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CGC-22-599079

Filing Fees Exempt (Gov. Code § 6103)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

POTTER HANDY LLP, MARK POTTER, RUSSELL HANDY, DENNIS PRICE, AMANDA LOCKHART SEABOCK, CHRISTOPHER SEABOCK, PRATHIMA PRICE, RAYMOND BALLISTER JR., PHYL GRACE, CHRISTINA CARSON, ELLIOTT MONTGOMERY, FAYTHE GUTIERREZ, ISABEL ROSE MASANQUE, BRADLEY SMITH, TEHNIAT ZAMAN, JOSIE ZIMMERMAN, and DOES 1-100,

Defendants.

Case No.

COMPLAINT FOR RESTITUTION, CIVIL PENALTIES, PRELIMINARY AND PERMANENT INJUNCTIONS, AND OTHER EQUITABLE RELIEF

Business & Professions Code § 17200 *et seq.*

The District Attorney for the City and County of San Francisco and the District Attorney for the County of Los Angeles, authorized to protect the general public within the State of California from unlawful, unfair, and fraudulent business practices, bring this suit in the name of the People of the State of California. The People hereby allege the following:

SUMMARY OF THE CASE

1. The law firm Potter Handy LLP, dba "Center for Disability Access," is unlawfully circumventing the California Legislature's procedural reforms on abusive Unruh Civil Rights Act ("Unruh Act") disabilities litigation. The firm does so by filing thousands of boilerplate, cut-and-paste federal-court lawsuits that falsely assert its clients have standing under the federal Americans with Disabilities Act ("ADA"). By using false standing allegations to get an ADA injunctive-relief claim into federal court—where the Legislature's procedural reforms on abusive Unruh Act litigation do not apply—and coupling the federal claim with a state-law Unruh Act claim, Potter Handy is able to avoid those reforms while demanding small businesses pay it the heavy damages available under the Unruh Act.

2. Each year, Potter Handy files thousands of boilerplate "ADA/Unruh" lawsuits on behalf of a few repeat plaintiffs ("Serial Filers") against California small businesses with little regard to whether those businesses actually violate the ADA. These lawsuits are financially onerous, in large part because the Unruh Act (but not its federal counterpart) allows Potter Handy to demand damages of at least $4,000 per alleged violation. Small businesses, particularly those owned by immigrants and individuals for whom English is a second language, who are often less familiar with the complexities of the American legal system, are rarely able to afford the risk and expense of defending themselves in court. As a result, each year Potter Handy uses ADA/Unruh lawsuits to shake down hundreds or even thousands of small businesses to pay it cash settlements, regardless of whether the businesses actually violate the ADA.

3. As the Legislature has stated and codified into statute, the kind of abusive, boilerplate litigation that Potter Handy engages in not only harms small businesses, but also "unfairly taints the reputation of other innocent disabled consumers who are merely trying to go about their daily lives accessing public accommodations as they are entitled to have full and

equal access under the state's Unruh Civil Rights Act[.]" (Code Civ. Proc., § 425.55.) Accordingly, California has repeatedly amended the Unruh Act to impose procedural reforms that prevent exactly this kind of blunderbuss approach to litigation, which benefits no one except the attorneys of Potter Handy. Most notably, between 2008 and 2016 the California Legislature imposed strict new pleading requirements and additional filing fees that only apply to "high-frequency" Unruh Act litigants like Potter Handy's clients. The Legislature also created the Certified Access Specialist program ("CASp"), which incentivizes businesses to obtain accessibility inspections and proactively correct ADA violations. These reforms make it difficult or impossible for Potter Handy to bring the vast quantities of boilerplate Unruh Act suits that are its bread-and-butter. While these legislative reforms do not create barriers to honest plaintiffs and attorneys, they simply require too much detail (as well as verification of that detail under penalty of perjury) for unscrupulous firms whose business models rely on the ability to file thousands of boilerplate lawsuits alleging vague, generic violations in order to extract settlements from small businesses.

4. However, California's procedural reforms on abusive Unruh Act litigation only apply to cases filed in *state court*, not to federal court cases. Thus, Potter Handy has opted to circumvent these reforms by bringing ADA/Unruh cases in federal court. By asserting an injunctive-relief ADA claim to invoke federal court jurisdiction and coupling that with an Unruh Act claim so it can demand $4,000-per-violation damages, Potter Handy has continued with its business model of bombarding California's small businesses with abusive boilerplate lawsuits, ignoring California's procedural reforms. As one federal district court has stated, this scheme "ducks the burdens of state law but still reaps its benefits…significantly undermin[ing] California's efforts to reform Unruh Act litigation."[1] And as the federal Ninth Circuit Court of Appeals stated in December 2021, in an appeal involving one of Potter Handy's Serial Filer

[1] (Order Declining Supplemental Jurisdiction Over Plaintiff's Unruh Act Claim, *Whitaker v. La Conq, LLC* (C.D. Cal., Sept. 20, 2019, No. 2:19-cv-07404).)

cases, "the procedural strictures that California put in place have been rendered largely toothless, because they can now be readily evaded."[2]

5. If that were all, this story would end here. But Potter Handy's boilerplate lawsuits are not clever lawyering that happened to find a hole in a well-intentioned statute. They are able to evade California's procedural reforms only because they rely on false standing allegations, and their lawsuits are therefore ***unlawful*** under current law. To file cases in federal court, Potter Handy must satisfy the requirements of federal Article III standing in each and every ADA/Unruh case it files. Under federal law, in an ADA/Unruh case alleging that a business has a construction-related defect or physical barrier that violates the ADA, Potter Handy must allege that its client personally encountered an ADA violation at the business, was deterred or prevented from accessing the business because of it, and genuinely intends to return to the business after the barrier is removed.[3]

6. But actually encountering barriers and returning to businesses after cases end is a time-intensive endeavor, and it is literally impossible for Potter Handy's Serial Filer clients, at least some of whom are wheelchair-bound, to repeatedly travel to all of the thousands of businesses they sue, especially those that are located hundreds of miles from where they live. Indeed, Potter Handy's Serial Filers frequently do not personally encounter barriers themselves (often conducting cursory "drive-bys" or having helpers or investigators go to businesses in their place) and they almost never return to the businesses they sue after the cases resolve.

7. Therein lies Potter Handy's lawbreaking: to keep up the volume of thousands of boilerplate cases necessary to sustain its business model, ***in each case the firm's attorneys file, they intentionally include and adopt false allegations that the Serial Filer personally encountered a barrier at the business in question, was deterred or prevented from accessing the business because of it, and intends to return to the business after the violation is cured.*** The attorneys of Potter Handy, who are the Defendants in this matter, are well-aware that their

[2] (*Arroyo v. Rosas* (Dec. 10, 2021) – F.4th –, 2021 U.S. App. LEXIS 36510, at *21, *23.)

[3] (*See Chapman v. Pier 1 Imports, Inc.* (9th Cir. 2011) 631 F.3d 939, 953 (en banc).)

clients do not personally encounter barriers, are not deterred by them, and have no genuine intent to return to the businesses they sue. However, these attorney Defendants intentionally adopt false standing allegations in each of the Serial Filer cases they file in order to obtain and keep federal court jurisdiction, thereby avoiding the strict procedural reforms on abusive Unruh Act litigation that would apply in state court to make boilerplate litigation impossible.

8. In intentionally adopting these false statements in order to get into federal court and avoid California's Unruh Act reforms, Potter Handy's attorneys violate California Rules of Professional Conduct 3.1 and 3.3, as well as the State Bar Act, Business and Professions Code section 6128(a) ("Section 6128(a)"), which prohibits an attorney from committing "deceit or collusion, or consent[ing] to any deceit or collusion, with intent to deceive the court or any party." Each of these provisions applies to attorneys practicing in federal court in California.[4] A violation of any one of these provisions, each of which is exempt from the litigation privilege, constitutes an unlawful business practice under California's Unfair Competition Law, Business and Professions Code section 17200 *et seq.* ("UCL").

9. The public record and evidence gathered by the People confirm that Potter Handy's business practice is to intentionally file cases containing false standing allegations in order to invoke federal jurisdiction. Potter Handy's Serial Filers have repeatedly testified in depositions, with Potter Handy counsel present, that they do not have standing: they do not return to the businesses they sue or they cannot identify businesses they returned to afterward. Federal courts have awarded attorney's fees to businesses and sanctioned Potter Handy attorneys, including named partner Russell Handy, for the firm's bringing of frivolous or false standing allegations. Other federal courts, even without issuing sanctions or awarding attorney's fees, have thrown out Serial Filer cases for lack of standing, holding that their allegations simply are not credible. Moreover, the astonishing number of cases Potter Handy files on behalf of the Serial Filers—***over 800 federal cases*** on behalf of Serial Filer Orlando Garcia, approximately ***1,700 federal cases*** on behalf of Serial Filer Brian Whitaker, and thousands more on behalf of

[4] Attorneys practicing in federal courts in California are required to follow the standards of conduct set forth in the State Bar Act and California Rules of Professional Conduct.

Chris Langer, Scott Johnson, Rafael Arroyo, and the various other Serial Filers—make it literally impossible for the Serial Filers to have personally encountered each listed barrier, let alone to intend to return to hundreds of businesses located hundreds of miles away from their homes.

10. Reports from sued businesses corroborate what the depositions, federal court orders, and sheer volume of cases make clear. Business after business interviewed by the San Francisco District Attorney's Office's investigators reported being sued for barriers that could not possibly have been encountered by the Serial Filers. For example, while multiple Chinatown businesses were sued for allegedly having inaccessible outdoor dining tables during the early months of 2021, those businesses were open for takeout only during that time and had no dining tables at all—indoor or outdoor. Other businesses reviewed their security camera footage for the months in question and saw that the Serial Filers never went to their businesses at all. Still others were sued for alleged violations that objectively did not exist; for example, one Chinatown business was sued for allegedly having an illegally steep 12.5% ramp to its front door, when in fact the entranceway was nearly flat.

11. Tragically, the human cost of Potter Handy's fraudulent lawsuits is immense, representing a forced transfer of wealth from those least able to afford it to the pockets of the firm and the attorney Defendants. Once Potter Handy has filed a lawsuit and gotten into federal court on the back of its false standing allegations, the firm pressures its targets into settling, rarely resolving cases for less than $10,000 and often demanding much more. Potter Handy demands large cash settlements even where the business quickly fixes all potential violations, the case has no merit, the business has a recent CASp inspection and certificate,[5] or paying the settlement would mean the business will fail. Potter Handy also runs up its attorney's fees

[5] In fact, Potter Handy sometimes uses the fact that a business has had a CASp inspection *as further justification for suing the business*. *See, e.g.*, Complaint, *Garcia v. Tom Family Benevolent Ass'n*, (N.D. Cal., June 30, 2021, No. 3:21-cv-05084) at ¶ 13 ("Additionally, there was a Certified Access Specialist (CASP) letter affixed to the business window, dated March 17, 2017, during plaintiff's visit. Defendants, through the CASP inspection, likely were made aware of the obligations they had to make sure the premises were compliant for persons with disabilities.") By weaponizing the CASp process in its federal court cases, Potter Handy has further subverted the intent of the amended Unruh Act, which grants businesses certain advantages in state-court litigation for having obtained a CASp inspection.

(which it can recoup under the ADA if successful) to assert further pressure on its targets. Because it regularly costs between $50,000 or $100,000 to defend against an ADA/Unruh lawsuit, small "mom and pop" businesses have little choice but to submit and pay Potter Handy to leave them alone. After the business settles, the Serial Filer fails to return to the business, and the firm rarely if ever monitors the business's compliance with the ADA and Unruh Act, despite that being the alleged basis for the lawsuit. Instead, Potter Handy and the Serial Filer simply move on to other targets, filing an ever-increasing number of new lawsuits in order to keep the firm's revenues flowing.

12. This unlawful scheme has allowed Potter Handy to extract an enormous amount of money from California's small businesses. Based on the People's review of the federal courts' PACER filing system, a single one of Potter Handy's Serial Filers, Orlando Garcia, has settled more than 500 federal ADA/Unruh lawsuits since December 2019. Assuming an average settlement figure of $10,000, that means that Potter Handy has extracted ***more than $5,000,000*** from small businesses based on a single Serial Filer's cases in less than three years. Extrapolating to the many thousands of additional cases Potter Handy has filed on behalf of Brian Whitaker, Scott Johnson, and the other Serial Filers, it is reasonable to assume Potter Handy has drained ***tens of millions of dollars*** from California's small businesses during the statute of limitations period alone. None of this would be possible if Potter Handy did not intentionally use false standing allegations to keep federal court jurisdiction and avoid California's procedural reforms.

13. The firm's business practice of using false standing allegations to obtain federal court jurisdiction of lawsuits targeting the smallest businesses, including many businesses owned by immigrants, is unacceptable. As described *infra*, small businesses in San Francisco's Chinatown and across the Bay Area, many owned by Asian-American immigrants, were barely beginning to recover from the slowdown in business caused by the COVID-19 pandemic when they were sued by Potter Handy. Despite Potter Handy's suits being based on false standing allegations and thus frivolous, most of these businesses were forced to settle, further damaging

their economic viability. Some of these businesses are still operating at a loss, and others will take months to recoup the settlement figures.

14. Potter Handy's unlawful business practices cannot be tolerated and must be put to an end. Accordingly, the People bring this civil prosecution under the UCL to protect California's small businesses from Potter Handy's lawbreaking and fulfill the California Legislature's policy goal of putting a halt to abusive Unruh Act litigation.

PARTIES

15. The People of the State of California (the "People") bring this action by and through Chesa Boudin, District Attorney of the City and County of San Francisco, and George Gascón, District Attorney of the County of Los Angeles.

16. The People may bring a civil action to enjoin any person who engages, has engaged in, or proposes to engage in unfair competition, as defined in Business and Professions Code section 17200, and may seek civil penalties and restitution for each act of unfair competition. (Bus. & Prof. Code, §§ 17203, 17204, 17206.)

17. The People bring this action without prejudice to any other action or claim that the People may have based on separate, independent, and unrelated violations arising out of matters or allegations that are not set forth in this Complaint.

18. Defendant Potter Handy LLP, dba Center for Disability Access ("Potter Handy"), is a law firm, structured as a limited liability partnership organized under the laws of the State of California. Potter Handy's principal place of business is located at 8033 Linda Vista Rd, Suite 200, San Diego, CA 92111. Potter Handy files ADA lawsuits under the pseudonym "Center for Disability Access," a name which, on information and belief, is intended to mislead businesses and the public into believing Potter Handy is a legitimate disability rights advocacy group when it is in fact a for-profit law firm.

19. Defendant Mark Potter is a licensed California attorney who is the managing partner and founder of Potter Handy, and who practices law by, through, and at Potter Handy.

Defendant Potter oversees the firm's personnel and maintains and reviews all the firm's billing, in addition to personally litigating cases.[6]

20. Defendant Russell Handy is a licensed California attorney who is a named partner of Potter Handy, and who practices law by, through, and at Potter Handy.

21. Defendant Dennis Price is a licensed California attorney who is a partner of Potter Handy, works as a supervising and training attorney at the firm, and is involved in litigating the firm's appeals of its Serial Filer cases. He practices law by, through, and at Potter Handy.

22. Defendant Amanda Lockhart Seabock is a licensed California attorney who is a supervising attorney at Potter Handy, and who practices law by, through, and at Potter Handy. As of May 2021, Defendant Amanda Lockhart Seabock managed Potter Handy's discovery team, supervised all ADA lawsuits the firm files in the Northern District of California, and supervised settlement matters throughout California.

23. Defendants Christopher Seabock, Prathima Price, Raymond Ballister Jr., Phyl Grace, Christina Carson (aka Chris Carson), Elliott Montgomery, Faythe Gutierrez, Isabel Rose Masanque, Bradley Smith, Tehniat Zaman, and Josie Zimmerman are licensed California attorneys who practice law by, through, and at Potter Handy, or practiced law by, through, and at Potter Handy during the four years prior to the filing of this civil prosecution.

24. The true names and capacities of the defendants sued in this Complaint under the fictitious names of Does 1-100 are unknown to the People at this time, and the People therefore sue said defendants by such fictitious names pursuant to Code of Civil Procedure section 474. The People allege that defendants Does 1-100 are in some manner responsible for the events alleged herein. The People will seek leave to amend this Complaint to show the Does' true names and capacities when these facts have been determined.

[6] Additional detail regarding Defendants Potter, Handy, Dennis Price, and Amanda Lockhart Seabock is supplied by a declaration submitted by Defendant Potter in a May 2021 Serial Filer case. This declaration is attached as **Exhibit A** to the People's Complaint and incorporated by reference.

25. Whenever reference is made in this Complaint to any act of Potter Handy or of Defendants, individually or collectively, unless otherwise specified, such allegation or allegations shall be deemed to mean the act of each Defendant acting jointly and severally.

JURISDICTION AND VENUE

26. This Court has subject matter jurisdiction over this action pursuant to Article VI, section 10 of the California Constitution.

27. The Court has personal jurisdiction over Defendants. Defendant Potter Handy is incorporated and maintains its principal place of business in California, while the Defendants all work in Potter Handy's California offices. Defendants have filed thousands of cases in courts within the State of California alleging that California businesses violated California's Unruh Act. Defendants have thus taken advantage of the benefits and privileges of the laws of the State of California and have purposefully availed themselves of the California market.

28. Venue is proper in this Court pursuant to Code of Civil Procedure section 393 because Defendants' violations of law that occurred in the City and County of San Francisco are part of the case upon which the People seek penalties imposed by statute and, independently, because Defendants' business practices affect San Francisco consumers. Moreover, according to their recent pleadings, Defendants maintain a secondary office or facility within the City and County of San Francisco.

FACTUAL ALLEGATIONS

I. THE LEGAL REGIME GOVERNING DISABILITIES LAWSUITS

A. The Americans With Disabilities Act Creates a Private Enforcement System to Ensure Accessibility in Public Accommodations

29. The Americans With Disabilities Act of 1990 (as noted, "ADA") is the bedrock federal civil rights law that prohibits discrimination based on disability. Signed by President George H.W. Bush with the statement "Let the shameful wall of exclusion finally come tumbling down," the ADA's purpose is to ensure that people with disabilities have the same rights and opportunities as everyone else. Title III of the ADA, which applies to such "public accommodations" as private businesses that serve members of the public, sets forth the general

rule that "[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation[.]" (42 U.S.C. § 12182(a).)

30. Title III of the ADA also sets specific rules for places of public accommodations, including rules relating to the construction of new buildings and the removal of architectural barriers from existing buildings. Notably, while buildings constructed for first occupancy after January 26, 1993 must be "readily accessible to and usable by persons with disabilities, except where an entity can demonstrate that it is structurally impracticable to meet the requirements of such subsection," buildings constructed prior to that date must only "remove architectural barriers…where such removal is readily achievable."[7]

31. To enforce the provisions of Title III, the ADA empowers both the U.S. Attorney General and private plaintiffs to file lawsuits for injunctive relief, including court orders to alter facilities to make them accessible to persons with disabilities. (42 U.S.C. § 12188(a).) Private plaintiffs are not entitled to recover damages in ADA lawsuits but may recover reasonable attorney's fees if they prevail in litigation. (*Ibid.*; 42 U.S.C. § 2000a-3(b).)

B. California's Unruh Act Supplements the ADA by Allowing Plaintiffs to Demand Damages of No Less Than $4,000 for Each ADA Violation They Encounter

32. In 1992, California amended its State civil rights law, the Unruh Civil Rights Act ("Unruh Act"), to align with the federal ADA. As amended, the Unruh Act states that "[a]ll persons within the jurisdiction of the state are free and equal, and no matter what their…disability…are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all businesses establishments of every kind whatsoever." (Civ. Code, § 51(b).) The Unruh Act further states that "[a] violation of the right of any individual under the federal Americans With Disabilities Act of 1990…shall also constitute a violation of this section." (Civ. Code, § 51(f).)

[7] 42 U.S.C. §§ 12183(a)(1), 12182(b)(2)(A)(iv). Pre-1993 buildings that are *altered* after January 26, 1992 must, to "the maximum extent feasible," meet the "readily accessible to and usable by" standard applicable to new construction, but *only* with respect to the altered portion of the building. 42 U.S.C. § 12183(a)(2).

33. Like the ADA, the Unruh Act allows a prevailing plaintiff to obtain injunctive relief and attorney's fees. Unlike the ADA, however, the Unruh Act also allows private plaintiffs to recover "actual damages, and any amount that may be determined…up to a maximum of three times the amount of actual damage *but in no case less than four thousand dollars ($4,000)*." (Civ. Code, § 52 (emphasis added).) This means that a disabled plaintiff filing a lawsuit in California may bring both a federal ADA claim for injunctive relief and a state law Unruh Act claim for damages, all for the same alleged set of facts—an "ADA/Unruh" suit.

34. The ability to recover actual damages of no less than $4,000 per violation functions as a heavy incentive for California plaintiffs and plaintiffs' attorneys to file Unruh Act suits—either as standalone cases in state court or piggybacked onto a federal ADA claim in federal court.

C. The Unruh Act's Provision for Damages Created an Unfortunate Side Effect: A Cottage Industry of Plaintiffs' Attorneys Who Specialize in Shaking Down Small Businesses for Money Using Threats of Unruh Act Litigation

35. The combination of injunctive relief and damages allowed by combining federal and state claims into an ADA/Unruh suit has had an enormously positive effect by incentivizing plaintiffs' attorneys and disabled individuals to bring suit to eliminate barriers in public accommodations. Unfortunately, the heavy monetary damages allowed by the Unruh Act also had the unintended side effect of incentivizing unscrupulous attorneys to file enormous numbers of boilerplate lawsuits against small businesses for the sole purpose of extracting cash settlements, without regard as to whether the alleged violations even exist, would have been voluntarily cured in the absence of a lawsuit, or would even be remedied through settlement.

36. Anecdotal reports confirm the scale of this problem a decade ago. In 2010, *ABC7 Los Angeles* reported on a serial plaintiff who had filed more than 500 ADA lawsuits, including one lawsuit where he reportedly alleged a restaurant's bathroom mirror was too high, but later dismissed the case after surveillance footage showed he never visited the bathroom in question.[8] In March 2012, the *Mountain Democrat* reported that Pony Espresso, a small business in

[8] *Man sues hundreds over disability violations*, ABC7 Los Angeles (Sept. 8, 2010), <https://abc7.com/archive/7655664/>.

Pollocks Pines, California, was forced out of business by an ADA lawsuit filed by Serial Filer Scott Johnson, a client of Defendants who has been repeatedly accused of not actually visiting the businesses he sues.[9] That same month, the *Orange County Register* reported on a lawsuit filed by Chris Langer, another Serial Filer client of Defendants, against a small liquor store. The *Register* quoted an architect and ADA-compliance consultant who referred to Langer and Defendant Mark Potter as "drive-by litigants" who typically demanded $12,000 to settle a case; the article concluded that "[t]here's great value in disabled-rights litigation, but the practice of just driving around and trying to pick up $4,000 (or $12,000) a pop sounds a lot more like a shakedown than a civil-rights movement."[10]

37. Indeed, even as early as 2011, as reported by the *San Francisco Examiner*, then-San Francisco Supervisor David Chiu had proposed reforms to rein in "an epidemic of lawsuits alleging ADA violations," estimating that 4,809 ADA cases had been filed against California businesses since 2005. Then-Supervisor Chiu noted at the time that "There have been a handful of individuals who have made a living out of suing small businesses. It's a cottage industry." [11]

D. California Has Repeatedly Amended the Unruh Act to Rein in Abusive Litigation

38. In part because of this problem, in 2008, the California Legislature enacted Senate Bill No. 1608, including the Construction-Related Accessibility Standards Compliance Act ("CRASCA"), the first of a series of Unruh Act reforms intended to protect the rights of disabled persons while at the same time reducing unnecessary litigation. In Section 7, the Legislature stated as follows:

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[9] Schultz, *ADA attorney forces out small business Pollock,* Mountain Democrat (March 1, 2012), <https://www.mtdemocrat.com/news/ada-attorney-forces-out-small-business-pollock/>; *Sacramento Area Attorney Indicted for Filing False Tax Returns*, U.S. Dept. of J. (May 23, 2019, <https://www.justice.gov/usao-edca/pr/sacramento-area-attorney-indicted-filing-false-tax-returns>.

[10] Mickadeit, *Disability lawsuits: Shakedown or legit?*, Orange County Register (March 9, 2012), <https://www.ocregister.com/2012/03/09/disability-lawsuits-shakedown-or-legit/>.

[11] *Chiu proposal could curb costly ADA disability access lawsuits in San Francisco*, S.F. Examiner (Sept. 27, 2011), <https://www.sfexaminer.com/news/chiu-proposal-could-curb-costly-ada-disability-access-lawsuits-in-san-francisco/>.

> The Legislature finds and declares that, despite the fact that state law has provided persons with disabilities the right to full and equal access to public facilities since 1968, and that a violation of the right of any person under the [ADA] has also constituted a violation of the Unruh Civil Rights Act [] since 1992, persons with disabilities are still being denied full and equal access to public facilities in many instances. The Legislature further finds and declares that businesses in California have the responsibility to provide full and equal access to public facilities as required in the laws and regulations, but that compliance may be thwarted in some cases by conflicting state and federal regulations, which in turn results in unnecessary litigation.[12]

39. To help businesses comply with the laws and protect the rights of disabled persons while avoiding unnecessary litigation, the Legislature created the California Commission on Disability Access and set up a process by which businesses could voluntarily hire an inspector through the Certified Access Specialist program ("CASp").[13] These CASp inspectors are intended to help business owners evaluate their compliance with disability access standards, allowing businesses to receive inspection reports identifying changes they could make to improve accessibility. As an incentive, businesses that complete CASp inspections and are later sued for violating the Unruh Act may apply for an Early Evaluation Conference and stay of litigation, which promote early resolution and reduce costs, in part by requiring plaintiffs to submit itemized lists of alleged violations, damages and attorney's fees claims, and settlement demands.[14] Certain defendants also have the opportunity to reduce the $4,000 minimum Unruh Act damages to as low as $1,000 per violation.

40. Taken together, CRASCA and the CASp process represented a worthy step forward to facilitate increased accessibility while protecting businesses from excessive litigation. Unfortunately, they did not go far enough to combat indiscriminate ADA/Unruh litigation mills. By 2012, the epidemic of abusive Unruh Act litigation in California had grown to such proportions that the Legislature was compelled to step in once again. That year, in Senate Bill

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[12] Act of Sept. 28, 2008, § 7, 2008 Cal Stats. ch. 549 codified at Gov. Code, § 8299.

[13] *See* Civ. Code § 55.53.

[14] *See* Civ. Code § 55.54(d)(7).

No. 1186, the Legislature enacted a suite of reforms targeted at reining in abusive Unruh Act litigation. In Section 24 of the bill, the Legislature noted that the abusive actions of certain plaintiffs' attorneys—who, prior to the reforms, were sending large numbers of prelitigation demand letters—enriched only the attorneys and plaintiffs, without promoting the goals of accessibility for the plaintiff or the larger disability community:

> The Legislature finds and declares that a very small number of plaintiffs' attorneys have been abusing the right of petition under Sections 52 and 54.3 of the Civil Code by issuing a demand for money to a California business owner that demands the owner pay a quick settlement of the attorney's alleged claim under those laws or else incur greater liability and legal costs if a lawsuit is filed.
>
> …
>
> These "pay me now or pay me more" demands are used to scare businesses into paying quick settlements that only financially enrich the attorney and claimant and do not promote accessibility either for the claimant or the disability community as a whole. These practices, often involving a series of demand for money letters sent to numerous businesses, do not promote compliance with the accessibility requirements and erode public support for and confidence in our laws.[15]

41. Accordingly, as part of Senate Bill No. 1186, the California Legislature added a new provision to the Civil Code prohibiting attorneys from sending businesses up-front demands for money in pre-litigation demand letters alleging construction-related accessibility claims. (*See* Civ. Code, § 55.31(b).) Moreover, the Legislature modified the Code of Civil Procedure to impose heightened pleading requirements applicable only to Unruh Act construction-related accessibility claims, namely, that the plaintiff must allege an explanation of the specific access barrier the plaintiff personally encountered, the way in which the barrier denied the plaintiff full and equal use or access or deterred the individual on that particular occasion, and the exact dates of each occasion on which the plaintiff encountered the specific barrier. (*See* Code Civ. Proc., § 425.50(a).) Furthermore, the Legislature required that all Unruh Act lawsuits alleging construction-related accessibility claims be verified by the plaintiff, *i.e.*, that the plaintiff swear

[15] Act of Sept. 19, 2012, § 24, 2012 Cal. Stats. ch. 383.

under penalty of perjury that the allegations in their lawsuits are true and correct. (*See* Code Civ. Proc., § 425.50(b).)

42. Despite the 2012 reforms, the onslaught of abusive Unruh Act litigation continued, forcing the California Legislature to step in yet again. In 2015, the Legislature enacted Assembly Bill No. 1521, attempting to preserve the Unruh Act's protections for disabled persons' civil rights while limiting abusive litigation:

> The Legislature finds and declares all of the following:
>
> (1) Protection of the civil rights of persons with disabilities is of the utmost importance to this state, and private enforcement is the essential means of achieving that goal, as the law has been designed.
>
> (2) According to information from the California Commission on Disability Access, more than one-half, or 54 percent, of all construction-related accessibility complaints filed between 2012 and 2014 were filed by two law firms. Forty-six percent of all complaints were filed by a total of 14 parties. Therefore, a very small number of plaintiffs have filed a disproportionately large number of the construction-related accessibility claims in the state, from 70 to 300 lawsuits each year.[16]

The Legislature specifically noted that *"**these lawsuits are frequently filed against small businesses on the basis of boilerplate complaints, apparently seeking quick cash settlements rather than correction of the accessibility violation***."[17] The Legislature went on to note the harm that this type of litigation causes to disabled consumers:

> This practice unfairly taints the reputation of other innocent disabled consumers who are merely trying to go about their daily lives accessing public accommodations as they are entitled to have full and equal access under the state's Unruh Civil Rights Act (Section 51 of the Civil Code) and the federal Americans with Disability Act of 1990 (Public Law 101-336).[18]

43. As part of Assembly Bill No. 1521, the Legislature instituted additional filing requirements that apply *only* to what it termed "high-frequency litigant[s]," plaintiffs who filed

[16] Act of Oct. 10, 2015, § 6, 2015 Cal. Stats. ch. 755, codified at Code Civ. Proc., § 425.55.

[17] *Ibid.* (emphasis added).

[18] *Ibid.*

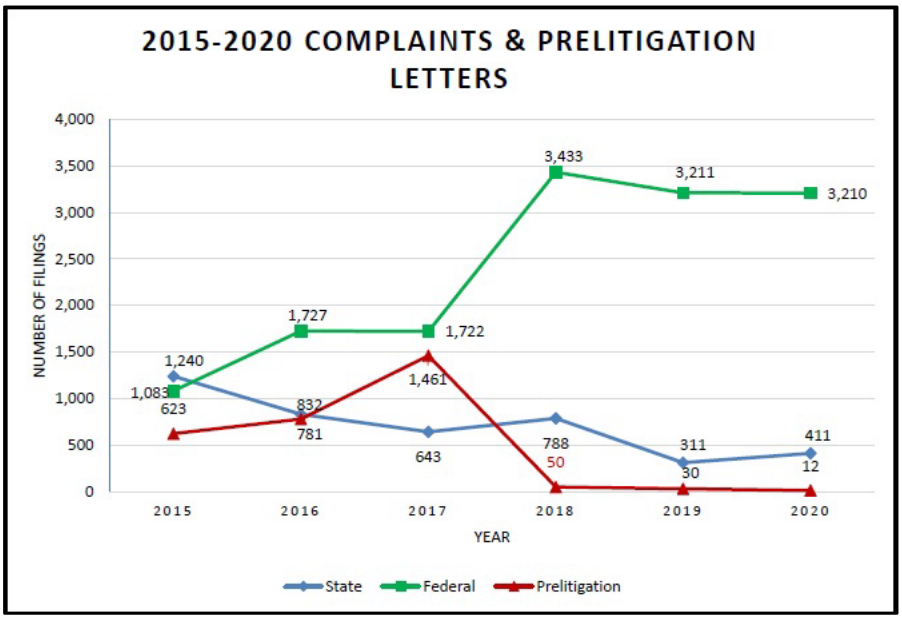
10 or more lawsuits alleging construction-related accessibility violations in the preceding 12-month period. (Code Civ. Proc., § 425.55(a)-(b).) Such serial plaintiffs would be subject to additional pleading requirements, including that they would need to disclose their status as a high-frequency litigant, how many complaints they had filed in the prior 12 months, the reason why the plaintiff was in "the geographic area of the defendant's business," and why the plaintiff "desired to access the defendant's business." (Code Civ. Proc., § 425.50(a)(4)(A).) Moreover, the Legislature required these plaintiffs' *attorneys* to sign all complaints alleging construction-related accessibility claims to certify the complaints were not being presented for the purpose of harassing or increasing litigation costs, that the claims were warranted under the law, and that the allegations and factual contentions had evidentiary support. (Code Civ. Proc., § 425.50(c).) Furthermore, the Legislature imposed a $1,000 additional filing fee—over and above the ordinary civil filing fee—for each new case filed by a high-frequency litigant plaintiff. (Gov. Code, § 70616.5.)

E. Over the Past Five Years, Defendants Shifted Most of Their Cases to Federal Court in Order to Avoid the Stricter Procedural Requirements of California's Unruh Act Reforms

44. The post-2015 Unruh Act's requirements of heightened pleading, verification under penalty of perjury, and additional fees, as well as the CASp program and related protections against unnecessary litigation, do not prevent honest disability rights attorneys and disabled plaintiffs from seeking justice in state court. However, they are a significant barrier to the business model of unscrupulous attorneys like Defendants, who—as the California Legislature recognized—file vast numbers of indiscriminate lawsuits in order to force small businesses who cannot risk the uncertainty and expense of litigation to pay cash settlements.

45. Sadly, the Legislature's multiple reforms did not have the desired effect of forcing Defendants to abandon their abusive business model. The reason for this is that the heightened pleading standards, requirement to plead under penalty of perjury, additional fees, and the protections offered by the CASp program are *state law* procedural requirements that have not been applied in federal court. After the California Legislature's reforms went into effect, Defendants and other "ADA mill" firms simply moved their cases to federal court, pleading

ADA claims to invoke federal jurisdiction and coupling them with Unruh Act damages claims piggybacked into federal court using the doctrine of supplemental jurisdiction.[19] The below graph,[20] created by the California Commission on Disability Access, reflects a steady decline in state court Unruh Act filings and prelitigation demand letters since 2015, and a simultaneous climb in federal court ADA filings:



46. The federal Ninth Circuit recently explained this phenomenon in a published opinion issued in a Serial Filer case brought by Defendants:

> In response to the resulting substantial volume of claims asserted under the Unruh Act, and the concern that high-frequency litigants may be using the statute to obtain monetary relief for themselves without accompanying adjustments to locations to assure accessibility to others, California chose not to reform the underlying cause of action but instead to impose filing restrictions designed to

[19] *See* 28 U.S.C. § 1367(a) ("[I]n any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.")

[20] 2020 Annual Report to the Legislature, Appendix A, Cal. Com. on Disability Access (Jan. 31, 2021), <https://www.dgs.ca.gov/Resources/Legislative-Reports.> The numbers listed are not exhaustive as the Commission's dataset, which relies on attorney self-reporting, is not complete. However, it is demonstrative of the overall trend away from state court Unruh cases and toward federal court ADA/Unruh cases.

> address that concern. Because these procedural restrictions apparently have not been applied in federal court, the consequence of these various laws, taken together, was to make it very unattractive to file such Unruh Act suits in state court but very attractive to file them in federal court. Given that the Unruh Act borrows the ADA's substantive standards as the predicate for its cause of action, a federal forum is readily available simply by pairing the Unruh Act claim with a companion ADA claim for injunctive relief.… The apparent result has been a wholesale shifting of Unruh Act/ADA cases into the U.S. District Court for the Central District of California (and perhaps the other California federal courts as well).

(*Arroyo v. Rosas* (Dec. 10, 2021) – F.4th –, 2021 U.S. App. LEXIS 36510, at *21-22.)

47. Indeed, the scramble by Defendants to file joint ADA/Unruh Act cases in federal court solely to avoid California's attempts to rein in their bad behavior is striking. As the *Arroyo* court noted, in 2013, there were only 419 total ADA cases filed in the U.S. District Court for the Central District of California. In 2016, the first full year after California's reform went into place, this number rose to 1,386, and then to 1,670 in 2017, 2,720 in 2018, and 3,374 in 2019. Likewise, the *Orange County Register* reported in 2019 that there were 2,751 federal ADA cases filed in California as a whole in 2017, but that number increased to 4,249 in 2018.[21] As the Ninth Circuit stated in *Arroyo*, this "wholesale shifting of cases from state to federal court" has resulted in a situation where "***the procedural strictures that California put in place have been rendered largely toothless, because they can now be readily evaded***." (*Arroyo*, *supra*, 2021 U.S. App. LEXIS 36510, at *21, *23 (emphasis added).)

F. To Bring an ADA/Unruh Lawsuit in Federal Court, Plaintiffs Must Plead and Prove Standing, *I.E.,* That They Personally Encountered a Barrier at the Defendant Business and Have a Genuine Intent to Return in the Future

48. Although filing ADA/Unruh Act cases in federal court has allowed Defendants and their cohorts to avoid California's reforms on abusive Unruh Act litigation, it requires them to instead satisfy federal jurisdictional requirements, foremost among them the U.S. Constitution's requirement that a plaintiff plead and prove standing. As U.S. Supreme Court

[21] Schwebke, *These 'ghost' legal clients are shaking down mom-and-pop businesses under the guise of disability rights*, Orange County Register (July 21, 2019), <https://www.ocregister.com/2019/07/21/these-ghost-legal-clients-are-shaking-down-mom-and-pop-businesses-under-the-guise-of-disability-rights/>.

case law states, to have Article III standing, a plaintiff must have suffered (1) an injury in fact; (2) that is fairly traceable to the defendant; and (3) is likely to be redressed by a favorable decision.[22] Importantly, "Article III standing requires a concrete injury even in the context of a statutory violation"—that is, ***even if the business in question violated the ADA, the lawsuit cannot go forward if that specific plaintiff lacks standing***.[23]

49. Set on the backdrop of this more general case law, the Ninth Circuit's *en banc* decision in *Chapman v. Pier 1 Imports* sets forth the specific standard an ADA plaintiff must meet to plead and prove standing in a California federal court case alleging construction-related accessibility violations. In most cases, an ADA plaintiff must first plead and prove that they personally encountered at least one physical barrier at a business, and that the barrier denied them full and equal access to that business. Additionally, because the only remedy available under the federal ADA is *injunctive relief against future harm*, the plaintiff must plead and prove a genuine intent to return to the business once the alleged unlawful barrier is removed:

> An ADA plaintiff must show at each stage of the proceedings either that he is deterred from returning to the facility or that he intends to return to the facility and is therefore likely to suffer repeated injury. ***He lacks standing if he is indifferent to returning to the store or if his alleged intent to return is not genuine,*** or if the barriers he seeks to enjoin do not pose a real and immediate threat to him due to his particular disability.
>
> …
>
> The threat of repeated injury in the future is "real and immediate" so long as the encountered barriers either ***deter him from returning*** or continue to exist at a place of public accommodation ***to which he intends to return***.[24]

50. Thus, to maintain an ADA/Unruh action in federal court, thereby avoiding California's procedural reforms on Unruh Act damages claims, a plaintiff must plead and prove not only that they personally encountered an ADA violation at a defendant business, but that they

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[22] *Lujan v. Defenders of Wildlife* (1992) 504 U.S. 555, 560-61.

[23] *Spokeo, Inc. v. Robins* (2016) 136 S.Ct. 1540, 1549.

[24] *Chapman v. Pier 1 Imports, Inc.* (9th Cir. 2011) 631 F.3d 939, 953 (en banc) (emphasis added).

genuinely intend to return to the business once the alleged violation is cured. If the plaintiff did not personally encounter the alleged violation, or was not prevented or deterred by it from accessing the business, or if the plaintiff *did* encounter the alleged violation but has no genuine intent to return to the business, the federal court must dismiss the ADA claim for lack of standing.[25] Once that occurs, federal courts will typically decline to exercise jurisdiction over the Unruh Act damages claim and will dismiss the suit in its entirety.

51. It bears repeating that these federal standing requirements are prerequisites to bringing a lawsuit ***whether or not the business in question violated the ADA***. Put another way, even if a defendant business is intentionally violating the ADA, an ADA lawsuit can only go forward if the particular plaintiff who sues that business pleads and proves they personally encountered a barrier and have a genuine intent to return. "Only those plaintiffs who have been *concretely harmed* by a defendant's statutory violation may sue that private defendant over that violation in federal court . . . . Article III grants federal courts the power to redress harms that defendants cause plaintiffs, not a freewheeling power to hold defendants accountable for legal infractions."[26]

52. Thus, plaintiffs and plaintiffs' attorneys who file ADA/Unruh suits in federal court must fulfill the federal courts' standing requirements or suffer dismissal. For this reason, the requirement that an ADA/Unruh plaintiff plead and prove Article III standing is not some immaterial technicality: it is a bedrock requirement of the federal court system, and a critical protection against abusive, fraudulent litigation.

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[25] Whether a plaintiff personally encounters a barrier or genuinely intends to return to a business is separate from the issue of the plaintiff's *motivation* for doing so. In 2017, a Ninth Circuit panel concluded that "tester" standing is allowable under the ADA, *i.e.*, that a plaintiff can have standing even if their only motivation for visiting a business is to test its compliance with the ADA. *See Civil Rights Educ. & Enforcement Ctr. v. Hosp. Properties Trust*, 867 F.3d 1093 (9th Cir. 2017) 1101-02. Regardless of a given plaintiff's subjective motivation, the plaintiff must actually personally encounter a barrier and have a genuine intent to return to the business to have standing.

[26] *TransUnion, LLC v. Ramirez* (2021) 141 S.Ct. 2190, 2205 (emphasis original, citations omitted).

II. POTTER HANDY'S SCHEME TO USE UNLAWFUL ADA/UNRUH CASES TO PRESSURE SMALL BUSINESSES INTO PAYING CASH SETTLEMENTS

A. Potter Handy's Attorneys Collude with a Stable of Repeat ADA/Unruh Plaintiffs to File Deceitful Boilerplate Lawsuits Containing False Statements

53. For many years, Potter Handy, using the pseudonym "Center for Disability Access," has been one of the top filers of ADA and Unruh Act lawsuits in the State of California. The overwhelming majority of the firm's cases are boilerplate lawsuits, typically filed on behalf of a few repeat plaintiffs and solely intended to extract cash settlements from small businesses. As the California Legislature has determined, indiscriminate, boilerplate lawsuits are contrary to the intent of the Unruh Act and unfairly taint the reputation of innocent disabled consumers who are merely trying to go about their daily lives accessing public accommodations.

54. Relevant here, over the statute of limitations period, Potter Handy has not merely filed vast numbers of boilerplate ADA/Unruh lawsuits; it has unlawfully deceived federal courts and sued businesses by falsely alleging in those lawsuits that its Serial Filers meet federal standing requirements. (*See* Bus. & Prof. Code, § 6128(a).) Each of these lawsuits falsely alleges that the Serial Filer in question *actually* personally encountered and was deterred by certain physical barriers, and that the Serial Filer *genuinely* intends to return to the sued business.[27] Collectively, these cases comprise the overwhelming majority of the firm's litigation matters, and a substantial percentage of all disability lawsuits filed in the State of California. Potter Handy's Serial Filers—all of whom fulfill the definition of "high frequency litigants" under California law and would have to comply with California's procedural reforms on abusive

[27] Potter Handy has long been alleged to engage in fraud. Notably, in 2005, a former Potter Handy client named Phillip DiPrima asked to dismiss cases that Potter Handy had filed on his behalf, submitting a sworn declaration accusing Defendants Mark Potter and Russell Handy of multiple fraudulent acts. Relevant here, Mr. DiPrima accused Defendants Potter and Handy of (1) alleging ADA violations in complaints filed in Mr. DiPrima's name that Mr. DiPrima did not experience and had not told Potter Handy he experienced; and (2) entering into settlements on Mr. DiPrima's behalf without obtaining commitments to fix the alleged ADA violations, solely to maximize their own compensation. Defendants Potter and Handy retaliated against Mr. DiPrima by suing him for libel, but on information and belief the majority of Mr. DiPrima's allegations were never fully investigated or adjudicated.

A copy of Mr. DiPrima's declaration is attached as **Exhibit B** and incorporated into the People's complaint by reference.

Unruh Act litigation if they filed cases in state court—prominently include Orlando Garcia, Brian Whitaker, Scott Johnson, Christopher Langer, and Rafael Arroyo, as well as other individuals.[28]

55. On information and belief, Potter Handy, or its agents and investigators, gives the Serial Filers instructions as to which regions, neighborhoods, or kinds of businesses to target. Potter Handy and the attorney Defendants typically sue small businesses that are unlikely to have the resources necessary to defend themselves against frivolous litigation, and they rarely file lawsuits against large corporations, which represent only a small proportion of Defendants' targets. Indeed, the People's review of the over 800 cases that Defendants filed on behalf of Serial Filer Orlando Garcia indicates that he mostly sues small businesses, such as convenience stores, laundromats, liquor stores, beauty salons, and small restaurants and retail shops. Based on the People's review, Potter Handy also appears to target businesses in marginalized communities, particularly those that have large populations of immigrants and residents who do not speak English or for whom English is a second language, who may be less familiar with the intricacies of the American legal system or otherwise may be easier to frighten into complying with monetary demands cloaked in the trappings of legal process. Notably, beginning in late 2020 and early 2021, Defendants, conspiring with and aided and abetted by Serial Filers Orlando Garcia and Brian Whitaker, began filing dozens of lawsuits against small businesses in San Francisco's Chinatown—a neighborhood with a high proportion of immigrants and monolingual Cantonese speakers.

56. On information and belief, once Potter Handy has identified particular businesses, neighborhoods, or regions for the Serial Filers to target, they coordinate with the Serial Filers to give them instructions on where to go. This coordination is best demonstrated by an early 2021

[28] Certain of the Serial Filers, including Orlando Garcia, are also plaintiffs in large numbers of Unruh Act "website accessibility" claims Potter Handy files, typically in California Superior Court. Website accessibility claims are generally interpreted as not being subject to many of California's reforms on abusive Unruh Act litigation. The fact that Potter Handy chooses to file large numbers of website accessibility cases in Superior Court is further evidence that the firm's decision to file physical-barrier cases in federal court is solely intended to circumvent California's reforms on boilerplate Unruh Act litigation.

geographical shift by Mr. Garcia and Mr. Whitaker, two of Potter Handy's most prolific Serial Filers, who suddenly moved their activities from Los Angeles to the San Francisco Bay Area, despite being residents of Los Angeles County.

57. Brian Whitaker, on whose behalf Potter Handy filed approximately 1,100 federal ADA/Unruh cases in the Los Angeles area between 2018 and early 2021, stopped initiating new cases there in early 2021. On information and belief, this was in part due to the fact that some of the federal district court judges in the Central District of California, which includes Los Angeles, had become familiar with Defendants' abusive practices and began either dismissing their lawsuits or declining to exercise jurisdiction over the state-law Unruh Act claims that give Potter Handy the ability to demand damages.[29] Conversely, on information and belief Defendants viewed the Northern District of California (covering the Bay Area) as a more plaintiff-favorable and profitable venue to file cases in, in part due to the existence of that court's General Order No. 56. That Order expressly encourages settlement in ADA cases, doing so by requiring that businesses obtain a court order prior to conducting any discovery (often necessary to discover the Serial Filers' lack of standing) while requiring them to participate in early in-person settlement meetings and to allow plaintiffs' counsel to conduct site inspections.[30] Accordingly, just as Mr. Whitaker tapered off his activities in Los Angeles in early 2021, Defendants began filing an enormous number of federal cases on his behalf in federal courts in San Francisco, Oakland, and San Jose, eventually reaching over 500 new cases filed between January 2021 and February 2022.

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[29] An example of one judge's familiarity with Potter Handy comes from the March 2020 ruling in *Whitaker v. PQ Americana, Inc.* (C.D. Cal. March 20, 2020) 2020 U.S. Dist. LEXIS 71958, at *7-9: "Plaintiff's conclusory allegation of deterrence, especially when viewed in light of his extensive filings, is insufficient to support standing . . . . The Court's conclusion is buttressed by the fact that Plaintiff has filed hundreds of disability discrimination lawsuits and, consistent with the Court's 'judicial experience and common sense,' could not possibly return to each of the places he has sued."

[30] *See* General Order No. 56: Americans With Disabilities Act Access Litigation (Amended Jan. 1, 2020), <https://cand.uscourts.gov/wp-content/uploads/general-orders/GO-56.pdf>.

58. Similarly, Orlando Garcia, on whose behalf Potter Handy filed nearly 500 physical-barrier ADA/Unruh cases in Los Angeles's federal courts beginning in 2019, suddenly stopped initiating cases there in early 2021. Instead, like they did with Mr. Whitaker, Defendants began filing cases on Mr. Garcia's behalf in San Francisco, Oakland, and San Jose, reaching over 320 physical-barrier ADA/Unruh cases filed in the Northern District of California in a ten-month period from May 2021 to March 2022.[31]

59. This sudden, close-in-time shift from Los Angeles to the Bay Area by two of the most notorious Serial Filers in Potter Handy's stable—both of whom live in Los Angeles County—could only have been coordinated by and at the direction of Defendants.[32] Moreover, it underscores the fact that the Serial Filers' lawsuits are not intended to remedy ADA violations personally encountered by the Serial Filers in their day-to-day lives in their own communities, but to maximize financial returns for Defendants and the Serial Filers themselves by targeting vulnerable small businesses in plaintiff-friendly judicial venues.

60. Once Potter Handy and its Serial Filers have identified new targets, the Serial Filers "visit" the businesses. However, they often do not actually go to the targeted businesses in person, let alone personally encounter any physical barriers.[33] Instead, they sometimes engage in "drive-by" visits, in which they do not actually enter the business but instead drive past it or pass it by on the sidewalk—all for the purpose of creating plausible deniability that they visited the

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[31] Prior to moving his activities to the Bay Area, in late 2020 and early 2021, Defendants filed over 80 ADA/Unruh cases in *state court* on Mr. Garcia's behalf against hotels, alleging those hotels had deficient websites. As noted *supra*, plaintiffs asserting website-related violations in state court do not have to comply with the Unruh Act's procedural reforms that apply in physical-barrier cases.

[32] In fact, Mr. Garcia admitted in a June 2021 deposition in the case *Garcia v. Four Café Inc.* (C.D. Cal., Aug. 13, 2020, No. 2:20-cv-07278), that he had not left southern California between 2016 and June 2021. Additional detail is provided in footnote 59, *infra*.

[33] Indeed, the most prolific Serial Filer that colludes with Potter Handy, Scott Johnson—who has been the plaintiff in over 6,250 ADA cases since 2003—has repeatedly been accused of not actually visiting the businesses he sues. *See Serial ADA filer sets sights on Bay Area merchants, submitting 1,000 complaints in two years*, The Mercury News (June 28, 2021), <https://www.mercurynews.com/2021/06/28/serial-ada-filer-sets-sights-on-bay-area-merchants-submitting-1000-complaints-in-two-years/>.

business and personally encountered an unlawful barrier, as needed to invoke federal jurisdiction. On these "visits," the Serial Filers are sometimes accompanied by helpers or assistants who scout out businesses and sometimes document potential ADA violations in their stead. For example, Orlando Garcia is often accompanied and assisted by his ex-wife, while Brian Whitaker is often accompanied and assisted by his girlfriend and various friends.

61. On other occasions, on information and belief, the Serial Filers do not visit the businesses themselves at all and simply coordinate with Potter Handy as to which businesses should be sued. Potter Handy will then send one of its paid investigators to visit the business in person days or weeks after the purported "visit" to take photographs and measurements, giving Defendants the bare information necessary to file a minimally sufficient federal court complaint that pleads the existence of an ADA violation at that business. Because the Serial Filers often do not actually encounter any barriers themselves or keep track of what particular barrier supposedly deterred them from patronizing the businesses (which they never actually had any real intent of visiting or patronizing), Defendants must conduct this kind of follow-up investigation to obtain the site-specific information needed to fill out a boilerplate complaint template. However, even this information is of questionable reliability, casting further doubt on the veracity of Defendants' practices and whether the Serial Filers actually encounter ADA violations. Mr. Evens Louis, one of Defendants' investigators, has testified that when he visits businesses at Potter Handy's direction, he will sometimes take measurements using the "body transference" method—*i.e.*, he measures the width of store aisles by counting off steps with his feet, and measures counter heights by extrapolating to where the countertop comes in relationship to his navel.[34]

62. After the investigators finish their work, Defendants file an ADA/Unruh lawsuit in federal court, typically one to six months after the date of the alleged visit. In each and every physical-barrier ADA/Unruh case that Defendants file in federal court on behalf of one of their

[34] A partial transcript of the trial of *Garcia v. Josefina Rodriguez* (C.D. Cal., Aug. 11, 2021, No. 2:20-cv-05647), including Mr. Louis's testimony regarding body transference measurements at pages 28-35, is attached as **Exhibit C** and incorporated by reference.

Serial Filers, Defendants submit a boilerplate federal court complaint styled using the same basic pleading pattern and containing the same basic allegations. For example, during 2021 and 2022, Defendants' physical-barrier ADA/Unruh complaints contained variations of the following allegations:[35]

a. First, that the Serial Filer is a California resident with physical disabilities, who cannot walk and must use a wheelchair for mobility.

b. Second, that the Serial Filer attempted to visit the sued defendant's business during a particular month (*e.g.*, June 2021) "with the intention to avail himself of its good or services motivated in part to determine if the defendants comply with the disability access laws." Potter Handy does *not* allege the specific date on which the Serial Filer supposedly visited the business, despite having this information available to it. On information and belief, this omission is intentional, designed (in part) to make it more difficult for the defendant business to determine after reviewing the complaint whether the Serial Filer actually visited the business or encountered any barriers.

c. Third, that the business contained some kind of physical barrier in violation of the ADA, almost always phrased in extremely generic terms. For example, Potter Handy frequently alleges that "on the date of the plaintiff's visit, the defendants failed to provide wheelchair accessible paths of travel in conformance with the ADA Standards as it relates to wheelchair users like the plaintiff." Other purported physical barriers Potter Handy frequently alleges in its Serial Filer suits include a lack of wheelchair accessible sales counters, wheelchair accessible parking, and wheelchair accessible outdoor dining surfaces.

d. Fourth, that the Serial Filer personally encountered at least one such physical barrier, usually one that is alleged in a very generic fashion. Examples of

[35] An example of one such federal complaint filed by Potter Handy on behalf of Orlando Garcia is attached as **Exhibit D** and incorporated by reference.

such alleged barriers include "a slope of about 20%, which was too steep for plaintiff"; or that "the ramp that runs up to the entrance did not have a level landing"; or that "the sales and service counters were too high"; or a "lack of sufficient knee or toe clearance under the outside dining surfaces for wheelchair users."[36]

e. Fifth, that the Serial Filer "believes there are other features of the [named kind of violation in question, *e.g.*, 'paths of travel'] that likely fail to comply with the ADA Standards."

f. Sixth, that "[t]he barriers identified above are easily removed without much difficulty or expense. They are the types of barriers identified by the Department of Justice as presumably readily achievable to remove and, in fact, these barriers are readily achievable to remove. Moreover, there are numerous alternative accommodations that could be made to provide a greater level of access if complete removal were not achievable."

g. Seventh, that the Serial Filer "was specifically deterred" from returning and patronizing the business "due to his actual personal knowledge of the barriers gleaned from his encounter with them," but that the Serial Filer "will return to [the business] to avail himself of its good or services and to determine compliance with the disability access laws once it is represented to him that [the business] and its facilities are accessible. Plaintiff is currently deterred from doing so because of his knowledge of the existing barriers and his uncertainty about the existence of yet other barriers on the site."

h. Eighth, that the allegations state a violation of the ADA, 42 U.S.C. § 12101 *et seq.*, as necessary to satisfy federal jurisdictional requirements and keep the case in federal court.

[36] *See, e.g.*, *Garcia v. Fruitvale Bottles & Liquor* (N.D. Cal., May 14, 2021, No. 3:21-cv-03619); *Garcia v. Algazzalli* (N.D. Cal., June 28, 2021, No. 3:21-cv-04923); *Johnson v. NVP Associates* (N.D. Cal., Jan. 25, 2022, No. 5:22-cv-00483); *Garcia v. Stone* (N.D. Cal., June 6, 2021, No. 3:21-cv-04394).

i. Ninth, that the allegations also state a violation of the Unruh Act, California Civil Code § 51-53, as necessary to demand damages.

j. Tenth, a request for injunctive relief under the ADA and for actual damages, at a statutory minimum of $4,000 per violation, pursuant to the Unruh Act.

63. Importantly, the physical barriers that Potter Handy alleges its Serial Filers encountered are sometimes false, incorrect, or do not rise to the level of a legal violation under the circumstances of the particular case—especially for lawsuits filed against businesses in older buildings, which must only make alterations where doing so is "readily achievable." (42 U.S.C. §§ 12182(a)(1), (b)(2)(A)(iv).) Indeed, in the very small proportion of cases that are litigated to judgment on the merits, Defendants have sometimes lost because the courts conclude that the construction alterations necessary to cure the businesses' alleged violations would not be readily achievable, and as a result there is no ADA violation at all.[37] Defendants' assertion of non-meritorious violations is in part because the sheer volume of cases Defendants file makes it very difficult for them to administer their own cases or keep track of which violations supposedly exist at which businesses.[38] However, the merits of the allegations in any given case are

[37] *See, e.g.*, Order and Judgment Re Court Trial, *Garcia v. Josefina Rodriguez*, (C.D. Cal., July 13, 2021, No. 2:20-cv-05647) at 3 (not readily achievable to fix a sloped floor because it would cost the business $16,140 to fix); Order re Defendants' Motion for Summary Judgment, *Garcia v. Deanna Antoinette Ductoc* (C.D. Cal., Nov. 16, 2021, No. 2:20-cv-09097) (granting summary judgment for a small bakery sued by Defendants, finding it was not readily achievable to install a permanent ADA-compliant ramp at the bakery's entrance because it would cost the business at least $43,000); *see also, e.g.*, Order Re: Renewed Application for Default Judgment, *Garcia v. Jesus Macias* (C.D. Cal., Feb. 22, 2022, No. 2:20-cv-09888) (in response to an application for default judgment, *sua sponte* considering the issue of whether removing an alleged barrier was readily achievable, concluding it was not, and dismissing the lawsuit).

[38] Defendants' difficulties in managing the huge volume of boilerplate lawsuits they file are demonstrated by their failures in *Garcia v. Chew Lun Benevolent Association* (N.D. Cal., June 14, 2021, No. 4:21-cv-04547). In that case, federal Magistrate Judge Sallie Kim was forced to issue no less than ***four*** Orders to Show Cause due to Defendants' repeated failure to timely file necessary motions, appear at hearings for their own motions, or appropriately respond to prior Orders to Show Cause. In response, Defendant Josie Zimmerman submitted a declaration stating that Potter Handy "is in the midst of reassigning cases to ensure more consistent attorney appearances throughout the life of a case" and Defendant Tehniat Zaman submitted a declaration stating that Potter Handy "has hired additional attorneys and staff to assure no future deadlines are overlooked." Ultimately, Judge Kim sanctioned Defendants, referring Defendants Amanda

(continued on next page)

essentially irrelevant to Potter Handy's business model, which is based on settling large numbers of deceitful ADA/Unruh cases *before* the Serial Filers' allegations are adjudicated—very often within a few months of filing.

64. Shortly after filing a federal ADA/Unruh lawsuit, Potter Handy demands that the sued business enter into a settlement agreement, typically refusing to settle for less than $10,000 and often demanding significantly more. Although many businesses would prevail if they litigated to judgment, either because the Serial Filer lacks standing or because the business is already fully compliant with the ADA (either because the violation does not exist at all, or because curing the alleged violation is not readily achievable for the business), in the vast majority of cases businesses simply settle as quickly as possible, without ever litigating the merits of the Serial Filers' allegations. This is because even the expense of *successfully* defending an ADA/Unruh lawsuit can easily cost a business over $50,000 or $100,000 in costs and fees.

65. In part, the high cost of defending against one of Potter Handy's fraudulent lawsuits is because Defendants demand large cash settlements even if the sued business quickly fixes all potential violations, will not dismiss cases they know they would lose if litigated to judgment, intentionally run up their attorney's fees so they can make higher settlement demands, and generally refuse to engage in good faith negotiations, thereby wearing out their small business targets and further pressuring them into settling cases.[39] For example, in *Langer v. Badger Co.*, discussed at more length *infra*, Defendants Handy and Carson were sanctioned by the federal Southern District of California (Chief Judge Larry Alan Burns) for intentionally proceeding with a Serial Filer ADA claim against a business that had already shut down,

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Lockhart Seabock and Tehniat Zaman to the Northern District of California's Standing Committee on Professional Conduct for failing to "meet the minimum standards of conduct for this Court."

[39] As one federal court noted in ruling on a fee request, Defendants submitted "unreasonably inflated billing records." Order Granting in Part Plaintiff's Application for Default Judgment and Request to Affix Attorney's Fees, *Garcia v. LA Florence Property, Inc.* (C.D. Cal., Jan. 27, 2021, No. 2:20-cv-08383).

eliminating the Serial Filer's standing to seek an injunction and rendering the ADA claim moot. Perhaps even more egregiously, Defendants Potter and Grace were recently sanctioned by the federal Southern District of California (Judge John Houston) for filing a case on behalf of longtime Serial Filer Enrique Lozano. In 2001, Defendants filed and subsequently settled an ADA case on behalf of Mr. Lozano against Beamspeed, an internet service provider located in Calexico, California. In 2014, Defendants filed *another* case on Mr. Lozano's behalf against Beamspeed, ***alleging the exact same disabled parking violation Defendants had already agreed was cured in the 2001 case's settlement***. After lengthy proceedings in the District Court and Ninth Circuit, in March 2022 Judge Houston sanctioned Defendants, finding they had filed and maintained a "baseless lawsuit" and had "ignore[ed] Defendants' counsel's repeated requests for a copy of the settlement agreement and then doubl[ed] the settlement demand when they finally provided a copy of the agreement to Defendant's counsel, rather than dismissing the action."[40]

66. Faced with Defendants' aggressive, unlawful business practices, most targeted businesses, particularly small "mom and pop" businesses without significant financial resources to draw on, have no practical choice but to accede to Defendants' demands and settle, often paying a minimum of between $10,000 and $20,000 to do so. These settlement agreements typically require the businesses to cure any ADA violations that may exist on the premises, but Defendants rarely monitor businesses' compliance after a settlement, instead focusing their resources and energies on filing new lawsuits in order to keep the money flowing.

67. Largely because of this all-encompassing focus on filing and settling as many cases as possible, and contrary to the Serial Filers' allegations that they are deterred from patronizing the sued businesses because of the existence of the alleged violations but intend to return once the violations are cured, ***Potter Handy's Serial Filers almost never return to the businesses they sue after a settlement is reached***. Monitoring and ensuring compliance with the ADA is an expensive, time-intensive endeavor that is, at best, an ancillary goal of Defendants and their Serial Filer clients. Their primary, overriding goal is to maximize their own financial

[40] Order Granting Rule 11 Sanctions and Sanctions Under 28 U.S.C. § 1927, *Lozano v. Cabrera et al.* (S.D. Cal., March 2, 2022, No. 3:14-cv-00333).

gain by filing and settling as many boilerplate lawsuits as possible, and time a Serial Filer spends returning to a business to monitor compliance is time the Serial Filer cannot spend seeking out new targets. Thus, instead of coordinating with the Serial Filers to ensure they actually return to businesses after settlements and monitor compliance, on information and belief Defendants encourage their Serial Filers to instead seek out new targets, all so they can maximize their own profits.

68. Defendants' business practice has produced lucrative results for Potter Handy. A review of the PACER federal court filing system reveals that since December 2019, Defendants have filed and settled over **500** physical-barrier ADA/Unruh cases on behalf of Serial Filer Orlando Garcia alone. On information and belief, Defendants typically settle Serial Filer cases for between $10,000 and $20,000. Conservatively assuming an average settlement figure of $10,000 per case, ***Defendants have extracted over $5,000,000 from California's small businesses from the cases filed on behalf of just one of their Serial Filers in just over two years.***[41] Extrapolating to the thousands of physical-barrier ADA/Unruh cases Defendants have filed on behalf of Brian Whitaker, Scott Johnson, and their other Serial Filers over the past four years, it is reasonable to conclude that California's small businesses have paid Defendants ***tens of millions of dollars*** during the statute of limitations period, all to settle lawsuits containing false standing allegations, none of which could have been brought had Defendants not intentionally made those false allegations. This is not what the Unruh Act was intended for; it is a shakedown perpetrated by unethical lawyers who have abused their status as officers of the court.

B. Defendants Know That the Serial Filers Do Not Have Standing to Sue, But They Nonetheless Sign Off on False Standing Allegations in Order to Assert Federal Jurisdiction and Avoid Dismissal

69. Defendants' intentional use of false standing allegations to obtain federal

[41] How much of this money is paid to the Serial Filers themselves is unclear, but appears to be minimal. According to Mr. Garcia's testimony in *Garcia v. Josefina Rodriguez*, he estimates making $40,000 per year from filing ADA lawsuits, but he does not file tax returns and cannot estimate how much he makes from each filed case. *See* **Exhibit C**, at p. 77:4-18.

jurisdiction and maintain their scheme is remarkable, in part because of how open their lawbreaking is and how little Defendants do to hide it. Defendants have time and again been given ample notice that their clients' standing allegations are false or otherwise not credible, negating any possible argument that Defendants are unaware that the standing allegations contained in their Serial Filer complaints are false. Notably, certain of the Defendants have personally attended depositions of their Serial Filer clients where the clients gave testimony that contravenes standing; other Defendants have been sanctioned by the federal courts for persisting with fraudulent standing allegations; and the firm as a whole has repeatedly had Serial Filer cases dismissed for lack of standing. Moreover, the vast number of cases filed, which makes it literally impossible for the Serial Filers to genuinely intend to return to each of the businesses they sue, is sufficient by itself to give Defendants notice that the standing allegations they bring are false. And finally, the People's investigation has revealed multiple individual cases in which the Defendants have made demonstrably false standing allegations in Serial Filer cases. Each of these facts is evidence that collectively prove Defendants intentionally use or consent to the use of false standing allegations to maintain their scheme of deceiving the courts and businesses they sue into believing they have federal standing, as necessary to evade the amended Unruh Act's restrictions on abusive, boilerplate litigation. (*See* Bus. & Prof. Code, § 6128(a) ("Every attorney is guilty of a misdemeanor who…is guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party.").)

1. The Serial Filers' Sworn Deposition Testimony, Given in the Presence of Potter Handy Counsel

70. Defendants have repeatedly been confronted with sworn testimony from their Serial Filer clients that undercuts or disproves the standing allegations Defendants sign off on and advocate for in every ADA/Unruh lawsuit they file. Several of these instances are recounted here.

71. In October 2019, Potter Handy filed an ADA/Unruh suit on behalf of Serial Filer Chris Langer against the owners of India's Tandoori and Yuko Kitchen, two restaurants located on the same block on Wilshire Boulevard in Los Angeles, alleging they had "failed to provide

accessible parking."[42] The following September, Mr. Langer was deposed in that case and was represented at his deposition by Defendant Elliott Montgomery.[43] During the deposition, Mr. Langer was confronted about his purported intent to return, a vital part of the federal standing analysis, and defense counsel showed him a list of some 310 of the approximately 1,600 businesses he had sued in ADA cases by that time. Despite having his recollection refreshed with the list and a number of pauses in the proceedings, Mr. Langer could only identify ***six*** businesses he had returned to out of the 310 on the list. Mr. Langer also affirmatively admitted not having returned to three of the businesses he had sued: a cannabis dispensary, a wine center, and a plant nursery.

72. Moreover, during the deposition, Defendant Montgomery repeatedly objected to questions relating to Mr. Langer's standing to sue, going so far as to instruct his client not to answer the questions—a fact demonstrating Defendant Montgomery's knowledge that his client lacked standing, and that the questions were threatening to expose that fact. Indeed, counsel for the business was forced to admonish Defendant Montgomery that "I'm entitled to find out if he goes back to businesses he sues. That's a matter of Constitutional standing."

73. Similarly, in August 2020, Potter Handy filed an ADA/Unruh suit on behalf of Serial Filer Orlando Garcia against the Flavor of India restaurant located on Orange Grove Avenue in Burbank, alleging it had "failed to provide wheelchair accessible dining surfaces" and thus he had encountered a "lack of sufficient knee or toe clearance under the dining surfaces."[44] That December, Mr. Garcia was deposed in that case and was represented at the deposition by Defendant Montgomery, who once again instructed his Serial Filer client not to answer certain questions relating to standing. As in Mr. Langer's deposition, Mr. Garcia admitted never returning to 15 of the businesses he had sued, could not recall how many of the more than 100

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[42] *Langer v. Americana Plaza LLC* (C.D. Cal., Oct. 17, 2019, No. 2:19-cv-08978

[43] A copy of a portion of the transcript of Mr. Langer's deposition in this matter is attached as **Exhibit E** and incorporated by reference.

[44] *Garcia v. 1971 Fateh LLC* (C.D. Cal., Aug. 22, 2020, No. 2:20-cv-07661).

businesses he'd sued in January 2020 that he had returned to afterward, and ultimately could only remember returning to a grand total of ***two*** businesses he had sued during the year 2020.[45]

74. Also in August 2020, Potter Handy filed an ADA/Unruh suit on behalf of Mr. Garcia against the Four Café restaurant located on Colorado Boulevard in Los Angeles, again alleging it had "failed to provide wheelchair accessible dining surfaces" that Mr. Garcia supposedly personally encountered.[46] In June 2021, Mr. Garcia was deposed in that matter and was represented at that deposition by Defendant Bradley Smith.[47] In that deposition, Mr. Garcia made multiple admissions that undercut his claims of standing. Notably, he claimed to discard receipts from businesses he visits, such that the only documentary evidence of his visits are emails to his counsel, over which his counsel claims attorney-client privilege. Moreover, Mr. Garcia could not name a single restaurant he had visited between June and December 2020, and when asked what restaurants he had returned to after suing them, could only name a single business.[48]

2. Court Orders Sanctioning Defendants, Awarding Attorney's Fees to Sued Businesses, and Throwing Out Serial Filer Cases for Lack of Standing

75. Even beyond their own clients' sworn testimony, many of Defendants' ADA/Unruh cases have been dismissed by the federal courts for failure to prove standing—a result that would inform any attorney that their clients' standing allegations are not true. In at least one case, certain of the Defendants have even been personally sanctioned by the federal courts for falsely alleging the Serial Filers have standing when Defendants know they do not.

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[45] A copy of a portion of the transcript of Mr. Garcia's deposition in this matter is attached as **Exhibit F** and incorporated by reference.

[46] *Garcia v. Four Café Inc.* (C.D. Cal., Aug. 13, 2020, No. 2:20-cv-07278).

[47] A copy of a portion of the transcript of Mr. Garcia's deposition in this matter is attached as **Exhibit G** and incorporated by reference.

[48] By the People's estimation based on a review of federal court records available on PACER, between June and December 2020 Mr. Garcia filed approximately 90 lawsuits against different restaurants, bars, and other food service establishments.

76. In May 2020, Defendants Russell Handy and Christina Carson were sanctioned by the federal Southern District of California, Chief Judge Larry Alan Burns, for making fraudulent standing allegations in a case they had brought on behalf of Mr. Langer against a defendant that later went out of business, making it impossible for Mr. Langer to return to that business. The court stated:

> Furthermore, the pleadings specifically allege that Langer intended to return to Dave's Tavern and patronize it just as soon as barriers are removed. Counsel knew or were willfully blind to the fact that this was false, yet they kept prosecuting the ADA claim anyway. In fact, they continued to tell the Court Langer was going to return to the tavern long after they knew he would not or could not. (*See* Docket no. 14 (Opp'n to Mot. to Dismiss for Lack of Jurisdiction) at 14:10–16:16 (arguing that Langer had standing to seek injunctive relief, because Langer intended to return to Dave's Tavern but that barriers there prevented him from doing so).) They also used this falsehood as a basis for arguing that the Court could not decline supplemental jurisdiction over Langer's state law claim. (*See id.* at 16:17–20:17.) At the very least, this amounts to a fraud on the Court.
>
> …
>
> The Court finds that attorneys Russell Handy and Chris Carson intentionally and willfully disobeyed its February 28 order. They did this in order to keep a claim alive that they had reason to know had become moot, and to conceal the truth from the Court and to thwart the Court's own efforts to carry out its jurisdictional obligations. It is also clear they either had actual or constructive knowledge that Dave's Tavern was closed, or were on inquiry notice well before the Court's February 28 order, and litigated in bad faith even after being warned. They are therefore subject to sanctions.[49]

77. Perhaps even more indicative of Defendants' intentional use of false standing allegations to deceive the courts and targeted businesses, in January 2022 Judge Virginia Phillips of the Central District of California granted over $36,000 in attorney's fees to a prevailing Los Angeles business after a bench trial in the case *Garcia v. Guadalupe Alcocer*. In that case, an ADA/Unruh lawsuit Potter Handy filed on Mr. Garcia's behalf in September 2020 against Su Casa De Cambio, a check-cashing store, the firm alleged the store "failed to provide wheelchair

[49] Order Imposing Sanctions, *Langer v. Badger Co., LLC* (S.D. Cal., May 15, 2020, No. 18-cv-934).

accessible service counters and "[a] problem that plaintiff encountered was that the sales counters were too high and there was no lowered portion of the service counters suitable for wheelchair users." In the eventual trial in that case, in which Mr. Garcia was represented by Defendant Ballister, Mr. Garcia's claims were dismissed for lack of standing, and the court thereafter granted attorney's fees to the prevailing defendant, finding the case was frivolous, stating:

> [T] he Court determined Plaintiff failed to establish standing for his ADA claim… ***The Court considers Plaintiffs' litigation history to determine whether this action was frivolous or unreasonable. The Court concludes that it is.***
>
> Plaintiff has filed hundreds of ADA cases in the Central District of California. Many of those cases have resulted in settlements but some have been dismissed for lack of standing. For example, recently two of Plaintiff's ADA lawsuits, identical to this one, were dismissed for lack of standing within the Central District of California, months before the trial in this matter took place. The Honorable Stephen V. Wilson of this Court dismissed Plaintiff's ADA claim for lack of standing on April 21, 2021. Likewise, the Honorable Dale S. Fischer also of this Court dismissed Plaintiff's ADA claim for lack of standing on July 12, 2021. Both of these lawsuits were dismissed with reasoned opinions that detailed the ADA standing requirement and discussed at length how Plaintiff had failed to meet that requirement. These orders of dismissal provided Plaintiff with notice that the same issue would arise in this case and its negative determination would be fatal to his ADA claim here, yet he continued to pursue this action.
>
> Moreover, the evidence Plaintiff presented at trial in support of his claimed standing to pursue his ADA claim was not credible. To wit, Plaintiff admitted that he had sued at least 14 check-cashing stores in Los Angeles and has not returned to any of those locations; he visited Defendants' store on August 18, 2020 for the first time and has not returned. He also admitted he has a checking and savings account at a bank, he does not pay bills with money orders or send money by Western Union or MoneyGram, and there are multiple check-cashing stores located closer to his residence than Defendants' check-cashing location, which is 10.5 miles away from his residence and took him over an hour using public transportation to reach. The evidence presented here was similar to that presented in the actions pending before Judge Wilson and Judge Fischer and which those Judges found failed to satisfy the standing requirement to pursue an ADA claim for injunctive relief. In other words,

> Plaintiff knew or should have known the evidence he intended to present in this case as to his purported standing would be found insufficient.
>
> Plaintiff's litigation history shows he was aware of the standing requirements for ADA claims and on multiple occasions has failed to satisfy those requirements. This conduct, taken together with his lack of credibility in this case, strongly weigh in favor of finding the present action both frivolous and unreasonable. Plaintiff did not have a reasonable basis to allege an injury-in-fact that would support Article III standing. Plaintiff knew or should have known that he lacked standing in this case. This action raised no standing issues that had not already been resolved unambiguously by prior decisions within the Ninth Circuit and the Central District of California. The Court finds Plaintiff's bases for filing this lawsuit were frivolous, unreasonable, and groundless. Accordingly, the Court concludes an award of attorneys' fees in favor of Defendants is justified here.[50]

78. Even beyond instances where the courts have awarded sanctions or fees, Defendants have had multiple Serial Filer cases dismissed for failure to credibly plead and prove standing. Indeed, a number of federal courts have recognized that the volume of Potter Handy's cases and their Serial Filers' pattern of meaningless travel indicate the Serial Filers have no credible intent to return to the businesses they sue.

79. For example, as early as August 2018, the Central District of California (Judge Andre Birotte Jr.) dismissed one of Mr. Langer's cases for lack of standing. That occurred in an ADA/Unruh case Potter Handy had filed in January 2018 against H&R, LLC, the owner of a strip mall located on Highland Avenue in Los Angeles, alleging "there was an insufficient number of accessible parking spaces on the day of plaintiff's visit." After Potter Handy moved for a default judgment in May 2018, Judge Birotte noted that Mr. Langer lived in San Diego County, the nearest part of which was 78 miles from the sued business, stating "Plaintiff's alleged intent to return does not appear genuine…. The declarations of Plaintiff and his attorney say nothing as to why Plaintiff would return to this particular establishment, or if he intends to return to the same area on regular basis…. Plaintiff's lengthy filing history indicates a pattern of

[50] Order Granting Motion for Attorneys' Fees, *Garcia v. Guadalupe Alcocer* (C.D. Cal., Jan. 19, 2022, No. 2:20-cv-08419) at 7-9 (citations omitted, emphasis added). A copy of this full order is attached as **Exhibit H**.

meaningless travel. According to the Court's own calculations, since 2017, Plaintiff has filed approximately seven lawsuits a week in the Central District of California. This rate of filing counters his sentiment to return to this Strip Mall, let alone return to all hundreds of offending locations."[51]

80. Likewise, in March 2020, the Central District of California (Judge Dale Fischer) dismissed one of Brian Whitaker's ADA/Unruh cases for lack of standing. Potter Handy filed that case on behalf of Mr. Whitaker in December 2019 against the Le Pain Quotidien restaurant on American Way in Glendale, alleging it "failed to provide accessible dining surfaces" and "[p]laintiff personally encountered these barriers." Judge Fischer dismissed that case in March 2020, stating that "Plaintiff's conclusory allegation of deterrence, especially when viewed in light of his extensive filings, is insufficient to support standing." "The Court's conclusion is buttressed by the fact that Plaintiff has filed hundreds of disability discrimination lawsuits and, consistent with the Court's 'judicial experience and common sense,' could not possibly return to each of the places he has sued."[52]

81. Likewise, in June 2020, Judge Fischer dismissed another of Mr. Whitaker's ADA/Unruh cases against a different restaurant for lack of standing. Potter Handy filed that case, *Whitaker v. LSB Property Management, LLC*, against the Legends Restaurant & Sports Bar on 2nd Street in Long Beach, alleging it "failed to provide accessible dining surfaces" and that "[p]laintiff personally encountered these barriers." Judge Fischer dismissed that case for lack of standing in June 2020, stating that the fact that "Plaintiff filed several virtually identical lawsuits against other businessowners along [the street]," Mr. Whitaker's status as a high frequency

[51] *Langer v. H&R LLC* (C.D. Cal. Aug. 13, 2018, No. 2:18-CV-00596) 2018 U.S. Dist. LEXIS 225938, at *6, *8-10.

[52] *Whitaker v. PQ Americana, LLC* (C.D. Cal. March 20, 2020, No. 2:19-cv-10495) 2020 U.S. Dist. LEXIS 71958, at *7-9.

litigant, and Mr. Whitaker's failure to provide any supporting evidence, all "cast doubt on the plausibility of Plaintiff's allegations that he is deterred from visiting the Restaurant."[53]

82. And once again, in December 2020, Judge Michael Fitzgerald of the Central District dismissed another one of Mr. Whitaker's ADA/Unruh cases for lack of standing. In that case, *Whitaker v. BPP East Union LLC*, Potter Handy had filed suit in July 2020 on behalf of Mr. Whitaker against the Dirt Dog Pasadena restaurant in Pasadena, alleging it "failed to provide wheelchair accessible dining surfaces" and "failed to provide wheelchair accessible sales counters." In December 2020, the Court concluded:

> Whitaker is a serial litigant, having filed 990 ADA/Unruh Civil Rights Act cases in the district courts in this state…. Whitaker, who does not own a vehicle and does not have a driver's license, traveled to these twenty-four businesses from his residence in Downtown Los Angeles. He travels thirty percent by train and bus, thirty percent by Uber, thirty-nine percent with friends and one percent with Access, a free service…. Plaintiff's alleged intent to return to the restaurant here does not appear genuine, given that he has made the same assertion with respect to the 990 other businesses he has sued…. Plaintiff's allegations are simply not ***credible*** in light of the shockingly high number of ADA cases that Plaintiff [filed] in the last few years.[54]

83. As for Orlando Garcia, in April 2021, the Central District of California (Judge Stephen Wilson) dismissed his lawsuit against the Flavor of India restaurant, stating that, "[w]hile motivation is irrelevant to the question of standing and status as an ADA tester does not deprive Plaintiff of standing, Plaintiff's status as an ADA tester alone does not confer standing either." Judge Wilson found that Mr. Garcia's "professed intent to return is wholly incredible." In particular, Judge Wilson noted that Mr. Garcia's testimony at his deposition and an evidentiary hearing was inconsistent, both as to where Mr. Garcia actually was on the day he supposedly visited Flavor of India and how he supposedly traveled during the COVID-19 pandemic. Moreover, Mr. Garcia admitted having never eaten Indian food despite claiming an

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[53] *Whitaker v. LSB Property Mgmt., LLC* (C.D. Cal., June 22, 2020, No. 2:19-cv-9607) 2020 U.S. Dist. LEXIS 108874, at *10-12.

[54] *Whitaker v. BPP East Union LLC*, (C.D. Cal., Dec. 11, 2020, No. 2:20-cv-06818) (emphasis original).

intent to return to an Indian food restaurant. Judge Wilson dismissed the case for lack of standing, finding that "Plaintiff's demeanor and memory during his testimony undermines the credibility of his intent to return. Additionally, the record as a whole undermines Plaintiff's stated intent to return."[55]

84. Mr. Garcia again was found not to have standing in July 2021, in his lawsuit that Potter Handy had filed on his behalf in June 2020 against the Indiana Market store on Indiana Street in Los Angeles, alleging it had "failed to provide wheelchair accessible paths of travel" and failed to provide wheelchair accessible sales counters." After the eventual bench trial, one of the very few trials to occur in Mr. Garcia's more-than-800 lawsuits, the Central District of California (Judge R. Gary Klausner) entered judgment for the store:

> Plaintiff must now *show* a credible threat of future injury. He has failed to do so. The Court does not find credible Plaintiff's testimony that he would go back to the [store]. The store is over 10 miles from his house. He does not drive and must take public transportation to get there. On top of all that, Plaintiff has filed over 500 ADA complaints over the years, and these filings are one of his main sources of income. Based on his prolific litigation history, the store's distance from his home, and testimony, it is unrealistic to believe that Plaintiff ever intends to visit the [store] again.[56]

85. In light of all of these court decisions, Defendants have personal knowledge that the Serial Filers regularly do not visit the businesses they sue and have no genuine intent to return afterward. Yet Defendants nevertheless continue to allege federal standing using the same Serial Filers (despite their personal knowledge of Serial Filers' practices) without doing anything to ensure their Serial Filers are actually visiting businesses and returning to them after settlements. Thus, Defendants intentionally submit false standing allegations in their Serial Filer lawsuits, all with the intent of deceiving the courts and sued businesses in order to maintain standing and avoiding California's reforms on boilerplate Unruh Act lawsuits.

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[55] *Garcia v. 1971 Fateh LLC* (C.D. Cal. April 21, 2021, No. 2:20-cv-07661-SVW-AS) 2021 U.S. Dist. LEXIS 166534, at *4-9.

[56] Order and Judgment Re Court Trial, *Garcia v. Josefina Rodriguez* (C.D. Cal., July 13, 2021, No. 2:20-cv-05647).

3. It Is Literally Impossible for the Serial Filers to Have a Genuine Intent to Return to Each and Every One of the Thousands of Businesses They Sue

86. As a number of the above-quoted federal court decisions have noted, the sheer volume of federal ADA/Unruh cases that Defendants file discredits the Serial Filers' allegations that they personally encounter barriers at each sued business and genuinely intend to return to each business.[57] Between 2018 and the present, Defendants filed ***over 800 federal cases*** on behalf of Orlando Garcia, approximately ***1,700 federal cases*** on behalf of Brian Whitaker, and thousands more on behalf of Chris Langer, Scott Johnson, Rafael Arroyo, and the other Serial Filers.[58] Particularly in light of the fact that the Serial Filers' sworn testimony makes clear that they cannot even keep track of all the businesses they sue, Defendants know it is literally impossible for the Serial Filers to have personally encountered each alleged barrier and to genuinely intend to return to each business.

87. Defendants' deceitful, unlawful conduct is particularly blatant and indisputable with respect to Mr. Garcia and Mr. Whitaker. As discussed above, beginning in 2021 Defendants started filing hundreds and hundreds of cases against Bay Area businesses on behalf of Mr. Garcia and Mr. Whitaker, both of whom live in Los Angeles County, a 350-400 mile drive away. Over the past year, Defendants have unleashed these two Serial Filers on the Bay Area's small business community, filing hundreds of indiscriminate ADA/Unruh Act lawsuits containing false standing allegations against restaurants, beauty parlors, laundromats, a print shop, a veterinary hospital, and a host of different retail shops, among other kinds of businesses. And yet, to the People's knowledge, these two Serial Filers have no preexisting connection to

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[57] *See also, e.g.*, *Bouyer v. LAXMI Hospitality LLC* (C.D. Cal. Dec. 9, 2020, No. 2:20-cv-7802) ("These conclusory allegations amount to mere 'some day' intentions that the Ninth Circuit has found are insufficient to establish Article III standing. Plaintiff, who has filed over 450 similar actions in the Central District in recent years, has failed to present any concrete plans or other specific information about when he intends to return to Defendant's Property. The Court therefore concludes that Plaintiff has failed to plead or submit sufficient facts to establish his standing[.]")

[58] A spreadsheet listing all cases that Potter Handy filed on behalf of Orlando Garcia in federal court, as well as all removed state court cases alleging website accessibility violations, is attached as **Exhibit I** and is incorporated by reference into the People's complaint.

San Francisco or the larger Bay Area; indeed, Mr. Garcia even admitted in a June 2021 deposition (with Defendant Bradley Smith present) that he had not left southern California between 2016 and June 2021.[59]

4. Cases Where Defendants Made Demonstrably False Standing Allegations

88. Anecdotal evidence provides further support for what the deposition transcripts, federal court decisions, and sheer number of Potter Handy cases already make clear: the Serial Filers do not actually personally encounter barriers at the businesses they sue, let alone have a genuine intent to return. The People list the seven cases below as examples further demonstrating that Defendants intentionally, falsely allege their Serial Filers have standing in order to extract settlements from small businesses, and to shine a light on the human impact of the Defendants' unlawful business practices. In all seven of these cases, the complaints were signed by Defendant Amanda Lockhart Seabock, listing Defendants Prathima Price and Dennis Price as additional counsel.

89. *Hon's Wun-Tun House.* In April 2021, Potter Handy filed an ADA/Unruh suit on behalf of Serial Filer Brian Whitaker against Hon's Wun-Tun House, a Cantonese restaurant located on Kearny Street in San Francisco's historic Chinatown.[60] In the complaint, Defendants repeated their standard boilerplate allegations, identifying only a single physical barrier that Mr. Whitaker supposedly encountered during an alleged visit in March 2021: a "lack of sufficient knee or toe clearance under the outside dining surfaces for wheelchair users." This allegation was false; in March 2021, ***Hon's Wun-Tun House was open for takeout only, it had no outdoor***

[59] Mr. Garcia's testimony on this point is internally inconsistent, casting further doubt on his credibility. *See* **Exhibit G** at 13:16-14:-22, 23:13-14, 25:14-23 (first stating under oath he had not left Southern California between 2016 and the June 17, 2021 deposition, and then shortly thereafter claiming he had gone to San Francisco the week before the deposition, and then also claiming he had additionally stayed in San Jose within the preceding 12 months). Mr. Garcia also testified in his deposition that it is a "struggle" and "exhausting" to leave his home, and stated that to travel long-distance he would need another person to drive him in his van. These facts, which are known to Defendants, further demonstrate it is impossible that he could return to hundreds of different businesses many hundreds of miles from where he lives. *See* **Exhibit G** at 14:23-15:10.

[60] *Whitaker v. Hon's Wun-Tun House LLC*, (N.D. Cal., April 27, 2021, No. 3:21-cv-03041).

dining tables at all, and it was not providing sit-down dining services for anyone. In fact, during that time, it was blocking its entrance with two tables to ensure no customers could enter. Mr. Whitaker could not possibly have personally encountered an inaccessible outdoor dining surface in March 2021, as alleged.

90. *Latte Express.* Also in April 2021, Potter Handy filed an ADA/Unruh suit on behalf of Serial Filer Brian Whitaker against Latte Express, a small shop in San Francisco's historic Chinatown that sells coffee, pastries, and Vietnamese sandwiches, and which is located immediately next door to Hon's Wun-Tun House.[61] In the complaint, Defendants repeated their standard boilerplate allegations, identifying the exact same physical barrier that Mr. Whitaker had supposedly encountered in March 2021 at Hon's Wun-Tun House: a "lack of sufficient knee or toe clearance under the outside dining surfaces for wheelchair users." But, like Hon's Wun-Tun House, ***Latte Express was not open for indoor or outdoor dining in March 2021—only takeout—and, in fact, it did not even set any dining tables outside during that time period.*** As with Hon's Wun-Tun House, Mr. Whitaker could not possibly have personally encountered an inaccessible outdoor dining surface in March 2021, as alleged.

91. *Lyle Tuttle Tattoo Shop and Tattoo Museum.* Also in April 2021, Potter Handy filed an ADA/Unruh suit on behalf of Serial Filer Brian Whitaker against the historic Lyle Tuttle Tattoo Shop and Tattoo Museum, located on Columbus Avenue in the North Beach neighborhood of San Francisco.[62] In the complaint, Defendants repeated their standard boilerplate allegations, identifying only a single physical barrier that Mr. Whitaker supposedly encountered during March 2021: "an unramped step at the entrance of Lyle Tuttle." However, Mr. Whitaker could not possibly have encountered this alleged barrier, because ***the Lyle Tuttle shop was open by appointment-only in March 2021, was closed to walk-ins, and Mr. Whitaker never made an appointment***. In fact, at that time the Lyle Tuttle shop had signage in front of its business stating that appointments were required. Nonetheless, if Mr. Whitaker had actually

[61] *Whitaker v. Eva C. Jeong* (N.D. Cal. filed April 1, 2021, No. 3:21-cv-02362).

[62] *Whitaker v. The Tattoo Museum LLC* (N.D. Cal. April 14, 2021, No. 3:21-cv-02662).

attempted to enter the shop by pushing the doorbell to summon an employee, he would have found that the shop had a removable wheelchair ramp that would have allowed him full access to the business, disproving his allegation of personally encountering a barrier preventing him from entering. Further disproving the allegation that Mr. Whitaker actually encountered the alleged barrier, when the shop's counsel asked Defendants for proof that Mr. Whitaker was even in San Francisco at the time of his supposed visit, the only "proof" Defendants could provide were two photographs of the shop that were clearly taken from a vehicle in the travel lane on Columbus Avenue—indicating Mr. Whitaker never visited the business, or merely passed it by in a vehicle without ever encountering the step.[63]

92. *Dim Sum Corner.* In June 2021, Potter Handy filed an ADA/Unruh suit on behalf of Serial Filer Orlando Garcia against Dim Sum Corner, a newly renovated restaurant located on Grant Avenue in San Francisco's historic Chinatown, which had taken and passed a CASp inspection prior to opening.[64] In the complaint, Defendants repeated their standard boilerplate allegations, identifying only two barriers Mr. Garcia supposedly encountered in June 2021: "the ramp that runs up to the entrance did not have a level landing. What is more, the ramp had a slope of about 12.5%. Finally, there were 2- to 2.5-inch rises (small steps) from the sidewalk to the outdoor dining area." However, in Dim Sum Corner's motion to dismiss, its counsel submitted a declaration and photograph proving that the entrance to the restaurant (which has a wide, modern ADA-compliant door activated by a manual push button) is almost completely flat and has no ramp, let alone one with a steep slope of 12.5%.[65] Dim Sum Corner's counsel also provided evidence of an accessible outdoor dining space. Defendants then amended their complaint to entirely change the alleged entrance violation to "a noticeable undulating slope at

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[63] One of these photographs is attached to this Complaint as **Exhibit J** and is incorporated herein by reference.

[64] *Garcia v. Betty Jean Louie II Limited Partnership* (N.D. Cal., June 30, 2021, No. 3:21-cv-05036).

[65] A photograph of Dim Sum Corner's entrance is attached to this Complaint as **Exhibit K** and is incorporated herein by reference.

the front entrance," stating that "[t]he idea of navigating this slope in his wheelchair gave plaintiff discomfort and would have caused him difficulty and, therefore, he did not attempt to enter the restaurant." Defendants also eliminated the allegation that the outdoor dining area had small steps, replacing it with a completely new allegation that a particular outdoor table was inaccessible by virtue of having a central pedestal. Despite Defendants' original claims being disproven, Defendants refused to dismiss their frivolous case, which Dim Sum Corner ultimately settled—a further example of Defendants leveraging false allegations to obtain cash settlements, even from businesses that clearly were in compliance with the ADA.

93. *Pacific Printing Company.* Also in June 2021, Potter Handy filed an ADA/Unruh suit on behalf of Serial Filer Orlando Garcia against Pacific Printing Company, a small print shop in San Francisco's historic Chinatown.[66] In the complaint, Defendants repeated their standard boilerplate allegations, identifying only a single physical barrier that Mr. Garcia supposedly encountered during June 2021: "an unramped step (vertical rise of about 3 inches) at the door entrance that was about three inch in height. There was no ramp for wheelchair users." However, as of June 2021, Pacific Printing Company's business was still very slow given the decrease in business caused by the COVID-19 pandemic, and the owner kept the business's door locked out of fear of anti-Chinese violence, only opening it to regular clients and other known customers. The owner never saw anyone in a wheelchair wanting to come into the store or patronize her business. Because the shop's door was locked in June 2021, the owner would have had to specially open it for Mr. Garcia in order for him to encounter the alleged step. However, Mr. Garcia was never seen, meaning he could not possibly have personally encountered the step as alleged.

94. *Coupa Café.* Outside of San Francisco, in May 2021, Potter Handy filed an ADA/Unruh suit on behalf of Serial Filer Brian Whitaker against Coupa Café, a restaurant located on Main Street in Redwood City, California.[67] In the complaint, Defendants repeated

[66] *Garcia v. Teresa C. Luk* (N.D. Cal., June 29, 2021, No. 3:21-cv-04986).

[67] *Whitaker v. Marston CC Corp.* (N.D. Cal., May 18, 2021, No. 4:21-cv-03700).

their standard boilerplate allegations, identifying only a single barrier Mr. Whitaker supposedly encountered in May 2021: "the lack of sufficient knee or toe clearance under the outside dining surfaces for wheelchair users." However, the business reviewed its surveillance camera footage for the month of May 2021 and saw that only one wheelchair user had visited the business, and that wheelchair user was known to the business as a regular customer who successfully made a purchase without issue. As a result, Defendants' allegations that Mr. Whitaker personally visited the business and encountered a barrier were false.

95. *Amy's Salon.* Also outside of San Francisco, in January 2021, Potter Handy filed an ADA/Unruh suit on behalf of Serial Filer Scott Johnson against the owners of the building that housed Amy's Salon, in Campbell, California.[68] In the complaint, Defendants repeated their standard boilerplate allegation that "Plaintiff went to Amy [sic] Salon in November 2020 with the intention to avail himself of its goods or services motivated in part to determine if the defendants comply with the disability access law…. Amy [sic] Salon is a facility open to the public, a place of public accommodation, and a business establishment." However, as the defendant building owner told the *Sacramento Bee*, Amy's Salon was closed in November, and the facility only allows pre-vetted customers inside, making it impossible for Mr. Johnson to have actually visited the business as he claimed.[69]

96. When viewed together, this anecdotal data proves what small businesses across California have long claimed: that the Serial Filer clients do not actually personally encounter the barriers Defendants allege they encountered. Combined with the deposition testimony, federal court cases, and sheer number of cases filed, the only possible conclusion is that Defendants intentionally make false standing allegations to deceive the courts and sued businesses into believing federal jurisdiction is appropriate, all for the purpose of avoiding California's reforms on abusive Unruh Act litigation and shaking down small businesses for cash settlements.

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[68] *Scott Johnson v. John A. Hughes et al.* (N.D. Cal., Jan. 29, 2021, No. 5:21-cv-00706).

[69] Stanton, *Serial ADA filer sets sights on Bay Area merchants, submitting 1,000 complaints in two years*, Sacramento Bee (June 28, 2021), <https://www.mercurynews.com/2021/06/28/serial-ada-filer-sets-sights-on-bay-area-merchants-submitting-1000-complaints-in-two-years/>.

C. Defendants' Unlawful Practices Have Subverted the Intent of the Unruh Act and Devastated Small Businesses in San Francisco and Across California

97. By circumventing the Unruh Act's restrictions on abusive litigation to use it as a cudgel to pressure small businesses to pay cash settlements, Defendants and the Serial Filers they conspire with have smeared the reputation of honest disabled plaintiffs and disability-rights attorneys, setting back the cause of disabled persons across California. As California law states, Defendants' business practices "unfairly taint[] the reputation of other innocent disabled consumers who are merely trying to go about their daily lives accessing public accommodations as they are entitled to have full and equal access under the state's Unruh Civil Rights Act[.]" (Code Civ. Proc., § 425.55(a)(2).)

98. These deceitful lawsuits have caused enormous damage to California's small businesses, the victims of Potter Handy's scheme. In San Francisco and the surrounding Bay Area, Asian-American communities have been especially affected, after already suffering greatly from the COVID-19 pandemic and a rise in anti-Asian hate crimes:

- "I couldn't sleep because I don't know what to do. This whole case — I can't afford it." — Fanly Chen, owner of the GoApple store in San Francisco's Chinatown.[70]
- "You feel like oh by god, everything is starting to come back, business is booming and then you fall from heaven. Not from heaven to Earth but to hell." — Kakey Chang, owner of My Breakfast House in San Carlos.[71]
- "The last year was so difficult and probably the hardest year that everyone has ever worked in this industry. So everyone was on this high, and all of the

[70] Egelko, Said, *Disability lawsuits hit S.F. Chinatown and state. Are they helpful or a moneymaking scheme?* San Francisco Chronicle (Updated Aug. 2, 2021), <https://www.sfchronicle.com/bayarea/article/Disability-lawsuits-hit-S-F-Chinatown-and-state-16356130.php>.

[71] *ADA lawsuits hit hard in San Mateo County*, The Daily Journal (Updated Aug. 2, 2021), <https://www.smdailyjournal.com/news/local/ada-lawsuits-hit-hard-in-san-mateo-county/article_276e60d6-ede4-11eb-8e21-cbe32ea45061.html>

sudden this [lawsuit] happened." — Tony Han, owner of Tai Pan in Palo Alto.[72]

99. Defendants have victimized businesses across much of California, but perhaps no community has been as harshly impacted by Defendants' scheme as San Francisco's historic Chinatown, a cultural center of the Bay Area's Chinese-American population that is home to large populations of immigrants, many of whom are monolingual speakers of Cantonese and other languages. The following paragraphs list several examples of how Defendants' unlawful business practices have harmed the Chinatown community.

100. Renmin Yan, the owner of Hon's Wun-Tun House on Kearny Street in San Francisco, came to the United States from Guangzhou, China 15 years ago. Her first language is Cantonese. She worked as a waitress for 11 years after immigrating, taking part-time English classes at the City College of San Francisco for four years, until she was too tired from her busy work schedule to continue. She was finally able to purchase Hon's Wun-Tun House from its previous owner in late 2018, eventually employing eight fulltime and parttime employees by March 2020. When the COVID-19 pandemic struck, the restaurant lost at least half of its revenue and, despite a rent reduction from its landlord, was forced to reduce its total workers to two fulltime and two part-time (including Ms. Yan herself). As described above, she was only providing takeout orders in March 2021, when Defendants falsely claimed that Brian Whitaker encountered an inaccessible outdoor dining table. Ms. Yan saw, after receiving the lawsuit, that she had only 21 days to respond and hired an attorney for $6,500. She was later assisted by another lawyer provided by the Chinese Chamber of Commerce, but ultimately settled with Defendants. Ms. Yan estimates it will take at least 2-3 months for her business to recuperate the settlement figure. Had Defendants not falsely alleged Mr. Whitaker's standing, they would not have been able to pursue a federal court lawsuit, force Ms. Yan to pay money to retain a lawyer, or pressure Ms. Yan into settling.

[72] Forestieri, *Spate of ADA lawsuits hits hundreds of local businesses still reeling from the pandemic*, The Almanac (Aug. 13, 2021), <https://www.almanacnews.com/news/2021/08/13/spate-of-ada-lawsuits-hits-hundreds-of-local-businesses-still-reeling-from-the-pandemic>.

101. Johnny Ly, the owner of Latte Express on Kearny Street in San Francisco, came to the United States from Cambodia 22 years ago. His first language is Cambodian, and he has basic English reading skills from ESL classes. When he and his wife arrived in the United States, they worked in donut shops in Los Angeles and bakeries in the Bay Area. About five years ago, after a year running a donut shop on San Francisco's Market Street, they were able to purchase Latte Express, which they run with the help of their son, with no other employees. After COVID-19 hit in March 2020, they lost over half of their revenue despite the landlord lowering their rent. They have not made a profit since 2020 and do not anticipate doing so in 2022. As described above, Mr. Ly was only providing takeout orders in March 2021, when Defendants falsely claimed that Brian Whitaker encountered an inaccessible outdoor dining table. Mr. Ly did not understand the lawsuit and did not have the money to hire a lawyer, so he brought the packet to his son-in-law, a general contractor who then sent workers to Latte Express to correct any potential ADA violations that might exist there. Mr. Ly's son believes the contractor sent photographs of the fixes to Defendants, but Mr. Ly never heard from Defendants again. Unfortunately, a review of the federal courts' PACER case management system reveals that Defendants—far from accepting Latte Express's good faith attempts to cure any possible ADA violations—simply moved for and obtained an entry of default against Mr. Ly in June 2021.[73]

102. Teresa Chow Luk, the owner of Pacific Printing Company on Clay Street in San Francisco, came to the United States from Macau in 1979. Her first language is Cantonese, and she is not fluent in English. Since arriving, she has worked at Pacific Printing Company, which she now owns with her husband. Prior to the March 2020 shutdown caused by COVID-19, she had four employees in addition to herself and her husband. The print shop was shut down for three months, and after it reopened there was hardly any business. Ms. Luk estimates a net loss of over 50% of her revenues from March 2020 to June 2021, during which time she did not take a salary. In fact, since COVID-19 struck, her employees have been on-call only, and she and her

[73] *Whitaker v. Eva C. Jeong* (N.D. Cal., June 2, 2021, No. 3:21-cv-02362) Docket No. 13.

husband only came into work because it was better than sitting at home. Even after reopening, Ms. Luk has kept the front door locked because of her fear of anti-Chinese violence, opening it only for regular clients and known customers, and generally bringing orders outside to the curb for her customers to pick up. She does not know when the business will earn a profit again. Since being sued by Defendants, the Chinese Chamber of Commerce has assisted Ms. Luk in obtaining a lawyer, and she is negotiating a settlement with Defendants—yet another example of Defendants using their false standing allegations to pressure small businesses without resources into cash settlements.

103. Beyond these few representative stories, thousands of other small businesses across California have been forced to pay their hard-earned funds, not to actually remedy ADA violations and increase accessibility, but to fill Defendants' pockets. Potter Handy's unlawful scheme can no longer be tolerated.

III. DEFENDANTS' VIOLATIONS OF THE UNFAIR COMPETITION LAW

A. The Unfair Competition Law, Business & Professions Code § 17200

104. California's Unfair Competition Law defines unfair competition to include any "unlawful, unfair or fraudulent business act or practice." (Bus. & Prof. Code, § 17200.) "Unlawful" practices include violations of criminal laws, as well as violations of the California Rules of Professional Conduct. (*See Stop Youth Addiction, Inc. v. Lucky Stores* (1998) 17 Cal.4th 553; *People ex rel. Herrera v. Stender* (2012) 212 Cal.App.4th 614.) Accordingly, an attorney or law firm that commits a crime or violates the California Rules of Professional Conduct has by extension violated the Unfair Competition Law. (*See* Bus. & Prof. Code, §§ 17200, 17201, 17203 & 17206(a).)

105. Business and Professions Code section 17206 imposes civil liability of not more than $2,500 for each violation of any act of unfair competition, as defined by Business and Professions Code section 17200.

106. Business and Professions Code section 17203 authorizes the Court to order restitution of any money or property which may have been acquired by means of unfair competition, as defined in Business and Professions Code section 17200.

107. Business and Professions Code section 17203 also authorizes the Court to issue an order to enjoin any person who engages, has engaged, or proposes to engage in unfair competition, as defined in Business and Professions Code section 17200.

B. Predicate Violations

108. Attorneys who practice in California federal courts are required to follow the standards of professional conduct required of members of the State Bar of California, including those set forth in the State Bar Act (Bus. & Prof. Code, §§ 6000 *et seq.*) and the Rules of Professional Conduct. (*See, e.g.*, N.D. Cal. Local Rule 11-4; C.D. Cal. Local Rule 83-3.1.2.) Several of these standards of professional conduct set forth legal requirements and prohibitions that may serve as predicate violations for a UCL claim alleging "unlawful" business practices and, at the same time, are exempt from California's litigation privilege.

1. Business & Professions Code § 6128(a): Attorney Deceit and Collusion

109. Business and Professions Code section 6128, subdivision (a) states that "[e]very attorney is guilty of a misdemeanor who…[i]s guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party." (Bus. & Prof. Code, § 6128(a).) Any attorney who knowingly makes, adopts, or approves a false statement in a legal filing or as part of litigation, or knowingly consents to another person making, adopting, or approving a false statement in a legal filing or as part of litigation, with the intent to deceive the court or another party, has violated Section 6128(a) and is guilty of a misdemeanor. The California Supreme Court has held that Section 6128(a) is specifically exempt from the litigation privilege. (*Action Apartment Assn., Inc. v. City of Santa Monica* (2007) 41 Cal.4th 1232, 1244 (citations omitted).)

2. Rule of Professional Conduct 3.1: Meritorious Claims

110. California Rule of Professional Conduct 3.1 states that a lawyer shall not "bring or continue an action, conduct a defense, or assert a position in litigation…without probable cause and for the purpose of harassing or maliciously injuring any person." (R. Prof. Conduct, § 3.1(a)(1).) Because Rule of Professional Conduct 3.1 only applies in the context of litigation, it is "more specific than" and exempt from the litigation privilege. (*Action Apartment*, *supra*, 41

Cal.4th at 1246 (statute exempt from litigation privilege where it is "more specific than the litigation privilege and would be significantly or wholly inoperable if its enforcement were barred when in conflict with the privilege").)

3. Rule of Professional Conduct 3.3: Candor Toward the Tribunal

111. California Rule of Professional Conduct 3.3(a)(1) states that a lawyer shall not "knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer." California Rule of Professional Conduct 3.3(b) states that "[a] lawyer who represents a client in a proceeding before a tribunal and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures to the extent permitted by Business and Professions Code section 6068, subdivision (e) and rule 1.6." Like Rule 3.1, Rule 3.3 only applies in the context of litigation, and it is therefore exempt from the litigation privilege.

4. UCL Claims Based on Alleged Violations of These Exempt Predicate Offenses are Themselves Exempted from the Litigation Privilege

112. The People's civil prosecution of Defendants is brought under the "unlawful" prong of the UCL, to enforce violations of Business and Professions Code section 6128(a), Rule of Professional Conduct 3.1, and Rule of Professional Conduct 3.3, all of which are exempt from the litigation privilege. As a result, the People's UCL claim is likewise exempt from the litigation privilege:

> Where, as here, the "borrowed" statute is more specific than the litigation privilege and the two are irreconcilable, unfair competition law claims based on conduct specifically prohibited by the borrowed statute are excepted from the litigation privilege…. Civil statutes for the protection of the public should be interpreted broadly in favor of their protective purpose.[74]

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[74] *People v. Persolve* (2013) 218 Cal.App.4th 1267, 1276-77; *see also Zhang v. Superior Court* (2013) 57 Cal.4th 364, 373-74 (a plaintiff may not use the UCL to reframe or recharacterize a claim if the underlying predicate is itself barred by the litigation privilege, but if the underlying predicate is not itself barred, the UCL claim may proceed).

C. Defendants Violate the Unfair Competition Law in the Federal ADA/Unruh Lawsuits They File on Behalf of the Serial Filers

113. When the Defendants file their federal ADA/Unruh complaints on behalf of their Serial Filers, take action to prosecute a federal ADA/Unruh case filed on behalf of their Serial Filers, or settle one of their Serial Filers' federal ADA/Unruh cases, they are intentionally signing off on, endorsing, adopting, and making the false allegations that the Serial Filer personally encountered a barrier at the sued business, was prevented or deterred from accessing the business because of that barrier, and genuinely intends to return to the sued business. They do so with the intent to deceive the federal courts and the small businesses they sue into believing the Serial Filers have standing, such that the small businesses they sue are forced to settle or engage in prolonged, expensive litigation.

114. In doing so, the Defendants violate Business and Professions Code section 6128(a) by committing deceit and collusion, and consenting to deceit and collusion, with the intent to deceive the federal court and the sued business into believing the Serial Filer has standing and therefore can bring a federal court case. They also violate Rule of Professional Conduct 3.1 by bringing and maintaining an action without probable cause—*i.e.*, an action for which the plaintiff lacks standing—for the purpose of maliciously injuring the sued business by forcing it to pay a settlement. And they violate Rule of Professional Conduct 3.3 by knowingly making, and failing to correct, the false standing allegations. The Defendants' predicate violations of these laws constitute unlawful business practices under the UCL.

115. All of the Defendants share information with each other and coordinate, collude, and conspire with each other, and aid and abet each other, to advance Potter Handy's primary goal—filing and settling deceitful federal ADA/Unruh Serial Filer cases.[75] Each of the Defendants, even when they are not personally committing the above-listed predicate violations

[75] As recognized in a number of cases, information and knowledge held by any one of the Defendants may be imputed to each of the other Defendants. *State Compensation Ins. Fund v. Drobot* (C.D. Cal., July 11, 2014) 2014 WL 12579808, at *7 (recognizing that what some attorneys know will be communicated to other attorneys in the same firm); *Genentech, Inc. v. SanofiAventis Deutschland GMBH* (N.D. Cal., Mar. 20, 2010) 2010 WL 1136478, at *7 (recognizing the reality that attorneys working in the same firm share information).

and therefore violating the UCL, intentionally aids and abets the other Defendants by giving them substantial assistance and encouragement, all while knowing that the others' conduct is unlawful.

116. That Defendants act in concert is demonstrated by the fact that each of them has assisted in representing the Serial Filers in the various ADA/Unruh cases filed by Potter Handy, often taking on different roles that are part of the overall unlawful scheme to file deceitful ADA/Unruh cases. As Defendant Potter's May 2021 declaration states, he manages the firm's personnel, while the other Defendants are assigned to a variety of roles across the firm's cases.[76] Defendants Handy, Dennis Price, and Amanda Lockhart Seabock also actively oversee the firm's other attorneys, a fact corroborated not only by Defendant Potter's declaration but by these attorneys' prominent appearance on the complaints they file on behalf of Orlando Garcia. Indeed, a review of the more than 800 publicly available court complaints filed on behalf of Orlando Garcia in federal physical-barrier cases reveals that Defendant Handy was the signing attorney in **479 cases** and Defendant Amanda Lockhart Seabock was the signing attorney in **321 cases**, while Defendant Dennis Price was listed as counsel on the complaints filed in **807 cases**.

117. Other Defendants also appear prominently in this fashion. Defendant Raymond Ballister Jr. was listed as counsel on the complaints filed in **488 cases**, Defendant Prathima Price was listed as counsel on the complaints filed in **321 cases**, and Defendant Phyl Grace was listed as counsel on the complaints filed in **150 cases**, while Defendant Carson was the signing attorney in seven cases, and both Defendant Zaman and Defendant Christopher Seabock signed one complaint or amended complaint. Defendants Zaman, Christopher Seabock, Montgomery, Gutierrez, Masanque, Smith, and Zimmerman frequently appear in different capacities in the various Serial Filer cases as needed to accomplish certain tasks or perform the day-to-day functions of litigation, such as by responding to motions to dismiss, filing for entries of default, appearing at mediations, attending in-person inspections at sued businesses, and handling a host of other administrative and procedural tasks.

[76] Exhibit A, at ¶¶ 2, 7, 8.

118. For example, as already discussed, Defendants Montgomery and Smith have appeared to represent the Serial Filers in their various depositions where their sworn testimony shows they lack standing. And as an additional example, in *Garcia v. Honey Baked Ham Inc.* (C.D. Cal., Jan. 29, 2020, No. 2:20-cv-00951), which included Defendants Handy, Dennis Price, Grace, and Ballister on the complaint, Defendant Elliott Montgomery appeared to file an amended complaint, Defendant Christopher Seabock appeared to file a stipulation and a report, Defendant Isabel Rose Masanque appeared to file an opposition to a motion for summary judgment, and Defendant Tehniat Zaman appeared to file a second amended complaint. All of the Defendants operate together as a single unit to file deceptive Serial Filer ADA/Unruh cases based on false standing allegations, with the intent of deceiving the courts and opposing parties.

119. In addition to the violations they personally committed, Defendants Mark Potter, Russell Handy, and Dennis Price, as partners of Defendant Potter Handy LLP, maintain ultimate supervisory and managerial responsibility over all of the other Defendants. For her part, Defendant Amanda Lockhart Seabock is a supervising attorney who oversees other attorneys' work. As such, Defendants Potter Handy LLP, Mark Potter, Russell Handy, Dennis Price, and Amanda Lockhart Seabock have the right to control the activities of the remainder of the Defendants, and therefore are principals of the remainder of the Defendants, who are their agents. Moreover, Defendants Potter, Handy, Dennis Price, and Amanda Lockhart Seabock know of their subordinates' unlawful violations and have failed to take reasonable remedial action. Accordingly, Defendants Potter Handy LLP, Mark Potter, Russell Handy, Dennis Price, and Amanda Lockhart Seabock are liable for any and all violations of the UCL committed by any one of the other Defendants.[77]

CAUSES OF ACTION

FIRST CAUSE OF ACTION (all Defendants)
(Business and Professions Code § 17200 *et seq.*)

120. The People repeat, re-allege, and incorporate herein each and every allegation in paragraphs 1 through 119, above.

[77] *See also* Rule of Professional Conduct § 5.1.

121. The UCL prohibits any person from engaging in "any unlawful, unfair, or fraudulent business act or practice." (Bus. & Prof. Code, § 17200 *et seq.*)

122. Defendants are "persons" subject to the UCL. (Bus. & Prof. Code, § 17201.)

123. The Defendants, Potter Handy LLP, Mark Potter, Russell Handy, Dennis Price, Amanda Lockhart Seabock, Christopher Seabock, Prathima Price, Raymond Ballister Jr., Phyl Grace, Christina Carson, Elliott Montgomery, Faythe Gutierrez, Isabel Rose Masanque, Bradley Smith, Tehniat Zaman, and Josie Zimmerman, intentionally engaged in, and continue to intentionally engage in, unlawful business practices in violation of the UCL through their knowing, intentional violations of Business & Professions Code section 6128(a), California Rule of Professional Conduct 3.1, and California Rule of Professional Conduct 3.3, as described at further length above. Each of these Defendants is also liable for having intentionally aided and abetted the violations of the UCL committed by each of the other Defendants.

124. Defendants Potter Handy LLP, Mark Potter, Russell Handy, Dennis Price, and Amanda Lockhart Seabock, as the principals of the other Defendants, who are their agents, are liable for each and every alleged violation of the UCL committed by the other Defendants.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

125. That pursuant to Business and Professions Code section 17203 and the Court's inherent equitable powers, Defendants; their successors and the assigns of all or substantially all their assets; their directors, officers, employees, agents, independent contractors, partners, associates and representatives of each of them; and all persons, corporations and other entities acting in concert or in participation with Defendants, be preliminarily and permanently restrained and enjoined from engaging in any acts of unfair competition, in violation of section 17200 of the Business and Professions Code.

126. That pursuant to Business and Professions Code section 17203, and pursuant to the Court's inherent equitable power, Defendants be ordered to restore to every person in interest all money and property which was acquired by Defendants through their unlawful conduct, according to proof—including but not limited to all settlement payments and attorney's fee

awards that Defendants received in each and every federal Serial Filer case that Defendants filed or settled within the four-year statute of limitations period.

127. That pursuant to Business and Professions Code section 17206, Defendants be ordered to pay cumulative[78] civil penalties of Two Thousand Five Hundred Dollars ($2,500.00) for each violation of Business and Professions Code section 17200, according to proof.

128. That Plaintiff be awarded its costs of suit.

Dated: April 11, 2022

Respectfully submitted,

By: _____
CHESA BOUDIN
District Attorney of the City and County of San Francisco

By: _____
GEORGE GASCÓN
Los Angeles County District Attorney

Attorneys for Plaintiff
PEOPLE OF THE STATE OF CALIFORNIA

[78] Bus. & Prof. Code § 17205.