

CENTER FOR DISABILITY ACCESS
Mark Potter, Esq., SBN 166317
Phyl Grace, Esq., SBN 171771
Mail: PO Box 262490
San Diego, CA 92196-2490
Delivery: 9845 Erma Road, Suite 300
San Diego, CA 92131
(858) 375-7385; (888) 422-5191 fax
phylg@potterhandy.com

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

**Scott Schutzza and John
Karczewski,**

Plaintiffs,

v.

**City of San Diego; Air California
Adventure, Inc., a California
Corporation Doing Business as
Torrey Pines Gliderport; and Does
1-10, Inclusive,**

Defendants.

Case No. **'13CV2992 CAB KSC**

**Complaint For Damages And
Injunctive Relief For Violations
Of:**

1. Title II of the American's With Disabilities Act, 42 U.S.C. §12131 *et seq.*;
2. Title III of the American's With Disabilities Act, 42 U.S.C. §12182 *et seq.*;
3. California's Unruh Civil Rights Act, Cal. Civ. Code 51 *et seq.* and
4. California's Disabled Persons Act, Cal. Civ. Code § 54.1 *et seq.*

Plaintiffs Scott Schutzza and John Karczewski (collectively "Plaintiffs") complain of Defendants City of San Diego; Air California Adventure, Inc., a California Corporation Doing Business as Torrey Pines Gliderport; and Does 1-10, Inclusive, (collectively "Defendants") and allege as follows:

INTRODUCTION

1. The Americans with Disabilities Act ("ADA") was passed over 2 decades ago with a principal goal of integrating people with disabilities into the country's economic and social life. 42 U.S.C. § 12101(a). Despite this

1 long-standing mandate, Defendants have failed to ensure that individuals
2 with disabilities have full and equal access to the goods, facilities, programs,
3 services and activities offered to members of the public at the Torrey Pines
4 Gliderport (“Gliderport”). Specifically, Defendants have constructed and/or
5 failed to remove architectural barriers that prevent individuals who use
6 wheelchairs from having full and equal access to the public facilities at the
7 Gliderport, thus subjecting Plaintiffs to discrimination on the basis of their
8 disabilities in violation of Title II and III of the ADA and related California
9 civil rights laws.

10 2. As a result of Defendants’ discriminatory acts and omissions,
11 Plaintiffs have suffered, and will continue to suffer, damages, and have been,
12 and will continue to be, prevented and deterred from accessing the goods,
13 facilities, programs, services and activities offered at the Gliderport
14 independently and in a manner equal to their able-bodied peers.

15 3. Through this lawsuit, Plaintiffs seek an injunction requiring
16 Defendants to provide them, and similarly situated persons, “full and equal”
17 access to Defendants’ public facilities as required by law. Plaintiffs also seek
18 damages and reasonable attorneys’ fees, costs and litigation expenses for
19 enforcing their civil rights.

20
21 **PARTIES**

22 4. Plaintiffs Scott Schutza (“Schutza”) and John Karczewski
23 (“Karczewski”) are, and at all times relevant herein were, California residents
24 with physical disabilities. Schutza and Karczewski are both unable to walk or
25 stand independently as the result of paraplegia, and use wheelchairs for
26 mobility. Schutza and Karczewski are, and at all times relevant herein were,
27 individuals with disabilities as those terms are defined under the ADA and its
28 implementing regulations (42 U.S.C. § 12102; 28 C.F.R. § 35.104; 28 C.F.R.

1 § 36.104) and California law (Cal. Gov. Code § 12926).

2 5. Defendant City of San Diego (“City”) is, and at all times relevant
3 to herein was, a public entity within the meaning of Title II of the ADA. At all
4 times relevant herein, the Regents owned, controlled, maintained and/or
5 exercised dominion over the Gliderport, located at 2800 Torrey Pines Scenic
6 Drive, in the City of La Jolla, California.

7 6. Defendant Air California Adventure, Inc. (“ACA”), a California
8 corporation doing business as Torrey Pines Gliderport, is a corporation
9 incorporated under the laws of California, with its principal place of business
10 located at 2800 Torrey Pines Scenic Drive, in the City of La Jolla, California.
11 ACA is, and at all times relevant herein was an owner, operator, lessor and/or
12 lessee of the Gliderport, located at 2800 Torrey Pines Scenic Drive, in the
13 City of La Jolla, California.

14 7. Plaintiffs are currently unaware of the true identities of Does 1-
15 10, inclusive, and will seek leave to amend when their true names, capacities,
16 connections, and responsibilities are ascertained.

17 8. Plaintiffs are informed and believe that each of the Defendants
18 is the agent, ostensible agent, alter ego, master, servant, trustor, trustee,
19 employer, employee, representative, franchiser, franchisee, lessor, lessee,
20 joint venturer, parent, subsidiary, affiliate, related entity, partner, and/or
21 associate, or such similar capacity, of each of the other Defendants, and was
22 at all times acting and performing, or failing to act or perform, within the
23 course and scope of such similar aforementioned capacities, and with the
24 authorization, consent, permission or ratification of each of the other
25 Defendants, and is personally responsible in some manner for the acts and
26 omissions of the other Defendants in proximately causing the violations and
27 damages complained of herein, and have participated, directed, and have
28 ostensibly and/or directly approved or ratified each of the acts or omissions of

1 each of the other Defendants, as herein described.

2 **JURISDICTION & VENUE**

3 9. This Court has subject matter jurisdiction over this action
4 pursuant to 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the
5 ADA.

6 10. Pursuant to pendant jurisdiction, attendant and related causes
7 of action arising from the same facts are also brought under California law,
8 including, the Unruh Civil Rights Act, Cal. Civ. Code § 51 *et seq.* and the
9 Disabled Persons Act, Cal. Civ. Code § 54.1 *et seq.*, both of which expressly
10 incorporate the Americans with Disabilities Act. Cal. Civ. Code §§ 51(f),
11 54.1(d).

12 11. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b)
13 and is founded on the fact that the real property which is the subject of this
14 action is located in this district and that Plaintiffs' causes of action arose in
15 this district.

16
17 **FACTUAL ALLEGATIONS**

18 12. The Gliderport is a city-owned private-use glider airport located
19 approximately 12.5 miles northwest of the central business district of San
20 Diego.

21 13. The Gliderport was first established as a soaring site in 1930
22 and is the home to hang gliding, paragliding, radio-controlled model
23 sailplanes, and full-scale man-carrying sailplanes. It is listed as a National
24 Landmark of Soaring of the National Soaring Museum and a Model Aviation
25 Landmark of the Academy of Model Aeronautics. It is considered by glider
26 enthusiasts of all types to be the "Kitty Hawk of the West."

27 14. Full-scale sailplanes are operated by the Associated Glider Clubs
28 of Southern California (AGCSC), only during special permit windows

1 between February and April, while models, hang gliders, and paragliders fly
2 any time the wind permits.

3 15. On March 11, 2013 and March 13, 2013, Plaintiffs visited the
4 Gliderport, seeking to join other spectators in watching the sailplanes, hang
5 gliders and paragliders. On both days, Plaintiffs encountered barriers
6 including:

- 7 a. Parking: There is no designated accessible parking;
- 8 b. Restrooms: There are no accessible restroom facilities;
- 9 c. Pedestrian Paths of Travel: The pedestrian paths of travel
10 are not safe and accessible to wheelchair users; and
- 11 d. Concessions/Snack Bar: The snack/concessions area is
12 inaccessible to wheelchair users as the counters are too
13 high; there is no accessible path of travel to and from the
14 area; and the seating is all picnic table style.

15 16. The barriers encountered by Plaintiffs at the Gliderport violate
16 the ADA Standards for Accessible Design (ADA Standards), 28 C.F.R. pt. 36,
17 app. D, and the Title 24 of the California Code of Regulations, the California
18 Building Code.

19 17. The unlawful and discriminatory barriers at the Gliderport have
20 caused Plaintiffs difficulty, anger, frustration and embarrassment and made
21 them feel unwelcome and like second-class citizens.

22 18. On information and belief, there are additional access barriers
23 and discriminatory policies that exclude and deter Plaintiffs and other
24 similarly situated individuals who use wheelchairs from enjoying full and
25 equal access to and use of the goods, services, facilities, privileges,
26 advantages, and accommodations offered by Defendants to the general
27 public at the Gliderport. Additional access barriers will be confirmed by
28

1 Plaintiffs through a noticed site inspection, at which time they will amend his
2 Complaint.

3 19. Plaintiffs intend to return to the Gliderport in the future, to
4 watch the sailplanes, hang gliders and paragliders. Until the unlawful and
5 discriminatory barriers at the Gliderport are remedied by Defendants,
6 Plaintiffs will continue to be denied full and equal access to the goods,
7 facilities, programs, services and activities offered by Defendants to the
8 general public, and will suffer ongoing discrimination by being prevented and
9 deterred from returning there.

10 20. The nature of Defendants' discrimination constitutes an
11 ongoing violation, and unless enjoined by this Court, will result in ongoing
12 and irreparable injury to Plaintiffs and other similarly disabled persons.

13
14 **GOVERNMENT CLAIM FILED**

15 *(With regard to claims for damages under California Law)*

16 21. Plaintiffs timely filed claims pursuant to § 910 et seq. of the
17 California Government Code with the City of San Diego on May 10, 2013.
18 Their claims were rejected on June 18, 2013.

19
20 **FIRST CAUSE OF ACTION**

21 **TITLE II OF THE AMERICANS WITH DISABILITIES ACT OF 1990**

22 **42 U.S.C. §§ 12131 et seq.**

23 *(On behalf of Plaintiffs and against Defendant City)*

24 22. Plaintiffs re-plead and incorporate by reference the allegations
25 contained in each of the foregoing paragraphs, and incorporate them herein
26 as if separately re-pled.

27 23. Title II of the ADA provides in pertinent part: “[N]o qualified
28 individual with a disability shall, by reason of such disability, be excluded

1 from participation in or be denied the benefits of the services, programs, or
2 activities of a public entity, or be subjected to discrimination by any such
3 entity.” 42 U.S.C. § 12132.

4 24. At all times relevant to this action, Defendant was a “public
5 entity” within the meaning of Title II of the ADA, offering programs, services
6 and/or activities to the general public at the Gliderport.

7 25. Plaintiffs are, and at all times relevant herein were, qualified
8 individuals with disabilities within the meaning of Title II of the ADA, and
9 meet the essential eligibility requirements for the receipt of the services,
10 programs, or activities offered by Defendant to the public at the Gliderport.

11 26. Defendant’s acts and omissions as herein alleged have
12 prevented and/or denied Plaintiffs from having full and equal use and benefit
13 of the programs, services and activities it offers to the public at the
14 Gliderport, in violation of Title II and its implementing regulations. The
15 Defendant’s discriminatory conduct includes, inter alia:

- 16 a. Denying Plaintiffs the opportunity to participate in or
17 benefit from the aids, benefits, or services offered by
18 Defendant to members of the public, on the basis of their
19 disabilities (28 C.F.R. § 35.130(b)(1)(i));
- 20 b. Affording Plaintiffs an opportunity to participate in or
21 benefit from the aids, benefits, or services offered by
22 Defendants to members of the public that is not equal to
23 that afforded their non-disabled peers (28 C.F.R. §
24 35.130(b)(1)(ii));
- 25 c. Providing Plaintiffs with an aid, benefit, or service that is
26 not as effective in affording equal opportunity to obtain
27 the same result, to gain the same benefit, or to reach the
28 same level of achievement as that provided to others (28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

C.F.R. § 35.130(b)(1)(iii));

- d. Otherwise limiting Plaintiffs in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aids, benefits, or services offered by Defendant to members of the public (28 C.F.R. § 35.130(b)(1)(vii));
- e. Utilizing methods of administration that have the effect of subjecting Plaintiffs to discrimination on the basis of their disabilities (28 C.F.R. § 35.130(b)(3)(i)); and
- f. Failing to make reasonable modifications in policies, practices, or procedures where necessary to avoid discrimination against Plaintiffs on the basis of their disabilities (28 C.F.R. § 35.130(b)(7)).

27. Defendant’s duties under Title II are mandatory, well-established and long-standing. Defendant is deemed to have had knowledge of its duties at all times relevant herein; its failure to carry out said duties was willful and knowing and/or the product of deliberate indifference.

28. Pursuant to 42 U.S.C. §§ 12133 and 12205, Plaintiffs pray for judgment as set forth below.

CAUSE OF ACTION
VIOLATION OF THE AMERICANS WITH DISABILITIES ACT
TITLE III - 42 U.S.C. §12101 et seq.
(On behalf of Plaintiffs and against Defendant ACA)

29. Plaintiffs re-plead and incorporate by reference the allegations contained in each of the foregoing paragraphs, and incorporate them herein as if separately re-pled.

30. Title III of the ADA provides that “No individual shall be discriminated against on the basis of disability in the full and equal

1 enjoyment of the goods, services, facilities, privileges, advantages, or
2 accommodations of any place of public accommodation by any person who
3 owns, leases (or leases to), or operates a place of public accommodation.” 42
4 U.S.C. § 12182(a).

5 31. Among the “private entities” which are considered “public
6 accommodations” for purposes of this title is “a motion picture house,
7 theater, concert hall, stadium, or other place of exhibition or entertainment”.
8 42 U.S.C. 12181(7)(C).

9 32. The Gliderport is a place of exhibition or entertainment, and
10 therefore a place of “public accommodation” for purposes of Title III of the
11 ADA.

12 33. Defendant has discriminated against Plaintiffs on the basis of
13 their disabilities in violation of Title III of the ADA. Defendant’s
14 discriminatory conduct includes, but is not limited to:

- 15 a. Directly, or through contractual, licensing, or other
16 arrangements, excluding or denying Plaintiffs goods, services,
17 facilities, privileges, advantages, accommodations, and/or
18 opportunities, on the basis of their disabilities. 42 U.S.C. §
19 12182(b)(1)(A)(i);
- 20 b. Providing Plaintiffs goods, services, facilities, privileges,
21 advantages, and/or accommodations that are not equal to those
22 afforded non-disabled individuals. 42 U.S.C. §
23 12182(b)(1)(A)(ii);
- 24 c. Failing to design and/or construct facilities built for first
25 occupancy after January 26, 1993 so that they are readily
26 accessible to and usable by individuals with disabilities in
27 accordance with the ADA Standards. 42 U.S.C. § 12183(a)(1);
- 28 d. Since January 26, 1992, failing to make alterations in such a

1 manner that, to the maximum extent feasible, the altered
2 portions of the facilities are readily accessible to and usable by
3 individuals with disabilities in accordance with the ADA
4 Standards. 42 U.S.C. § 12183(a)(2);

- 5 e. Since July 26, 1991, failing to comply with the ongoing
6 obligation to remove barriers, and/or provide path of travel
7 upgrades to remove barriers at facilities where such removal is
8 “readily achievable.” 42 U.S.C. § 12182(a)(2)(A)(iv); and
9 f. Failing “to make reasonable modifications in policies, practices,
10 or procedures, when such modifications are necessary to afford
11 such goods, services, facilities, privileges, advantages, or
12 accommodations to individuals with disabilities, unless the
13 entity can demonstrate that making such modifications would
14 fundamentally alter the nature of such goods, services, facilities,
15 privileges, advantages, or accommodations.” 42 U.S.C. §
16 12182(b)(2)(A)(ii).

17 34. Pursuant to the remedies, procedures, and rights set forth in 42
18 U.S.C. § 12188 and 42 U.S.C. § 12205, Plaintiffs pray for judgment as set
19 forth below.

20
21 **THIRD CAUSE OF ACTION**

22 **UNRUH CIVIL RIGHTS ACT**

23 **California Civil Code §§ 51 et seq.**

24 *(On behalf of Plaintiffs and against all Defendants)*

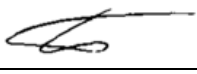
25 35. Plaintiffs re-plead and incorporate by reference the allegations
26 contained in each of the foregoing paragraphs, and incorporates them herein
27 as if separately re-pled.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- c. **Note:** the Plaintiffs are is not invoking section 55 of the California Civil Code and is not seeking injunctive relief under the Disabled Persons Act.
- 2. Award Plaintiffs general, compensatory, and statutory damages in an amount within the jurisdiction of this court;
- 3. Award Plaintiffs attorneys’ fees, litigation expenses and costs of suit, as provided by law; and
- 4. Award such other and further relief as the Court may deem just and proper.

Dated: December 10, 2013

Center For Disability Access

By: 

Mark Potter, Esq.
Attorneys for Plaintiff