

Minute Orders

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Case Type:
 Case Number:

Case CIVDS1504682 - DAVIS V BMI/BND TRAVELWARE

Action:

MOTION RE: SUMMARY JUDGMENT OR IN THE ALTERNATIVE FOR SUMMARY ADJUDICATION FILED BY PLAINTIFF EDWARD DAVIS 03/21/2016 - 8:30 AM DEPT. S22

BRYAN F FOSTER, JUDGE
 CLERK: JENNIFER MEDINA
 COURT REPORTER STACEY DETTMERS 13303
 COURT ATTENDANT ROBERT DELGADO

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APPEARANCES:

ATTORNEY VICTORIA C. KNOWLES PRESENT FOR PLAINTIFF/PETITIONER.
 ATTORNEY CINDY S. CHANG PRESENT FOR DEFENDANT/RESPONDENT.

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PROCEEDINGS:

PREDISPOSITION HEARING HELD

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MOTION

EDWARD DAVIS'S MOTION RE: SUMMARY JUDGMENT OR SUMMARY ADJUDICATION IS HEARD.
 ARGUED BY COUNSEL AND SUBMITTED.
 MATTER TAKEN UNDER SUBMISSION.

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 (THE FOLLOWING WAS NOT REPORTED)

COURT RULES AS FOLLOWS ON SUBMITTED MATTER:

COURT GRANTS PLAINTIFFS REQUEST AND TAKES JUDICIAL NOTICE OF PLAINTIFFS REQUEST FOR

JUDICIAL NOTICE EX. 5 AND JUDICIAL NOTICE OF THE EXISTENCE OF EX 1-4. COURT DENIES PLAINTIFFS

REQUESTS AS TO REQUEST FOR JUDICIAL NOTICE EXS. 6 & 7, PLAINTIFF FAILED TO PROVIDE A SUFFICIENT

BASIS FOR JUDICIAL NOTICE OF THESE DOCUMENTS.

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 COURT DENIES DEFENDANTS REQUEST AS TO DEFENDANTS REQUEST FOR JUDICIAL NOTICE EXS.

2-3, 5-6, DEFENDANT FAILED TO PROVIDE A SUFFICIENT BASIS FOR JUDICIAL NOTICE. COURT

DENIES DEFENDANTS REQUEST AS TO REQUEST FOR JUDICIAL NOTICE EX.4, SECTION 508 OF THE REHABILITATION ACT, AS UNNECESSARY. AS FOR DEFENDANTS REQUEST FOR JUDICIAL NOTICE EX. 1,

COURT GRANTS THE REQUEST AND TAKES JUDICIAL NOTICE THAT DEPARTMENT OF JUSTICE SOUGHT TO

OBTAIN PUBLIC COMMENTS ON PROPOSED REGULATIONS REGARDING PUBLIC ACCOMMODATIONS VIA THE INTERNET.

PLAINTIFFS EVIDENTIARY OBJECTIONS :

COURT OVERRULES PLAINTIFFS OBJECTION NO.S 1-5; SUSTAINS PLAINTIFFS OBJECTION NO. 6.

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PLAINTIFFS MOTION FOR SUMMARY JUDGMENT/ SUMMARY ADJUDICATION:

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COURT GRANTS PLAINTIFFS MOTION FOR SUMMARY JUDGMENT. PLAINTIFF HAS MET HIS BURDEN WITH

RESPECT TO DEMONSTRATING VIOLATIONS OF THE ADA AND UNRUH ACT. IT IS UNDISPUTED THAT PLAINTIFF

IS DISABLED WITHIN THE MEANING OF THE ADA. PLAINTIFF ALSO HAS PRESENTED SUFFICIENT EVIDENCE

AND LEGAL ARGUMENT TO CONCLUDE TITLE III OF THE ADA APPLIES TO PLAINTIFFS USE OF A WEBSITE

WHERE PLAINTIFF HAS DEMONSTRATED HE SOUGHT GOOD AND SERVICES FROM A PLACE OF PUBLIC

ACCOMMODATION BECAUSE HE DEMONSTRATED A SUFFICEIENT NEXUS EXISTS BETWEEN DEFENDANTS

RETAIL STORE AND ITS WEBSITE THAT DIRECTLY AFFECTS PLAINTIFFS ABILITY TO ACCESS GOOD AND

SERVICES. PLAINTIFF ALSO PRESENTED SUFFICIENT EVIDENCE THAT HE WAS DENIED FULL AND EQUAL

ENJOYMENT OF THE GOODS, SERVICES, PRIVILEGES, AND ACCOMMODATIONS OFFERED BY DEFENDANT BECAUSE O

HIS DISABILITY.

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PLAINTIFF HAS ALSO MET HIS BURDEN OF DEMONSTRATING THAT DAMAGES UNDER THE UNRUH ACT

CAUSE OF ACTION ARE \$4,000. THE UNDISPUTED EVIDENCE IS THAT PLAINTIFFS ACCESS TO THE WEBSITE WAS PREVENTED BY THE DEFENDANT AT THE TIME THE WEBSITE WAS DESIGNED. REPEATED ATTEMPTS

AT ACCESS TO THE WEBSITE KNOWN BY THE PLAINTIFF TO BE UNAVAILABLE TO HIM DOES NOT CONSTITUTE

ADDITIONAL OFFENSES UNDER CIVIL CODE SUB SECTION 52(A). DEFENDANT FAILED TO DEMONSTRATE ANY ISSUES

OF MATERIAL FACT ARE IN DISPUTE.

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AS PART OF GRANTING THE MOTION, THE COURT GRANTS PLAINTIFFS REQUEST FOR INJUNCTIVE RELIEF, AND

ENJOINS DEFENDANT FROM VIOLATING THE ADA AND UNRUH CIVIL RIGHTS ACT AND REQUIRES IT TO TAKE

STEPS NECESSARY TO MAKE COLORADBAGGAGE.COM READILY ACCESSIBLE TO AND USABLE BY VISUALLY

IMPAIRED INDIVIDUALS OR TO TERMINATE THE WEBSITE. AS FAR AS THE STANDARD, PLAINTIFFS

MOTION REQUESTED THAT DEFENDANT CONFORM ITS WEBSITE AS SET FORTH IN THE ACCESSIBILITY REPORT FOR COLORADO BAG AND BAGGAGE ATTACHED TO THE DECLARATION OF RUH AS EXHIBIT B, IN LIGHT OF DEFENDANT NOT OFFERING ANY OPPOSITION TO DEMONSTRATE SUCH IS NOT FEASIBLY, THE REQUESTED RELIEF IS GRANTED AS PART OF THE INJUNCTION RELIEF .

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JUDGMENT ON COMPLAINT (UNLIMITED) FILED 04/03/2015 OF EDWARD DAVIS ORDERED AS FOLLOWS:

JUDGMENT FOR EDWARD DAVIS

JUDGMENT FOR EDWARD DAVIS

JUDGMENT AGAINST BMI/BNB TRAVELWARECOMPANY

PLAINTIFF TO PREPARE ORDER AND JUDGMENT.

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HEARINGS:

ORDER TO SHOW CAUSE RE : SUBMISSION OF JUDGMENT SET FOR 04/21/16 AT 08:30 IN DEPARTMENT S22.

VACATE READI HEARING SCHEDULED FOR 04/21/16 AT 08:30 IN DEPARTMENT S22.

NOTICE GIVEN BY JUDICIAL ASSISTANT

CORRESPONDENCE COVERSHEET GENERATED TO MAIL COPY OF RULING ON SUBMITTED MATTER TO COUNSEL OF RECORD.

ACTION - COMPLETE

=== MINUTE ORDER END ===