimination, all a plaintiff must show to obtain statutory damages is a violation of the ADA. (*Flowers v. Prasad* (2015) 238 Cal.App.4th 930, 937-940 (*Flowers*) [ADA violation supports claims for statutory minimum damages under the Unruh Act and the California Disabled Persons Act]; *Botosan v. Paul McNally Realty* (9th Cir. 2000) 216 F.3d 827, 835 (*Botosan*) [affirming award of statutory minimum damages where defendant did not provide handicapped parking].) In *Botosan*, the plaintiff proved he was denied equal access in violation of the ADA, and the Ninth Circuit rejected the defendant’s argument that the district court had erroneously awarded the plaintiff statutory minimum damages “in the absence of proof of actual damages.” (*Botosan, supra*, 216 F.3d at p. 835.) Instead, emphasizing that section 52 “lists actual damages and statutory damages as two separate categories of damages that a plaintiff may

recover,” the court concluded that “proof of actual damages is not a prerequisite to recovery of statutory minimum damages.” (*Ibid.*) To recover statutory damages, plaintiffs must show that they were denied equal access. Proof of actual damages is not required. Similarly, plaintiffs who prove a violation of section 51 are entitled to a mandatory award of attorney fees. (§ 52, subd. (a); *Engel v. Worthington* (1997) 60 Cal.App.4th 628, 635 (*Engel*) [concluding the Legislature intended that an award of attorney fees to the prevailing plaintiff was mandatory].)

**Oliver’s failure to obtain a jury award for actual damages does not preclude an award of statutory damages**

Alta makes several different arguments in support of its overall contention that Oliver’s failure to obtain an award of actual damages precludes him from seeking award of statutory damages. Alta’s arguments focus on the statutory language of section 52, the jury instructions, and the special verdict form.

*Statutory language*

Without any case law to support its argument, Alta argues that “[w]here a statute provides for a combination of actual damages and penalties, they are distinct claims for recovery, and there is nothing preventing a plaintiff (as Oliver did here) from seeking one type of recovery at trial

without the other.”<sup>3</sup> As we explain in this section, nothing in the statutory language of section 52, subdivision (a), supports Alta’s argument that by presenting a case for actual damages to the jury, Oliver is precluded from seeking minimum statutory damages and attorney fees from the court.

“Under well-established rules of statutory construction, we must ascertain the intent of the drafters so as to effectuate the purpose of the law. [Citation.] Because the statutory language is generally the most reliable indicator of legislative intent, we first examine the words themselves, giving them their usual and ordinary meaning and construing them in context.’ [Citation.] ‘[E]very statute should be construed with reference to the whole system of law of which it is a part, so that all may be harmonized and have effect.’ [Citation.]” (*Mejia v. Reed* (2003) 31 Cal.4th 657, 663.) In addition, “the legislative history of the statute and the wider historical circumstances of its enactment may be considered in ascertaining the legislative intent.” (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1387.) Finally, the court may consider the impact of an interpretation on public policy, for “[w]here uncertainty exists consideration should be given to the consequences that will flow from a particular interpretation.” (*Ibid.*)

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<sup>3</sup> This section of Alta’s brief does cite to several cases, but none of them support Alta’s argument.

The statutory language, legislative history, and public policy underlying the Unruh Act all support an interpretation that permits a plaintiff to seek a jury finding on discrimination and actual damages, as well as a court award of statutory damages and attorney fees. We begin by analyzing the statutory language, keeping in mind that the Unruh Act “is to be given a liberal construction with a view to effectuating its purposes.” (*Koire, supra*, 40 Cal.3d at p. 28.) Any defendant who violates section 51 “is liable for each and every offense for the actual damages, and any amount that may be determined by a jury, or a court sitting without a jury, up to a maximum of three times the amount of actual damage but in no case less than four thousand dollars (\$4,000), and any attorney’s fees.” (§ 52, subd. (a).) We read the plain language of the statute as authorizing a plaintiff to seek three different categories of relief: (1) “the actual damages” as determined by a jury; (2) statutory damages, described in the text as “any amount that may be determined by a jury, or a court sitting without a jury, up to a maximum of three times the amount of actual damage but in no case less than four thousand dollars (\$4,000),” and (3) “any attorney’s fees” with the amount determined by the court. (§ 52, subd. (a); see also *Engel, supra*, 60 Cal.App.4th at p. 632 [“the court possesses discretion to determine the amount of the fees, but not their entitlement”].) Nothing in the statutory language supports Alta’s argument that by choosing to pursue an award for actual damages, Oliver forfeited his right to seek an award of statutory damages

from the court. This interpretation is supported by language in other cases describing the types of relief available under the Unruh Act. (See, e.g., *Koire, supra*, 40 Cal.3d at p. 33 [plaintiff can recover minimum statutory damages for each violation of section 51, regardless of actual damages]; *Engel, supra*, 60 Cal.App.4th at p. 633 [“Civil Code section[] 51 . . . violators are liable for actual and statutory damages and attorney fees”]; *Botosan, supra*, 216 F.3d at p. 835 [section 52 “lists actual damages and statutory damages as two separate categories of damages that a plaintiff may recover. Therefore, proof of actual damages is not a prerequisite to recovery of statutory minimum damages.”].)

The Legislature amended section 52’s statutory damages language in 1976 to add a provision for treble damages, with a \$250 minimum, as well as the attorney fees provision. “[T]he Governor’s legal affairs secretary, in a July 7, 1976, enrolled bill report, explained its purpose was to ‘sharply increase[] the damages recoverable for violation of the Unruh Act, including treble damages with a \$250 minimum, and attorneys fees.’ (Governor’s Off., Dept. Legal Affairs, Enrolled Bill Rep. on Assem. Bill No. 2553 (1975-1976 Reg. Sess.) July 7, 1976.)” (*Engel, supra*, 60 Cal.App.4th at p. 634, italics omitted [discussing attorney fees language].) The Legislature subsequently increased the statutory minimum damages amount to \$1,000 in 1994 (Stats. 1994, ch. 535, § 1, p. 2760) and to \$4,000 in 2001 (Stats. 2001, ch. 261, § 1, p. 2239.).

From a public policy perspective, it is consistent with the legislative goal of deterring discriminatory conduct to permit plaintiffs to obtain statutory damages even if a jury finds no actual damages. Had the jury here awarded some minimal amount of actual damages, such as \$100, and then awarded either \$0 or \$300 as the statutory damage amount, there would be no question that the court would have authority to increase the statutory damage award to \$4,000, consistent with the statutory language. We see nothing in the statute or case law that precluded the trial court from awarding the minimum penalty amount of \$4,000 after the jury found that Alta violated section 51 by denying Oliver full and equal services.

*Jury instructions and special verdict form*

Alta contends that by electing to pursue actual damages and using jury instructions and a special verdict form that directed the jury to determine damages, Oliver is precluded from obtaining statutory damages based upon the jury's finding of discrimination. Alta argues that Oliver could not change his theory of the case postverdict and seek a court award of minimum statutory damages. We conclude that Oliver's request for statutory damages was consistent with his theory of the case, and reject Alta's argument that the court was precluded from awarding minimum statutory damages.

“Upon request, a party in a civil case is entitled to correct, nonargumentative jury instructions on every theory of the case that is supported by substantial evidence. [Citations.] . . . When the trial court chooses to give an instruction, however, it must be a correct statement of the law. If an instruction quotes only a portion of a statute, the omissions must not make the instruction, considered as a whole and in the context of the evidence, misleading. [Citations.]” (*Maureen K. v. Tuschka* (2013) 215 Cal.App.4th 519, 526–527.)

The relevant jury instructions were based on CACI No. 3060, tailored to the particular circumstances of this case. In its original form, CACI No. 3060 instructs the jury that a plaintiff must prove: (1) that the defendant denied full and equal treatment to plaintiff; (2) that the plaintiff’s distinguishing or protected characteristic was a “substantial motivating reason” for the defendant’s conduct; (3) that the plaintiff was harmed; and (4) that the defendant’s conduct was “a substantial factor in causing” harm to the plaintiff. (CACI No. 3060.) The Directions for Use specify that the court should not give element two “[f]or claims that are also violations of the ADA.” (*Ibid.*) Alta correctly does not claim it was error to omit any instruction on element two, as Oliver’s claim was based on a disability. The Directions for Use also include the following guidance on elements three and four: “Note that the jury may award a successful plaintiff up to three times actual damages but not less than \$4,000 regardless of any actual damages. (Civ. Code,

§ 52[, subd.] (a).) In this regard, harm is presumed, and elements 3 and 4 may be considered as established if no actual damages are sought. (See *Koire*[, *supra*,] 40 Cal.3d [at p.] 33 [Unruh Act violations are per se injurious]; Civ. Code, § 52[, subd.] (a) [provides for minimum statutory damages for every violation regardless of the plaintiff's actual damages]; see also Civ. Code, § 52[, subd.] (h) ['actual damages' means special and general damages].)" (CACI No. 3060.)

The trial court presumably determined the evidence Oliver presented in support of his claim for actual damages was substantial enough to warrant jury instructions for elements three and four. Omitting any instruction on causation or harm would have been misleading because without such instructions, the jury might mistakenly conclude that its damage award could be arbitrary and unrelated to any harm Alta's discriminatory conduct caused to Oliver. There is no legal support for Alta's argument that an Unruh Act plaintiff must choose between seeking actual and statutory damages. We also reject as unfounded Alta's argument that Oliver did not seek statutory damages during the course of the trial and is therefore precluded from claiming them postverdict. The record contains evidence of Oliver's consistent position that he sought not just actual damages, but also a penalty consistent with a claim for statutory damages. Oliver referenced his claim for the penalty amount in his proposed special verdict form, the



joint proposed jury instructions, his trial brief, and his closing argument.

The court also tailored special verdict form VF-3030 to the circumstances of the case, omitting a question not necessary when the plaintiff's claim is based on a violation of the ADA, but including questions three and four relating to causation and damages. Once again, the Directions for Use applicable to VF-3030 specify that "Questions 3 and 4 may be omitted if only the statutory minimum of \$4,000 damages is sought. Harm is presumed for this amount. (See Civ. Code, § 52[, subd.] (a); *Koire*[, *supra*,] 40 Cal.3d [at p.] 33.)" (CACI No. VF-3030.) More importantly, the Directions for Use also clarify that if the jury awards a penalty amount above or below the statutory range, it is the judge's duty to correct the verdict: "The penalty in question 5 refers to the right of the jury to award a maximum of three times the amount of actual damages but not less than \$4,000. (Civ. Code, § 52[, subd.] (a).) The judge should correct the verdict if the jury award goes over that limit. Also, *if the jury awards nothing or an amount less than \$4,000 in question 5, the judge should increase that award to \$4,000 to reflect the statutory minimum.*" (CACI No. VF-3030, italics added.)

The jury's responses on the special verdict form reflect the jury's determination that (1) Alta denied full and equal services to Oliver, but (2) Alta's conduct did not cause any harm to Oliver. At this point, we return to the statements in *Koire* and other cases where courts have emphasized that the discriminatory conduct in violation of section 51 is per se

injurious, and without more will entitle a plaintiff to minimum statutory damages. (*Koire, supra*, 40 Cal.3d at p. 33; *Flowers, supra*, 238 Cal.App.4th at p. 938; *Botosan, supra*, 216 F.3d at p. 835.)

Nothing in the jury instructions requires a court to compel an Unruh Act plaintiff to choose between seeking actual damages and statutory damages, and the special verdict form expressly addresses the court's obligation to correct a statutory damage award that does not adhere to the statutory requirements.

### **Unambiguous verdict**

Alta contends that at a minimum, when the jury's responses are considered in light of the jury instructions and totality of the special verdict form, either the jury intended to deny any recovery to Oliver, or their verdict is ambiguous. As we have already explained, there was nothing ambiguous about the jury's determination that Oliver was denied full and equal services. Having proven a violation of section 51, Oliver was entitled to an award of \$4,000 in statutory damages, regardless of whether the jury found harm or awarded damages.

### **Attorney fees**

Alta's only challenge to the court's attorney fee award is that Oliver was not a prevailing party entitled to attorney

fees, because he did not prove that Alta's conduct caused him harm. As discussed in the body of this opinion, Oliver did not need to prove that Alta's conduct caused him harm in order to prevail on his claim. Having proven that Alta's conduct violated section 51, he is the prevailing party and is entitled to attorney fees under section 52, subdivision (a).

### **DISPOSITION**

The judgment and attorney fee award are affirmed. Costs on appeal are awarded to appellant Christopher Oliver.

KRIEGLER, Acting P.J.

We concur:

BAKER, J.

DUNNING, J.\*

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\* Judge of the Orange Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.