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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

CHRIS KOHLER,

Plaintiff,

vs.

FLAVA ENTERPRISES, INC., doing
business as House of Flava,

Defendant.

CASE NO. 10cv730 - IEG (NLS)

**ORDER
(1) GRANTING DEFENDANT’S
MOTION FOR SUMMARY
JUDGMENT**

[Doc. No. 99]

**(2) DENYING PLAINTIFF’S
MOTION FOR SUMMARY
JUDGMENT**

[Doc. No. 97]

Presently before the Court is the parties’ cross motions for summary judgment pursuant to Federal Rule of Civil Procedure 56. Plaintiff Chris Kohler, a paraplegic, brings a civil rights action under the Americans with Disabilities Act and related California statutes. For the reasons stated below, the Court **GRANTS** Defendant’s motion for summary judgment and **DENIES** Plaintiff’s motion for summary judgment.

BACKGROUND

Plaintiff is paralyzed from the waist down and requires the use of a wheelchair. [Doc. No. 44, Dep. Tr. of Chris Kohler (“Kohler Dep.”) at 14:15-15:14.] Plaintiff testified that, in February 2010, he visited Defendant’s retail clothing store, House of Flava, and encountered several barriers. [Id. at 16:15-19:6, 65:11-65:22.] Plaintiff testified that the bench in Defendant’s dressing room did not allow him to make a diagonal transfer onto it. [Id. at 16:15-16:25.] Plaintiff testified

1 that Defendant's lowered checkout counter had items on top of it and under it making it useless to
2 him. [Id. at 18:3-18:17, 23:4-24:16, 68:8-68:17.] Plaintiff also testified that he did not see the
3 appropriate disabled signs on Defendant's lowered counter. [Id. at 34:19-35:6.] Plaintiff states
4 that during his visit, he purchased a shirt at the regular checkout counter, took pictures of the
5 dressing room and the lowered counter, and then left Defendant's store. [Id. at 72:23-74:25.]
6 Plaintiff visited Defendant's store two more times and again encountered barriers although he did
7 not try on or purchase any clothing during those visits. [Id. at 75:21-77:14.]

8 On April 7, 2010, Plaintiff filed the present action against Defendant Flava Enterprises,
9 Inc. [Doc. No. 1.] On February 17, 2011, Plaintiff filed a First Amended Complaint ("FAC")
10 alleging four causes of action: (1) violation of the Americans with Disabilities Act of 1990
11 ("ADA"); (2) violation of the Disabled Persons Act ("DPA"), California Civil Code § 54; (3)
12 violation of the Unruh Civil Rights Act ("the Unruh Act"), California Civil Code § 51; and (4)
13 denial of full and equal access to public facilities, in violation of the California Health and Safety
14 Code. [Doc. No. 28.] Plaintiff seeks injunctive relief, declaratory relief, and damages. [Id.]
15 Specifically, the FAC alleges that Plaintiff encountered the five following barriers at Defendant's
16 store: (1) the checkout counter did not contain a lowered portion and was too high to accommodate
17 a patron in a wheelchair; (2) the dressing room bench was not 24 inches wide by 48 inches long;
18 (3) the clothing hooks inside the dressing room were mounted too high; (4) the International
19 Symbol of Accessibility was mounted below the checkout counter rather than above it; and (5)
20 there was no sign mounted above the disabled checkstand indicating that it is to remain open at all
21 times for persons with disabilities. [Id. ¶ 10.]

22 DISCUSSION

23 **I. Legal Standard for a Motion for Summary Judgment**

24 Summary judgment is proper where the pleadings and materials demonstrate "there is no
25 genuine issue as to any material fact and . . . the movant is entitled to judgment as a matter of law."
26 Fed. R. Civ. P. 56(c)(2); Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). A material issue of
27 fact is a question a trier of fact must answer to determine the rights of the parties under the
28 applicable substantive law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A dispute

1 is genuine “if the evidence is such that a reasonable jury could return a verdict for the nonmoving
2 party.” Id.

3 The moving party bears “the initial responsibility of informing the district court of the basis
4 for its motion.” Celotex, 477 U.S. at 323. To satisfy this burden, the movant must demonstrate
5 that no genuine issue of material fact exists for trial. Id. at 322. Where the moving party does not
6 have the ultimate burden of persuasion at trial, it may carry its initial burden of production in one
7 of two ways: “The moving party may produce evidence negating an essential element of the
8 nonmoving party’s case, or, after suitable discovery, the moving party may show that the
9 nonmoving party does not have enough evidence of an essential element of its claim or defense to
10 carry its ultimate burden of persuasion at trial.” Nissan Fire & Marine Ins. Co., v. Fritz Cos., 210
11 F.3d 1099, 1106 (9th Cir. 2000). To withstand a motion for summary judgment, the non-movant
12 must then show that there are genuine factual issues which can only be resolved by the trier of
13 fact. Reese v. Jefferson Sch. Dist. No. 14J, 208 F.3d 736, 738 (9th Cir. 2000). The non-moving
14 party may not rely on the pleadings alone, but must present specific facts creating a genuine issue
15 of material fact through affidavits, depositions, or answers to interrogatories. Fed. R. Civ. P.
16 56(e); Celotex, 477 U.S. at 324.

17 The court must review the record as a whole and draw all reasonable inferences in favor of
18 the non-moving party. Hernandez v. Spacelabs Med. Inc., 343 F.3d 1107, 1112 (9th Cir. 2003).
19 However, unsupported conjecture or conclusory statements are insufficient to defeat summary
20 judgment. Id.; Surrell v. Cal. Water Serv. Co., 518 F.3d 1097, 1103 (9th Cir. 2008). Moreover, the
21 court is not required “to scour the record in search of a genuine issue of triable fact,” Keenan v.
22 Allan, 91 F.3d 1275, 1279 (9th Cir.1996) (citations omitted), but rather “may limit its review to
23 the documents submitted for purposes of summary judgment and those parts of the record
24 specifically referenced therein.” Carmen v. San Francisco Unified Sch. Dist., 237 F.3d 1026, 1030
25 (9th Cir. 2001).

26 **II. Legal Standard for ADA claims**

27 The Americans with Disabilities Act was enacted “to provide clear, strong, consistent,
28 enforceable standards addressing discrimination against individuals with disabilities.” 42 U.S.C. §

1 12101(b)(2). “Its passage was premised on Congress’s finding that discrimination against the
2 disabled is ‘most often the product, not of invidious animus, but rather of thoughtlessness and
3 indifference,’ of ‘benign neglect,’ and of ‘apathetic attitudes rather than affirmative animus.’”
4 Chapman v. Pier 1 Imps. (U.S.), Inc., 631 F.3d 939, 944-45 (9th Cir. 2011) (en banc) (quoting
5 Alexander v. Choate, 469 U.S. 287, 295-96 (1985)).

6 Under the ADA, unlawful “discrimination” occurs when features of an accommodation
7 subject an individual or class of individuals on the basis of a disability or disabilities
8 of such individual or class, directly, or through contractual, licensing, or other
9 arrangements, to a denial of the opportunity of the individual or class to participate in
or benefit from the goods, services, facilities, privileges, advantages, or
accommodations of an entity.

10 42 U.S.C. § 12182(b)(1)(A)(I). In the context of existing facilities, discrimination includes “a
11 failure to remove architectural barriers . . . where such removal is readily achievable.” Id. §
12 12182(b)(2)(A)(iv). In the case of newly constructed facilities, compliance with the ADA’s
13 antidiscrimination mandate requires that facilities be “readily accessible to and usable by
14 individuals with disabilities.” Id. § 12183(a)(1).

15 “Whether a facility is ‘readily accessible’ is defined, in part, by the ADA Accessibility
16 Guidelines (‘ADAAG’).” Chapman, 631 F.3d at 945. These guidelines “lay out the technical
17 structural requirements of places of public accommodation.” Fortyune v. Am. Multi-Cinema, Inc.,
18 364 F.3d 1075, 1080-81 (9th Cir. 2004). “The ADAAG’s requirements are as precise as they are
19 thorough, and the difference between compliance and noncompliance with the standard of full and
20 equal enjoyment established by the ADA is often a matter of inches.” Chapman, 631 F.3d at 945-
21 46.

22 “To prevail on a Title III discrimination claim, the plaintiff must show that (1) [he] is
23 disabled within the meaning of the ADA; (2) the defendant is a private entity that owns, leases, or
24 operates a place of public accommodation; and (3) the plaintiff was denied public accommodations
25 by the defendant because of [his] disability.” Molski v. M.J. Cable, Inc., 481 F.3d 724, 730 (9th
26 Cir. 2007). “The ADA authorizes only injunctive relief for disabled individuals who suffer
27 prohibited discrimination and does not provide for the recovery of monetary damages by private
28 individuals.” Hubbard v. Rite Aid Corp., 433 F. Supp. 2d 1150, 1159 (S.D. Cal. 2006) (citing 42

1 U.S.C. § 12188(a)(2)).

2 **III. Analysis**

3 Defendant does not appear to dispute elements one or two of Plaintiff's ADA claim-that
4 Plaintiff is disabled within the meaning of the ADA and that Defendant's store is a place of public
5 accommodation. Therefore, the issue presented by the parties' cross motions for summary
6 judgment is whether Plaintiff was denied public accommodations by Defendant due to his
7 disability. In his amended complaint, Plaintiff states that Defendant's store contained five barriers
8 making the store inaccessible. [Doc. No. 28 ¶ 10.] The Court addresses each of the five barriers
9 below.

10 **A. Height of Checkout Counter**

11 The parties move for summary adjudication of Plaintiff's ADA claim that the checkout
12 counter was too high. [Pl.'s Mot. at 8-9; Def.'s Mot. at 2-10.] Defendant argues that its store
13 contains a lowered checkout counter that meets ADAAG requirements. [Def.'s Mot. at 2-5.]
14 Plaintiff argues that even assuming Defendant has a lowered counter, Defendant cannot show that
15 the lowered counter was unobstructed. [Pl.'s Mot. at 8.] In response, Defendant argues that there
16 is no requirement for underside clearance at customer service counters. [Def.'s Mot. at 6; Def.'s
17 Opp'n at 8-9.]

18 ADAAG section 7.2 provides:

19 In department stores and miscellaneous retail stores where counters have cash registers
20 and are provided for sales or distribution of goods or services to the public, at least one
21 of each type shall have a portion of the counter which is at least 36 in (915mm) in
length with a maximum height of 36 in (915 mm) above the finish floor.

22 24 C.F.R. pt. 36, App. A. § 7.2.

23 In 2009, Defendant installed a lowered counter, which is 35 inches high and 36 inches
24 wide. [Doc. No. 103-1, Declaration of Mark Kim ("Kim Decl.") ¶ 3, Exs. A-B.] Plaintiff testified
25 that the first time he visited Defendant's store in February 2010 there was a lowered counter at the
26 store. [Doc. No. 44, Kohler Dep. at 18:6-18:25, 65:11-65:22.] In addition, Plaintiff has submitted
27 a picture he took during this visit to the store, which shows the lowered counter. [Pl.'s Mot. at 8;

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1 Doc. No. 98, Declaration of Chris Kohler (“Kohler Decl.”) ¶ 2.]¹ Plaintiff has presented no
2 evidence showing that the lowered counter was higher than 36 inches. Therefore, there is no
3 genuine dispute of fact that during Plaintiff’s visits, Defendant’s store possessed a lowered counter
4 that is 35 inches high and 36 inches wide, and the store was in compliance with ADAAG section
5 7.2.

6 Plaintiff argues that even if Defendant’s store possessed a lowered counter, the counter was
7 inaccessible to him because it was blocked by merchandise, a storage bin, and a waste receptacle.
8 [Pl.’s Mot. at 8-9.] In support of this argument, Plaintiff has submitted a picture of the counter that
9 he took during his first visit showing that there was a storage bin and a waste receptacle under the
10 counter and a few items on top of the counter. [Id. at 8; Kohler Decl. ¶ 2.] Plaintiff also testified
11 about encountering these items during his visits to Defendant’s store. [Kohler Dep. at 18:3-18:25,
12 23:25-24:16.]

13 A violation of the ADA can occur where a defendant’s business is in compliance with
14 ADAAG requirements, but that defendant does not maintain its compliant features in a useable
15 manner. See Independent Living Resources v. Oregon Arena Corp., 1 F. Supp. 2d 1159, 1172-73
16 (D. Or. 1998); see also Fortyune, 364 F.3d at 1084-85. However, it does not seem that the items
17 shown in Plaintiff’s picture and testified about by Plaintiff rendered the lowered counter useless
18 and inaccessible.

19 Defendant argues that there is no ADAAG requirement that the lowered counter contain
20 underside clearance and, therefore, items underneath the counter would not render it inaccessible.
21 [Def.’s Mot. at 6; Def.’s Opp’n at 8-9.] In an attempt to refute this claim, Plaintiff cites to
22 ADAAG section 4.32.2. [Pl.’s Opp’n at 5.] Defendant argues that this section only applies to

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24 ¹ Defendant objects to the Declaration of Chris Kohler and the picture of the lowered counter
25 on three grounds. [Doc. No. 113-1 at 2-4.] First, Defendant argues that Plaintiff should not be able
26 to rely on the picture because he has not produced the picture in digital form. [Id. at 2-3.] Second,
the declaration fails to state that it was taken during his first visit to Defendant’s store in February
2010. [Id. at 3.] Third, the declaration lacks a proper signature. [Id. at 3-4.]

27 The Court **OVERRULES** Defendant’s objections. Defendant has not shown that a digital
28 version of the photograph is needed to oppose Plaintiff’s motion for summary judgment. In addition,
the declaration states that the photo is “a photo which was taken by me and which accurately depict[s]
the counter at the subject House of Flava on February 13, 2010.” [Kohler Decl. at 3.] Finally, the
declaration shows that it was signed by Plaintiff, Chris Kohler. [Id.]

1 dining facilities and is inapplicable to customer service counters. [Def.’s Reply at 6.]

2 Section 4.32.2 states that it applies to tables or counters that provide seating space for
3 people in wheelchairs. See 24 C.F.R. pt. 36, App. A. § 4.32.2. A checkout counter in a retail store
4 unlike a counter or table in a dining facility is not a counter that is intended to provide seating
5 space for people. The primary purpose of a checkout counter is to allow people to purchase
6 merchandise. A person in a wheelchair should be able to conduct the transaction without
7 underside clearance at the counter, and the Court concludes that section 4.32.2 does not apply to
8 Defendant’s lowered counter. Therefore, there is no requirement for underside clearance and the
9 lack of underside clearance does not render the counter inaccessible to Plaintiff.

10 Because the items below the counter did not render the counter inaccessible to Plaintiff, the
11 lowered counter was in compliance unless the items on top of it rendered the counter inaccessible.
12 The photo submitted by Plaintiff’s in support of his motion for summary judgment only shows a
13 few items on the counter, and it does not appear that these items would prevent him from using the
14 lowered counter to purchase merchandise. Therefore, the lowered counter was accessible to
15 Plaintiff. Accordingly, the Court **GRANTS** Defendant’s motion for summary judgment and
16 **DENIES** Plaintiff’s motion for summary judgment on Plaintiff’s ADA claim that the lowered
17 counter was too high and inaccessible.

18 **B. Accessibility Sign on Counter**

19 The parties move for summary adjudication of Plaintiff’s ADA claim that the lowered
20 counter lacked an International Symbol of Accessibility (“ISA”) sign. [Pl.’s Mot. at 11; Def.’s
21 Mot. at 15-18.] Plaintiff argues that the lowered counter was not properly identified because it
22 lacked an ISA sign as required by ADAAG section 7.3(3). [Pl.’s Mot. at 8; Doc. No. 118.]
23 Defendant argues that section 7.3(3) only applies to stores that have checkout aisles, and
24 Defendant’s store does not have any checkout aisles. [Doc. No. 119.]

25 The Court agrees with Defendant. Section 7.3(3), entitled “Check-out Aisles,” only
26 requires ISA “[s]ignage identifying accessible check-out aisles.” 24 C.F.R. pt. 36, App. A. §
27 7.3(3). Defendant’s store does not have a checkout aisle or checkout aisles. Defendant’s store
28 only has a single sales counter with a lowered portion and a raised portion. [Kim Decl. Exs. A-B;

1 Doc. Nos 101-102, Declaration of David Peters (“Peters Decl.”) Exs. A-C, H-L.] Defendant’s
2 sales counter is governed by ADAAG section 7.2, entitled “Sales and Service Counters, Teller
3 Windows, Information Counters.” See 24 C.F.R. pt. 36, App. A. § 7.2. Section 7.2 does not
4 contain a requirement for ISA signage, see id., and Plaintiff does not argue to the contrary.
5 Because section 7.3(3)’s signage requirement does not apply to Defendant’s sales counter, the
6 Court **GRANTS** Defendant’s motion for summary judgment and **DENIES** Plaintiff’s motion for
7 summary judgment on Plaintiff’s ADA claim that the lowered counter lacked an ISA sign.

8 **C. Length of Dressing Room Bench**

9 The parties move for summary adjudication of Plaintiff’s ADA claim that the dressing
10 room bench was too long, preventing Plaintiff from making a diagonal transfer onto the bench.
11 [Pl.’s Mot. at 9-10; Def.’s Mot. at 10-13.] Plaintiff argues that Defendant’s dressing room bench
12 does not comply with either the 2010 ADAAG standards or the 1991 ADAAG standards. [Pl.’s
13 Mot. at 9-10.] Defendant argues that the bench complies with the 1991 ADAAG standards
14 because it exceeds the required dimensions. [Def.’s Mot. at 10-13.]

15 On September 15, 2010, the Department of Justice promulgated new regulations and
16 adopted new ADAAG standards (“the 2010 ADAAG standards”). See Nondiscrimination on the
17 Basis of Disability by Public Accommodations and in Commercial Facilities, 75 Fed. Reg. 56236
18 (Sept. 15, 2010) (to be codified at 28 C.F.R. pt. 36). Prior to March 15, 2012, a business owner
19 can choose to comply with either the 2010 standards or the 1991 standards. Id. at 56254-55.
20 Therefore, Defendant’s dressing room bench is required to meet either the 2010 ADAAG
21 standards or the 1991 ADAAG standards. See id.

22 The 2010 standards require that a bench in an accessible dressing room comply with
23 section 903. 2010 Standards § 803.4. Section 903.3 provides that benches “shall have seats that
24 are 42 inches (1065 mm) long minimum and 20 inches (510 mm) deep minimum and 24 inches
25 (610 mm) deep maximum.” Id. § 903.3. Section 903.2 also requires that clear floor space in
26 compliance with section 305 be provided at the end of the bench seat. Id. § 903.2 Section 305.3
27 provides that clear floor space “shall be 30 inches (760 mm) minimum by 48 inches (1220 mm)
28 minimum.” Id. § 305.3.

1 Defendant's dressing room bench runs the entire length of the back wall of the dressing
2 room. [Kim Decl. ¶ 4, Ex. D; Def.'s Mot. at 11.] Therefore, the bench does not contain clear floor
3 space at the end of the bench seat, and the bench does not comply with the 2010 ADAAG
4 standards. See 2010 Standards §§ 305.3, 903.2. Accordingly, Defendant's bench is only in
5 compliance with the ADAAG standards if it complies with the 1991 standards.

6 The 1991 standards provide in Section 4.35.4 that:

7 Every accessible dressing room shall have a 24 in by 48 in (610 mm by 1220 mm)
8 bench fixed to the wall along the longer dimension. The bench shall be mounted 17
9 in to 19 in (430 mm to 485 mm) above the finish floor. Clear floor space shall be
provided alongside the bench to allow a person using a wheelchair to make a parallel
transfer onto the bench.

10 24 C.F.R. pt. 36, App. A § 4.35.4.

11 The parties agree that the dressing room bench is longer than 48 inches. [Pl.'s Mot. at 9-
12 10; Def.'s Mot. at 11-12; Doc. No. 103, Kim Decl. ¶ 4.] Because the bench is not exactly 48
13 inches long, it appears that the bench does not comply with the plain language of section 4.35.4.
14 However, section 2.2 of the 1991 standards provides: "Departures from particular technical and
15 scoping requirements of this guideline by the use of other designs and technologies are permitted
16 where the alternative designs and technologies used will provide substantially equivalent or
17 greater access to and usability of the facility." 24 C.F.R. pt. 36, App. A § 2.2.²

18 Defendant argues that a bench can be in compliance with the 1991 standards even if it
19 exceeds 48 inches in length. [Def.'s Mot. at 10-11.] In support of this argument, Defendant cites
20 to two summary judgment opinions from this district where the court held that a dressing room
21 bench in excess of 48 inches in length provided at least equivalent access to a bench that is 24
22 inches by 48 inches. See Oliver v. J.C. Penny Co., No. 09-cv-1658 (S.D. Cal., Order filed May 17,
23 2010 [Doc. No. 45]); Kohler v. Chelsea San Diego Finance, LLC, No. 09-cv-2780 (S.D. Cal.,
24 Order filed Dec. 9, 2010 [Doc. No. 202]).

25 The Court agrees with the analysis in those two opinions. Plaintiff's primary argument in

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27 ² Plaintiff argues that Defendant did not plead "equivalent access" as one of its affirmative
28 defenses in its answer, and, therefore, it has waived that defense. [Pl.'s Reply at 6.] However,
Plaintiff does not cite to case law stating that "equivalent access" must be plead by Defendant as an
affirmative defense. In addition, the Court finds that the defense of "equivalent access" is contained
in Defendant's first and seventh affirmative defenses in its answer. [Doc. No. 13 ¶¶ 55, 61.]

1 explaining why a longer bench is not equivalent is that a 64 inch bench that runs the full length of
2 the wall prevents him from making a diagonal transfer, which is much easier for Plaintiff to
3 perform than a parallel transfer. [Pl.'s Mot. at 2, 9-10; Pl.'s Reply at 4-5.] However, section
4 4.35.4 only mentions that the bench must allow for parallel transfers; it says nothing about
5 diagonal transfers. See 24 C.F.R. pt. 36, App. A § 4.35.4. Plaintiff argues that the 1991 standards
6 implicitly allow for diagonal transfers. [Pl.'s Reply at 5.] However, the Court disagrees that there
7 is an implicit requirement for diagonal transfers, when section 4.35.4 explicitly only mentions the
8 need to allow for parallel transfers. See 24 C.F.R. pt. 36, App. A § 4.35.4.

9 Plaintiff testified that he could have made a parallel transfer onto Defendant's bench.
10 [Kohler Dep. at 66:21-67:10, 87:12-87:16.] Therefore, the longer bench provided at least
11 substantially equivalent access to a 48 inch long bench. Accordingly, the Court **GRANTS**
12 Defendant's motion for summary judgment and **DENIES** Plaintiff's motion for summary
13 judgment on Plaintiff's ADA claim that Defendant's dressing room bench was too long.

14 **D. Height of the Clothing Hooks in Dressing Room**

15 Plaintiff's amended complaint alleges that the clothing hooks in Defendant's dressing room
16 were mounted too high. [FAC ¶ 10.] Defendant moves for summary adjudication of this claim
17 arguing that the clothing hooks were mounted 39 inches above the floor in compliance with
18 ADAAG § 4.2.5. See 24 C.F.R. pt. 36, App. A. § 4.2.5 ("the maximum high forward reach
19 allowed shall be 48 in"). [Def.'s Mot. at 14-15.] In response, Plaintiff concedes that the hooks are
20 accessible and does not oppose Defendant's motion for summary judgment with respect to this
21 claim. [Pl.'s Opp'n at 8; see also Doc. No. 46 at 12.] Accordingly, the Court **GRANTS**
22 Defendant's motion for summary judgment on Plaintiff's ADA claim that the clothing hooks in the
23 dressing room were mounted too high.

24 **E. Overhead Accessibility Sign**

25 Plaintiff's amended complaint alleges that the checkout counter lacked an overhead sign
26 indicating that the counter is to remain open at all times for persons with disabilities. [FAC ¶ 10.]
27 Defendant moves for summary adjudication of this claim arguing that such a sign is only required
28 for businesses that have checkout aisles, and Defendant's store does not have checkout aisles. See

1 24 C.F.R. pt. 36, App. A. § 7.3(3). Plaintiff does not oppose Defendant's motion for summary
 2 judgment on this claim. [Pl.'s Opp'n at 8; see also Doc. No. 46 at 12.] Accordingly, the Court
 3 **GRANTS** Defendant's motion for summary judgment on Plaintiff's ADA claim that the checkout
 4 counter lacks an overhead sign indicating that the counter is to remain open at all times for persons
 5 with disabilities.

6 **F. State Law Causes of Action**

7 The parties also move for summary adjudication of Plaintiff's state law causes of action.
 8 [Pl.'s Mot. at 11; Def.'s Mot. at 24-25.] Plaintiff argues that Defendant's conduct in violation of
 9 the ADA also violates California's Unruh Act and California's Disabled Persons Act ("DPA"),
 10 which are coextensive with the ADA. [Pl.'s Mot. at 11.] Defendant argues that because Plaintiff
 11 has not produced sufficient evidence showing that it violated the ADA, Plaintiff is not entitled to
 12 summary judgment on its state law claims. [Def.'s Opp'n at 17-18.] Defendant also alleges that
 13 because it is entitled to summary judgment on Plaintiff's ADA claims, the Court should decline to
 14 exercise supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. §
 15 1367(c). [Def.'s Mot. at 24-25.]

16 The Unruh Act and the DPA "entitle disabled individuals to full and equal access to public
 17 accommodations." Californians for Disability Rights v. Mervyn's LLC, 165 Cal. App. 4th 571,
 18 585 (2008). The Unruh Act provides:

19 All persons within the jurisdiction of this state are free and equal, and no matter what
 20 their sex, race, color, religion, ancestry, national origin, disability, medical condition,
 21 marital status, or sexual orientation are entitled to the full and equal accommodations,
 advantages, facilities, privileges, or services in all business establishments of every
 kind whatsoever.

22 CAL. CIV. CODE § 51(b). The DPA provides: "Individuals with disabilities shall be entitled to full
 23 and equal access, as other members of the general public, to . . . places of public accommodation,
 24 amusement, or resort, and other places to which the general public is invited" CAL. CIV.
 25 CODE § 54.1(a)(1).

26 Any violation of the ADA necessarily constitutes a violation of the Unruh Act and the
 27 DPA. Californians for Disability Rights, 165 Cal. App. 4th at 586; Molski, 481 F.3d at 731.
 28 Unlike the ADA, these state law statutes do allow for the recovery of monetary damages. See

1 CAL. CIV. CODE §§ 52(a), 54.3(a)

2 Plaintiff argues that since Defendant's conduct violated the ADA, it also violated the
3 Unruh Act and the DPA. [Pl.'s Mot. at 11.] Plaintiff does not provide any other arguments in
4 support of his Unruh Act and DPA claims. [Id.] As explained in the previous sections, Defendant
5 is entitled to summary judgment on all of Plaintiff's ADA claims. Because Plaintiff does not
6 provide any other basis for for his Unruh Act and DPA claims, Plaintiff is not entitled to summary
7 judgment on those claims, but Defendant is entitled to summary judgment on Plaintiff's Unruh Act
8 and DPA claims. Accordingly, the Court **GRANTS** Defendant's motion for summary judgment
9 and **DENIES** Plaintiff's motion for summary judgment on Plaintiff's Unruh Act and DPA claims.

10 Plaintiff's amended complaint also alleges a causes of action for denial of full and equal
11 access to public facilities, in violation of the California Health and Safety Code. [Doc. No. 28 ¶¶
12 48-52.] Defendant argues that because it is entitled to summary judgment on Plaintiff's ADA
13 claims, the Court should decline to exercise supplemental jurisdiction over this claim. [Def.'s
14 Mot. at 24-25.] Plaintiff does not address this claim in his motion for summary judgment.

15 While federal courts may exercise supplemental jurisdiction over state-law claims pursuant
16 to 28 U.S.C. § 1367(a), a court may decline to exercise supplemental jurisdiction where it "has
17 dismissed all claims over which it has original jurisdiction." 28 U.S.C. § 1367(c)(3). When
18 deciding whether to exercise supplemental jurisdiction, the Court considers judicial economy,
19 convenience and fairness to litigants, and comity with state courts. United Mine Workers v.
20 Gibbs, 383 U.S. 715, 726 (1966). Where federal claims have been dismissed, the balance of
21 factors usually tips in favor of declining to exercise jurisdiction over the remaining state law
22 claims and dismissing them without prejudice. Gini v. Las Vegas Metro. Police Dep't., 40 F.3d
23 1041, 1046 (9th Cir. 1994). Here, the Court has granted summary judgment for Defendant on all
24 of Plaintiff's ADA claims, therefore, there are no remaining claims over which the Court has
25 original jurisdiction. The Court declines to exercise supplemental jurisdiction over Plaintiff's
26 remaining state law claim. See 28 U.S.C. § 1367(c)(3). Accordingly, the Court **DISMISSES**
27 **WITHOUT PREJUDICE** Plaintiff's claim for denial of full and equal access to public facilities,
28 in violation of the California Health and Safety Code.


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CONCLUSION

For the reasons above, the Court **GRANTS** Defendant’s motion for summary judgment and **DENIES** Plaintiff’s motion for summary judgment on Plaintiff’s claim for violations of the ADA, Plaintiff’s claim for violations of the Unruh Act, and Plaintiff’s claim for violations of the DPA. The Court **DISMISSES WITHOUT PREJUDICE** Plaintiff’s claim for denial of full and equal access to public facilities, in violation of the California Health and Safety Code.

IT IS SO ORDERED.

DATED: September 26, 2011


**IRMA E. GONZALEZ, Chief Judge
United States District Court**