CIV-170131-CIV-DS1701664-CASEEN-154602

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System Code: CIV
Case Number: DS1701664
Case Type: CIV
Action Code: CASEEN
Action Date: 01/31/17
Action Time: 3:46
Action Seq: 0002
Printed by: ANPER

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Complaint and Party information entered

NEW FILE

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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JAN 31 2017

BY Anne Perry
ANNE PERRY, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

CHERYL THURSTON, an individual,

Plaintiff,

v.

PANDA RESTAURANT GROUP, INC., a California corporation; and DOES 1-10, inclusive,

Defendants.

Case No. CIVDS 1701664

COMPLAINT

176131-0853 $435-AP

Plaintiff Cheryl Thurston ("Plaintiff"), alleges the following upon information and belief based upon investigation of counsel, except as to her own acts, which she alleges upon personal knowledge:

INTRODUCTION

1. Plaintiff Cheryl Thurston is a blind individual who requires screen reading software to read website content and access the internet. Defendant Panda Restaurant Group, Inc. maintains its website, www.pandaexpress.com, in such a way that it contains access barriers preventing Plaintiff, and other blind and visually-impaired individuals, from gaining equal access to www.pandaexpress.com. Defendant's denial of full and equal access to its website, and therefore its products and services offered thereby, is a violation of Plaintiff's rights under California's Unruh Civil Rights Act.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this action. This Court has personal jurisdiction over Defendant because it is a California corporation with its principal place of business in Rosemead, California, and because it has conducted and continues to conduct substantial business in the State of California, County of San Bernardino, and Defendant's offending website is available across California.

3. Venue is proper in this Court because Defendant conducts substantial business in this County. Venue is also proper because a substantial portion of the misconduct alleged herein occurred in the County of San Bernardino.

PARTIES

4. Plaintiff resides in San Bernardino County, California. Plaintiff is permanently blind and uses a screen reader in order to access the internet and read website content. Despite several attempts to use and navigate www.pandaexpress.com, Plaintiff has been denied the full use and enjoyment of the facilities and services of www.pandaexpress.com as a result of accessibility barriers on www.pandaexpress.com. The access barriers on www.pandaexpress.com have caused a denial of Plaintiff's full and equal access multiple times in the past, and now deter Plaintiff on a regular basis from accessing Defendant's website. Similarly, the access barriers on www.pandaexpress.com have deterred Plaintiff from visiting Defendant's restaurants.

5. Plaintiff is informed and believes, and thereon alleges, that Defendant Panda Restaurant Group, Inc. is a California corporation with its principal place of business located in Rosemead, California. Plaintiff is informed and believes, and thereon alleges, that Defendant owns and operates restaurant locations and also has franchised restaurant locations around the United States, including in California. These locations constitute places of public accommodation. Defendant's locations provide to the public important goods and/or services. Defendant also provides to the public the www.pandaexpress.com website. www.pandaexpress.com provides access to the array of services, including restaurant locators, and many other benefits related to these facilities and services. The Panda Express restaurant locations, including those in California, are public accommodations within the definition of Title III of the Americans With Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12181(7). www.pandaexpress.com is a service, privilege, or advantage of the Panda Express services and locations. www.pandaexpress.com is a service that is by and integrated with these locations.

6. At all relevant times, each and every Defendant was acting as an agent and/or employee of each of the other Defendants and was acting within the course and/or scope of said agency and/or employment with the full knowledge and consent of each of the Defendants. Each of the acts and/or omissions complained of herein were alleged and made known to, and ratified by, each of the other Defendants (Panda Restaurant Group, Inc. and DOE Defendants will hereafter collectively be referred to as "Defendant").

7. The true names and capacities of the Defendants sued herein as DOES 1 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues such Defendants by fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend this Complaint to reflect the true names and capacities of the DOE Defendants when such identities become known.

FACTS

8. The Internet has become a significant source of information, a portal and tool for conducting business, and a means for doing everyday activities such as shopping, banking, etc. for both the sighted and blind, and/or visually-impaired persons.

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9. Blind individuals may access websites by using keyboards in conjunction with screen-reading software that vocalizes visual information on a computer screen. Screen access software provides the only method by which a blind person may independently access the internet. Unless websites are designed to be read by screen reading software, blind persons are unable to fully access websites and the information, products and services contained thereon.

10. The international website standards organization, W3C, has published version 2.0 of the Web Content Accessibility Guidelines ("WCAG 2.0"). WCAG 2.0 are well-established guidelines for making websites accessible to blind and visually-impaired people. These guidelines are successfully followed by numerous large business entities to ensure their websites are accessible. These guidelines recommend several basic components for making websites accessible including, but not limited to: adding invisible alternative text to graphics; ensuring that all functions can be performed using a keyboard and not just a mouse; ensuring that image maps are accessible; and adding headings so that blind people can easily navigate websites. Without these very basic components, a website will be inaccessible to a blind or visually-impaired person using a screen reader.

11. Defendant offers the commercial website, www.pandaexpress.com, which offers, among other things, information concerning the restaurant locations it operates, menus, employment opportunities, and allows users to find the closest locations for them to visit.

12. Based on information and belief, it is Defendant's policy and practice to deny blind users, including Plaintiff, access to www.pandaexpress.com. Plaintiff and other blind and visually impaired individuals have been and are being denied equal access to the Panda Express locations and to the other services offered to the public through www.pandaexpress.com.

13. Defendant denies blind individuals access to the services and information made available through www.pandaexpress.com by preventing them from freely navigating www.pandaexpress.com. www.pandaexpress.com contains access barriers that prevent free and full use by blind persons using screen reading software.

14. www.pandaexpress.com's barriers include, but are not limited to, the following: (1) the lack of Alternative Text, or a text equivalent. Alternative Text is invisible code embedded beneath a graphical image on a website. Web accessibility requires that Alternative Text be coded with each

picture so that a screen reader can speak the Alternative Text where a sighted user sees pictures. Alternative Text does not change the visual presentation, but instead a text box will pop-up when the mouse moves over the picture. The lack of Alternative Text on these graphics prevents screen readers from accurately vocalizing a description of the graphics. As a result, visually-impaired Panda Express customers are unable to determine what is on the website, browse the site, look for Panda Express locations, check out Defendant's menus and services, including possible job openings, and/or determine what location to visit; (2) Empty links that contain no text causing the function or purpose of the link to not be presented to the user. This can introduce confusion for keyboard and screen reader users; (3) Redundant Links where adjacent links go to the same URL address which results in additional navigation and repetition for keyboard and screen reader users; and (4) Missing form labels which presents a problem because if a form control does not have a properly associated text label, the function or purpose of that form control may not be presented to screen reader users. Form labels also provide visible descriptions and larger clickable targets for form controls.

15. Due to the inaccessibility of www.pandaexpress.com, blind and otherwise visually impaired customers who use screen readers cannot effectively browse for Defendant's locations and menus and services online. If www.pandaexpress.com were accessible, Plaintiff could independently investigate services, and find a location to visit, via Defendant's website as sighted individuals can and do.

16. Despite several attempts to use www.pandaexpress.com since July 2016, the numerous access barriers contained on Defendant's website have denied Plaintiff's full and equal access, and Plaintiff continues to be deterred on a regular basis from accessing Defendant's website. Similarly, based on the numerous access barriers contained on www.pandaexpress.com, Plaintiff has been deterred from visiting any of Defendant's physical locations that Plaintiff may locate by using www.pandaexpress.com.

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FIRST CAUSE OF ACTION

Violation of the Unruh Civil Rights Act, California Civil Code § 51 *et seq.*

(By Plaintiff Against All Defendants)

17. Plaintiff incorporates by this reference the allegations contained in the preceding paragraphs above as if fully set forth herein.

18. California Civil Code § 51 et seq. guarantees equal access for people with disabilities to the accommodations, advantages, facilities, privileges, and services of all business establishments of any kind whatsoever. Defendant is systematically violating the Unruh Civil Rights Act, California Civil Code § 51 *et seq.*

19. Defendant's Panda Express locations are "business establishments" within the meaning of the California Civil Code § 51 et seq. Defendant generates millions of dollars in revenue from the sale of its services in California through its Panda Express retail and franchised restaurant locations and related services and www.pandaexpress.com. www.pandaexpress.com is a service provided by Defendant that is inaccessible to patrons who are visually-impaired like Plaintiff. This inaccessibility denies visually-impaired patrons full and equal access to the facilities and services that Defendant makes available to the non-disabled public. Defendant is violating the Unruh Civil Rights Act, California Civil Code § 51 et seq., in that Defendant is denying visually-impaired customers the services provided by www.pandaexpress.com. These violations are ongoing.

20. Defendant's actions constitute intentional discrimination against Plaintiff on the basis of a disability in violation of the Unruh Civil Rights Act, Cal. Civil Code § 51 et seq. in that: Defendant has constructed a website that is inaccessible to Plaintiff; maintains the website in this inaccessible form; and has failed to take actions to correct these barriers even after being notified of the discrimination that such barriers cause.

21. Defendant is also violating the Unruh Civil Rights Act, California Civil Code § 51 *et seq.* in that the conduct alleged herein constitutes a violation of various provisions of the ADA, 42 U.S.C. § 12101 *et seq.* Section 51(f) of the California Civil Code provides that a violation of the right of any individual under the ADA shall also constitute a violation of the Unruh Civil Rights Act.

22. The actions of Defendants were and are in violation of the Unruh Civil Rights Act,

California Civil Code § 51 *et seq.*, and, therefore, Plaintiff is entitled to injunctive relief remedying the discrimination.

23. Plaintiff is also entitled to statutory minimum damages pursuant to California Civil Code § 52 for each and every offense.

24. Plaintiff is also entitled to reasonable attorneys' fees and costs; however, Plaintiff hereby expressly limits the amount of money that Plaintiff presently seeks to recover in this action to less than $75,000, such that the maximum amount of any recovery shall not exceed $74,999.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually, prays for relief and judgment as follows:

1. A preliminary and permanent injunction enjoining Defendants from violating the Unruh Civil Rights Act, California Civil Code § 51 *et seq.*;

2. A preliminary and permanent injunction requiring Defendant to take the steps necessary to make www.pandaexpress.com readily accessible to and usable by visually-impaired individuals;

3. An award of statutory minimum damages of $4,000 per violation pursuant to section 52(a) of the California Civil Code;

4. For attorneys' fees and expenses pursuant to all applicable laws including, without limitation, California Civil Code § 52(a);

5. For pre-judgment interest to the extent permitted by law;

6. For costs of suit; and

7. For such other and further relief as the Court deems just and proper.

Dated: January 31, 2017

PACIFIC TRIAL ATTORNEYS
A Professional Corporation

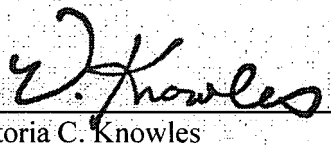
By: _____
Victoria C. Knowles
Attorney for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury of all claims and causes of action so triable in this lawsuit.

Dated: January 31, 2017

PACIFIC TRIAL ATTORNEYS
A Professional Corporation

By: 
Victoria C. Knowles
Attorney for Plaintiff