# HB1420
# HD1

# TESTIMONY OF
# THE DEPARTMENT OF THE ATTORNEY GENERAL
# TWENTY-SEVENTH LEGISLATURE, 2014

**ON THE FOLLOWING MEASURE:**
H.B. NO. 1420, H.D.1, RELATING TO SERVICE ANIMALS.

**BEFORE THE:**

SENATE COMMITTEE ON JUDICIARY AND LABOR

**DATE:** Friday, March 21, 2014 **TIME:** 10:00 am

**LOCATION:** State Capitol, Room 016

**TESTIFIER(S):** David M. Louie, Attorney General, or
Michelle E. Nakata, Deputy Attorney General

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Chair Hee and Members of the Committee:

The Department of the Attorney General opposes this bill because it violates the Americans with Disabilities Act of 1990, as amended by the ADA Amendments Act of 2008 (P.L. 110-325) (collectively, the "ADA").

In section 2, page 2, lines 14-18, this bill prohibits the false presentation of an animal as a service animal and provides that "[a]ny person who knowingly presents an animal as a service animal in violation of this section shall be guilty of a violation and shall be fined not more than $1,000. Each presentation of an animal as a service animal in violation of this section shall constitute a separate offense."

Generally, the ADA requires a public accommodation to permit the use of a service animal by a person with a disability. The ADA defines a public accommodation as "a private entity that owns, leases, or operates a place of public accommodation." 28 C.F.R. § 36.104. A place of public accommodation means "a facility operated by a private entity whose operations affect commerce." Id. Places of public accommodation include, but are not limited to, places of lodging (inn, hotel, motel), food establishments (restaurants or bars), places of public gathering (theater, concert hall, stadium, convention center), sales or rental establishments (shopping center, grocery store, bakery), service establishments (hospitals, bank, gas station, etc.), public transportation (terminal, depot, station), places of recreation (parks, zoo), and places of education (schools, private schools, university).

Under the ADA, a public accommodation may only ask two questions to determine whether an animal qualifies as a service animal. A public accommodation may ask: (1) if the

animal is required because of a disability, and (2) what work or task the animal has been trained to perform. 28 C.F.R. § 36.302(c)(6). No further inquiries can be made or proof required regarding a person's disability. Furthermore, a public accommodation "shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal." Id. The state agency charged with enforcement would also be limited to just those two inquiries. 28 C.F.R. § 35.136(f). Because the ADA prohibits further inquiries and requests for information, it would be very difficult, if not impossible, for a state agency charged with enforcement to establish that a person has violated this section.

In addition, the bill fails to specify how the measure will be enforced and which state agency has enforcement authority. Even if a specific state agency is given enforcement authority, establishing a violation for false presentation of a service animal will be problematic due to the limitations imposed by the ADA.

Finally, the passage of this bill has the potential to create substantial liability for the State. To enforce the law, the state agency with enforcement powers would need to violate the ADA to obtain the necessary facts for enforcement. Once the violation of the ADA occurs, the State will be subject to lawsuits for that very violation. Successful plaintiffs suing under the ADA have the right to seek attorneys' fees and costs if they prevail in their claim. These fees and costs can be substantial.

We respectfully request that the Committee hold this bill.

NEIL ABERCROMBIE
GOVERNOR

PATRICIA McMANAMAN
DIRECTOR

BARBARA A. YAMASHITA
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96809-0339

March 21, 2014

**MEMORANDUM:**

To: The Honorable Clayton Hee, Chair
Senate Committee on Judiciary and Labor

From: Patricia McManaman, Director

Subject: **H.B. 1420, H.D.1 – RELATING TO SERVICE ANIMALS**

Hearing: Friday, March 21, 2014; 10:00 a.m.
Conference Room 016, State Capitol

**PURPOSE:** The purpose of this bill is to require owners and handlers of service animals to have county obtained tags identifying them as service animals and requiring these animals to wear them when entering a public accommodation. It further makes it a violation to falsely present an animal as a service animal not trained to perform such work thereby facing a violation and fine.

**DEPARTMENT'S POSITION:** The Department of Human Services (DHS) has serious concerns regarding this bill.

The DHS empathizes with the sentiments expressed within the bill and through our Division of Vocational Rehabilitation's (DVR) Services for the Blind Branch, is very much aware of the problems faced by individuals with disabilities by those pet owners falsely representing their pet as a service animal. However, we believe that the bill

extends far beyond the intent of the Americans with Disabilities Act (ADA) and may place an unnecessary fee on those covered under the ADA.

Further, it is uncertain who would have enforcement authority in this bill. The DVR staff are not trained to determine if a service animal has been properly trained. Other violations in chapter 347, Hawaii Revised Statutes (HRS), are settled through civil action with the fines imposed by the Court. The DVR is a service agency for those eligible individuals with disabilities seeking employment or independent living services and has no authority to initiate fines. The investigative and enforcement activities necessary for enforcement would seem to indicate that staff must be on call 24/7.

The Department of Human Services and its Division of Vocational Rehabilitation is supportive of the intent H.B. 1420, H.D.1. As such, we would welcome any efforts by the Legislature to sit with our partners in the disability community along with consumers to work towards a solution that is effective within the confines of federal law.

Thank you for this opportunity to submit testimony.

# HAWAIʻI CIVIL RIGHTS COMMISSION

830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 · PHONE: 586-8636 FAX: 586-8655 TDD: 568-8692


March 21, 2014
Rm. 016, 10:00 a.m.

To: The Honorable Clayton Hee, Chair
Members of the Senate Committee on Judiciary and Labor

From: Linda Hamilton Krieger, Chair
and Commissioners of the Hawaiʻi Civil Rights Commission

Re: H.B. No. 1420, H.D.1

The Hawaiʻi Civil Rights Commission (HCRC) has enforcement jurisdiction over Hawaiʻi's laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state funded services. The HCRC carries out the Hawaiʻi constitutional mandate that no person shall be discriminated against in the exercise of their civil rights. Art. I, Sec. 5.

The original H.B. No. 1420 required owners or handlers of service dogs to obtain a service dog tag from county animal control officers and required service dogs to wear such tags as well as a leash, harness or cape that identifies the dog as a service dog when entering a public accommodation. The HCRC opposed the original bill because it was more restrictive than federal law (which prohibits a public accommodation from requiring any type of service animal documentation), and conflicted with the HCRC's interpretation of HRS Chapter 489 to allow other types of assistance animals as reasonable accommodations for persons with a disability.

The bill was amended in H.D.1 to delete the service dog tag requirements and instead prohibit a person from falsely presenting an animal as a service animal in a public accommodation. H.D. 1 also imposes a $1,000 fine for each violation. The HCRC has continuing concerns about H.D. 1 because its enforcement may also violate federal law, and it may still conflict with HRS Chapter 489, which allows non-

service assistance animals as reasonable accommodations for persons with a disability. U.S. Department of Justice (DOJ) rules relating to service animals state that the only inquiries a public accommodation can make are: 1) whether the animal is required because of a disability, and 2) what work or task has the animal been trained to perform (see 28 CFR §36.302). Accordingly, the entity enforcing the provisions in H.B. 1420, H.D.1 must also limited to the above two inquiries, and it would be nearly impossible to prove false representation of a service animal without making further inquiries or seeking further documentation, which are not allowed under Title III of the ADA.

Thank you for considering these concerns.

# DISABILITY AND COMMUNICATION ACCESS BOARD

919 Ala Moana Boulevard, Room 101 • Honolulu, Hawaii 96814
Ph. (808) 586-8121 (V/TDD) • Fax (808) 586-8129


March 21, 2014

TESTIMONY TO THE SENATE COMMITTEE ON JUDICIARY AND LABOR

House Bill1420, HD1 - Relating to Service Animals

The Disability and Communication Access Board (DCAB) has concerns and provides comments regarding House Bill 1420, HD1 that proposes to protect the public and to establish a penalty for falsely presenting an animal as a service animal by adding a new section to Chapter 347, Hawaii Revised Statutes.

DCAB is responsible for providing technical assistance regarding the Americans with Disabilities Act (ADA), and one major ADA issue our office deals with is service animals. Under the ADA, the definition for service animals is so broad that DCAB staff responds to approximately fifteen to twenty calls a week from private businesses, government agencies, and people with disabilities and their families asking how to identify a service animal or how to have a dog certified as a service animal. We acknowledge the extreme frustration over real and potential abuse due to the lack of identification and certification of service animals.

However, the U.S. Department of Justice rules clearly state that identification (card, vest, etc.) cannot be required, but does not include provisions relating to falsely representing an animal as a service animal. The rules also limit the inquiries that an entity may ask of an individual with a dog under Titles II and III of the ADA to two questions.

While we support the intent of the bill, we have many unanswered questions. The bill does not identify a state agency that will be responsible to develop administrative rules relating to how to identify a service animal; what criteria would be included in falsely presenting an animal as a service animal; how a citation will be issued for falsely presenting an animal as a service animal; and what agency is responsible for enforcement. Since we are not an enforcement agency, we defer to a legal authority for more information.

Thank you for the opportunity to testify.

Respectfully submitted,

Barbara Fischlowitz-Leong

BARBARA FISCHLOWITZ-LEONG
Chairperson
Legislative Committee

Francine Wai

FRANCINE WAI
Executive Director

HAWAII DISABILITY RIGHTS CENTER

**1132 Bishop Street, Suite 2102, Honolulu, Hawaii 96813**
*Phone/TTY*: **(808) 949-2922** *Toll Free*: **1-800-882-1057** *Fax*: **(808) 949-2928**
*E-mail*: **info@hawaiidisabilityrights.org** *Website*: **www.hawaiidisabilityrights.org**

**THE HOUSE SENATE**
**THE TWENTY-SEVENTH LEGISLATURE**
**REGULAR SESSION OF 2014**

**Committee on Judiciary and Labor**
**Testimony in Support of H.B. 1420, HD1**
**Relating to Service Animals**

**Friday, March 21, 2014, 10:00 A.M.**
**Conference Room 016**

Chair Hee and Members of the Committee:

The Hawaii Disability Rights Center is in support of this bill and wants to offer its comments. We are very sympathetic to the problem identified in the bill. Our office works hard to protect and fight for the rights of individuals with disabilities. We establish priorities and objectives each year, and have an intake screening process for the purpose of allocating our limited resources towards individuals with disabilities whose cases are meritorious and whose needs are genuine.

I mention that because we have seen first- hand and come to understand all too well that the concerns outlined in this bill are real. We have had individuals contact our office with alleged claims of discrimination based upon a failure to accommodate their service animals, only to discover that these "service" animals were in reality nothing more than pets. We are also aware of advertisements on the internet and other means by which individuals can obtain so called "identification papers" to present for the purpose of falsely verifying that their pet is a service animal.

We absolutely do not support efforts of that nature. In fact, we are extremely upset when we see such conduct because it creates a negative backlash and further stigmatization against individuals who truly have disabilities and who are the very people we are created to assist. For that reason, we support the type of approach that is set forth in this bill, inasmuch as it seems to be a reasonable response. In earlier hearings, we did comment on the original version of the bill and pointed out that its provisions exceeded the ADA and the Fair Housing Act. In response, there was some consensus that the legislature did have the authority to criminalize the conduct

that it sought to prohibit. We continue to believe that and as a result are in support of this bill.

One area we would point out to the Committee is that the current version of the bill applies to service animals, which are to be distinguished from emotional support animals. The latter are governed by different rules and issues surrounding them more frequently occur in the Fair Housing Act context as opposed to the ADA public accommodations context. Yet the problem does persist there as well. We have seen instances of individuals who have paid a “mental health professional” a fee via the internet to write a letter verifying their need for the emotional support animal as a means of requesting an accommodation from a “no pets policy” in a condominium. Yet the “professional” had never met the individual and was not necessarily a licensed medical or psychological provider.

Literally speaking, the current wording of the bill might not reach this conduct since the bill refers to service animals only. Additionally, the title of the bill is “Relating To Service Animals ” and therefore this vehicle may be too narrow to use as a means to address that issue. Yet we wanted to bring it to the Committee’s attention so that it would have a comprehensive view of the full range of the problem. We certainly stand ready to assist the Committee if it chooses to pursue that direction as well.

Thank you for the opportunity to testify in support of this measure.

**From:** phelan
**To:** JDLTestimony
**Subject:** Testimony
**Date:** Tuesday, March 18, 2014 1:00:50 PM

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THE SENATE
THE TWENTY-SEVENTH LEGISLATURE
REGULAR SESSION OF 2014

COMMITTEE ON JUDICIARY AND LABOR
Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

Support of HR Bill 1420/HSCR 150-14

My name is Yolanda Phelan
I represent the Hawaii Association of the Blind
Support of HR Bill 1420/HSCR 150-14

My experiences as a Guide Dog Handler and observations
of citizens in our community and members of the Hawaii
association of the Blind members who do understand that
There is a difference between professional trained Service animals and Comfort,
Therapy animals. We know that there is an increase of people in our state that
Continue to pass none professionally trained dogs as service animals.

These dogs have discredited the reputation of service animals who's training began from the time they
Were born. Service Animal Handlers also go through an intense training program to learn
How to work as a team with their dog and have full control.

You will not see a Service animal licking the table or eating out of a handlers plate in a restaurant. Or being aggressive to other dogs.
Or jumping around in a cab, and smudging their windows leaving the cleanup responsibility to the cab driver.
or barking and disrupting businesses.

People who go on the net and order certificates and capes stating that say their animals are service animals should be fined.
It has really gotten out of hand something needs to be done to resolve this issue. so we ask the state of Hawaii to support having a Tag representing the fact that both dog and handler have been train by a professional accredited trainer.
and to show proof before their tag is issued.

Landa Phelan
Hawaii Association of the Blind
Legislature Co-Chair
Member- Board of Directors

**From:** mailinglist@capitol.hawaii.gov
**To:** JDLTestimony
**Cc:** tkawaguchi@hawaii.rr.com
**Subject:** *Submitted testimony for HB1420 on Mar 21, 2014 10:00AM*
**Date:** Wednesday, March 19, 2014 8:20:24 AM

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**HB1420**
Submitted on: 3/19/2014
Testimony for JDL on Mar 21, 2014 10:00AM in Conference Room 016

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Tiffany Kawaguchi | Hawaii Canine Assistance Network | Oppose | No |

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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THE HOUSE OF REPRESENTATIVESTHE TWENTY-SEVENTH LEGISLATURE
Regular Session of 2014

COMMITTEE ON JUDICIARY AND LABOR

Chair Hee, Vice Chair Shimabukuro, Members of the Committee:

Hearing date: Friday, March 21, 2014Testimony on HB1420 HD 1

I am a volunteer with the Hawaii Canine Assistance Network, a 501(c)(3) organization dedicated to the training of golden retrievers and chocolate labradors as service dogs. We are an all-volunteer organization and rely upon public access in the process of training our dogs to become service dogs. HB1420 HD 1 as written would potentially subject our organization to fines, not to mention potential harassment, since our dogs wearing Hawaii CAN training vests while in training, are not yet certified as service dogs. We make it quite clear when we are training the dogs in public areas and facilities (stores, shopping centers, parks, etc) that these dogs are in training. Under this Bill, as written, we could be potentially fined as presenting our dogs as service animals, since they are not yet certified, but wearing a training vest.

The intent is well-meaning. However, without public access, our dogs are hampered in their training process as without the certification they cannot meet the public and learn to interact and behave appropriately.

Therefore, it is respectfully requested that the Bill, as written, not be passed.

Thank you.

Bev Helmer,
Volunteer, Hawaii Canine Assistance Network.

**From:** mailinglist@capitol.hawaii.gov
**To:** JDLTestimony
**Cc:** igarashij002@hawaii.rr.com
**Subject:** *Submitted testimony for HB1420 on Mar 21, 2014 10:00AM*
**Date:** Wednesday, March 19, 2014 8:27:45 PM

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**HB1420**
Submitted on: 3/19/2014
Testimony for JDL on Mar 21, 2014 10:00AM in Conference Room 016

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Amy | Hawaii CAN | Oppose | No |

Comments:

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**THE HOUSE OF REPRESENTATIVES**
**THE TWENTY-SEVENTH LEGISLATURE**
**Regular Session of 2014**

**COMMITTEE ON JUDICIARY AND LABOR**
**Chair Hee, Vice Chair Shimabukuro, Members of the Committee:**

**Hearing date: Friday, March 21, 2014**
**Testimony on HB1420 HD 1**
**Relating to Service Animals**

Chair Hee, Vice Chair Shimabukuro, and Members of the Committee:

We oppose House Bill 1420 and urge the Committee to hold this bill.

While we generally agree in concept that the legitimacy of the service animal program is being damaged when non-disabled individuals hold out for personal benefit animals that are not trained as service animals, the bill will prevent charitable service dog training organizations from using a necessary means of training its dogs for service animal work in public accommodation settings. Hawaii Canine Assistance Network (Hawaii CAN) is a 501(c)(3) charitable organization with the mission of raising and training service dogs and other assistance dogs for people with disabilities in Hawaii and using our dogs in training to rehabilitate at-risk populations in our community. Hawaii CAN is one of several service dog training organizations in Hawaii that will be significantly hindered from continuing to produce highly-trained service animals if this bill is passed without considerable amendments.

1. The legislature has correctly found that service animals perform an essential duty and are highly trained to serve members of our disabled community. Service dog training of a high caliber cannot be accomplished without teaching our dogs proper behaviors in places of public accommodation. Passing this bill will expose us and our trainers to fines and harassment for performing legitimate and necessary public access training activities.

2. We distinguish our dogs that are in training for service work (as opposed to simply pet dogs) by having them wear Hawaii CAN training vests in public access training sessions. We tell people who may question our presence in a public setting that the dog we are handling is in a formal training program for the purpose of becoming a service animal. We are received favorably from business owners and individuals when they know that we are training a future service animal to work for a disabled community member and we are not using public access rights for personal gain.

3. We are sincerely concerned that having our dogs continue to wear their training vests would be deemed "knowingly presenting an animal as a service animal" in violation of this bill; however, without the training vests, our dogs and trainers are often prevented from being admitted in public access settings, which will severely impede our ability to produce highly-trained service animals.

Hawaii Canine Assistance Network • 745 Fort Street, Ste 900 • Honolulu, Hawaii 96813
Phone: (808) 781-2596 • Fax: (866) 782-9449
info@hawaiican.org

4. This bill unintentionally and unnecessarily covers a group that is working to provide highly-trained service animals to disabled members of our community.

Thank you for your consideration of our concerns with this bill.

Respectfully submitted,

HAWAII CANINE ASSISTANCE NETWORK,
a Hawaii nonprofit corporation

Janel M. Yoshimoto,
President of the Board of Directors

Hawaii Canine Assistance Network • 745 Fort Street, Ste 900 • Honolulu, Hawaii 96813
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**From:** mailinglist@capitol.hawaii.gov
**To:** JDLTestimony
**Cc:** treycgordon@yahoo.com
**Subject:** Submitted testimony for HB1420 on Mar 21, 2014 10:00AM
**Date:** Thursday, March 20, 2014 9:45:16 AM

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**HB1420**
Submitted on: 3/20/2014
Testimony for JDL on Mar 21, 2014 10:00AM in Conference Room 016

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| trey gordon | Hawaii CAN | Oppose | No |

Comments: Hi my name is SGT Trey Gordon I am a soldier in the United States Army I have been serving as a military police dog handler. I currently am a volunteer with Hawaii CAN. I am a combat vet of both Iraq, and Afghanistan I have PTSD. The service that Hawaii CAN provides has been a very important part of my continuing recovery. This bill will have a negative out come to volunteers like me training service dogs in public locations. This is one of the most critical areas of training that a service dog needs. I urge you to consider this when reviewing this bill.

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**From:** mailinglist@capitol.hawaii.gov
**To:** JDLTestimony
**Cc:** hifido@hawaii.rr.com
**Subject:** Submitted testimony for HB1420 on Mar 21, 2014 10:00AM
**Date:** Wednesday, March 19, 2014 4:50:37 PM

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**HB1420**
Submitted on: 3/19/2014
Testimony for JDL on Mar 21, 2014 10:00AM in Conference Room 016

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Susan Luehrs | Hawaii Fi-Do Service Dogs | Comments Only | No |

Comments: As an ADI accredited program Hawaii Fi-Do Service Dogs is in support of the intent of HB1420 but has major concerns on how this would be administered. What state agency or program would be responsible to determine what dog qualifies as a service dog and how would these dogs be identified? Will the state set up a standard to follow on breed, age and skills of service dogs.? We appreciate the effort for this needed legislation but experience and knowledgeable people are needed to make this work.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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PETER L. FRITZ
ATTORNEY AT LAW
200 NORTH VINEYARD BOULEVARD, #430
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TELEPHONE 1711 CALL ME: 808.568.0077

THE SENATE
THE TWENTY-SEVENTH LEGISLATURE
REGULAR SESSION OF 2014

HEARING March 21, 2014
Testimony on H.B. 1420 HD1
(RELATING TO SERVICE ANIMALS)

Chair Hee, Vice-Chair Shimabukuro, and members of the Committee, my name is Peter Fritz. I am and individual with a disability, past member and Chair of the State Rehabilitation Committee, member and Chair of the Disability and Communications Access Board and an attorney. I am testifying as an attorney with specialized knowledge of laws concerning individuals with disabilities **in support** of the provisions in this bill to create a penalty for falsely representing that an animal is a service animal and suggesting that this bill be amended to make a misrepresentation a criminal penalty as was done in California.

Section 2 of this bill would make it a violation to falsely present an animal as a service animal if that animal is not individually trained to do work or perform tasks for the benefit of an individual with a disability.

I am suggesting that this bill be amended to create a criminal penalty under Hawaii's Penal Code for falsely representing that an animal is a service animal. This is what California did when it enacted California Penal Code § 365.7. A copy of this code provision is attached as Exhibit 1. The validity of the California code provision under the Americans with Disabilities Act ("ADA") was recently upheld in Lerma v. California (E.D. Cal. 2014). A copy of Lerma is attached as Exhibit 2.

The reasons for my suggestion are:

- A criminal statute provides for an enforcement mechanism.
- Questions that are asked by law enforcement authorities reduce confrontations between business owners and individuals.
- Under ADA, people are allowed to ask individuals limited questions about service animals.
- Police officers are trained to make determinations about the credibility of a person's answers.

Department of Justice Guidance on Service Animals

Under the ADA Title III guidance issued by the Department of Justice ("DOJ"), there are two questions that a business or other public accommodation may ask to determine if an animal qualifies as a service animal:

(1) "Is the animal required because of a disability?" and

(2) "What work or task has the animal been trained to perform?"

A business may not ask these two questions when it is readily apparent that the service animal is performing a task for a patron with a disability (for example, a dog that is observed guiding a person who is blind or has low vision). A copy of guidance concerning service animals published by the DoJ is attached as Exhibit 3.

An individual with a disability may not be asked questions about the nature or extent of the person's disability or be asked to provide proof of service animal training, licensing or certification.

California Penal Code on Falsely Representing That a Dog is a Service Dog

I would ask that the Committee should take notice of California Penal Code §365.7. This California code section makes it a criminal offense for someone to misrepresent that their animal is a service animal. This law enacted in 1994. On January 2, 2014, in the United States District Court for the Eastern District of California in Lerma v. California, held that the issuance of a citation for misrepresentation that an animal was a service animal did not violate the ADA. In reaching its decisions, the Court noted that the police officer's questions were limited to the questions that are allowed by the ADA.

Thank you for the opportunity to testify.

Respectfully Submitted,

PETER L. FRITZ

H.B. 1420 H.D. 1

EXHIBITS

1. California Penal Code §365.7
2. Lerma v. California (E.D. Cal. 2014)
3. United State Department of Just this Guidance on Service Animals

# 1

365.7

365.7. (a) Any person who knowingly and fraudulently represents himself or herself, through verbal or written notice, to be the owner or trainer of any canine licensed as, to be qualified as, or identified as, a guide, signal, or service dog, as defined in subdivisions (d), (e), and (f) of Section 365.5 and paragraph (6) of subdivision (b) of Section 54.1 of the Civil Code, shall be guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six months, by a fine not exceeding one thousand dollars ($1,000), or by both that fine and imprisonment.

(b) As used in this section, "owner" means any person who owns a guide, signal, or service dog, or who is authorized by the owner to use the guide, signal, or service dog.

365.5

365.5. (a) Any blind person, deaf person, or disabled person, who is a passenger on any common carrier, airplane, motor vehicle, railway train, motorbus, streetcar, boat, or any other public conveyance or mode of transportation operating within this state, shall be entitled to have with him or her a specially trained guide dog, signal dog, or service dog.

(b) No blind person, deaf person, or disabled person and his or her specially trained guide dog, signal dog, or service dog shall be denied admittance to accommodations, advantages, facilities, medical facilities, including hospitals, clinics, and physicians' offices,

telephone facilities, adoption agencies, private schools, hotels, lodging places, places of public accommodation, amusement, or resort, and other places to which the general public is invited within this state because of that guide dog, signal dog, or service dog.

(c) Any person, firm, association, or corporation, or the agent of any person, firm, association, or corporation, who prevents a disabled person from exercising, or interferes with a disabled person in the exercise of, the rights specified in this section is guiltyof a misdemeanor, punishable by a fine not exceeding two thousand five hundred dollars ($2,500).

(d) As used in this section, "guide dog" means any guide dog or Seeing Eye dog that was trained by a person licensed under Chapter 9.5 (commencing with Section 7200) of Division 3 of the Business and Professions Code or that meets the definitional criteria under federal regulations adopted to implement Title III of the Americans with Disabilities Act of 1990 (Public Law 101-336).

(e) As used in this section, "signal dog" means any dog trained to alert a deaf person, or a person whose hearing is impaired, to intruders or sounds.

(f) As used in this section, "service dog" means any dog individually trained to do work or perform tasks for the benefit of an individual with a disability, including, but not limited to, minimal protection work, rescue work, pulling a wheelchair, or fetching dropped items.

(g) (1) Nothing in this section is intended to affect any civil remedies available for a violation of this section.

(2) This section is intended to provide equal accessibility for all owners or trainers of animals that are trained as guide dogs, signal dogs, or service dogs in a manner that is no less than that provided by the Americans with Disabilities Act of 1990 (Public Law 101-336) and the Air Carrier Access Act of 1986 (Public Law 99-435).

(h) The exercise of rights specified in subdivisions (a) and (b) by any person may not be conditioned upon payment of any extra charge, provided that the person shall be liable for any provable damage done to the premises or facilities by his or her dog.

(i) Any trainer or individual with a disability may take dogs in any of the places specified in subdivisions (a) and (b) for the purpose of training the dogs as guide dogs, signal dogs, or service dogs. The person shall ensure that the dog is on a leash and tagged as a guide dog, signal dog, or service dog by an identification tag issued by the county clerk or animal control department as authorized by Chapter 3.5 (commencing with Section 30850) of Division 14 of the Food and Agricultural Code. In addition, the person shall be liable for any provable damage done to the premises or facilities by his or her dog.

54.1

54.1. (a) (1) Individuals with disabilities shall be entitled to full and equal access, as other members of the general public, to accommodations, advantages, facilities, medical facilities, including hospitals, clinics, and physicians' offices, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motorbuses, streetcars, boats, or any other public conveyances or modes of transportation (whether private, public, franchised, licensed, contracted, or otherwise provided), telephone facilities, adoption agencies, private schools, hotels, lodging places, places of public accommodation, amusement, or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law, or state or federal regulation, and applicable alike to all persons.

(2) As used in this section, "telephone facilities" means tariff items and other equipment and services that have been approved by the Public Utilities Commission to be used by individuals with disabilities in a manner feasible and compatible with the existing telephone network provided by the telephone companies.

(3) "Full and equal access," for purposes of this section in its application to transportation, means access that meets the standards of Titles II and III of the Americans with Disabilities Act of 1990 (Public Law 101-336) and federal regulations adopted pursuant thereto, except that, if the laws of this state prescribe higher standards, it shall mean access that meets those higher standards.

(b) (1) Individuals with disabilities shall be entitled to full and equal access, as other members of the general public, to all housing accommodations offered for rent, lease, or compensation in this state, subject to the conditions and limitations established by law, or state or federal regulation, and applicable alike to all persons.

(2) "Housing accommodations" means any real property, or portion thereof, that is used or occupied, or is intended, arranged, or designed to be used or occupied, as the home, residence, or sleeping place of one or more human beings, but shall not include any accommodations included within subdivision (a) or any single-family residence the occupants of which rent, lease, or furnish for compensation not more than one room therein.

(3) (A) Any person renting, leasing, or otherwise providing real property for compensation shall not refuse to permit an individual with a disability, at that person's expense, to make reasonable modifications of the existing rented premises if the modifications are necessary to afford the person full enjoyment of the premises. However, any modifications under this paragraph may be conditioned on the disabled tenant entering into an agreement to restore the interior of the premises to the condition existing prior to the modifications. No additional security may be required on account of an election to make modifications to the rented premises under this paragraph, but the lessor and tenant may negotiate, as part of the agreement to restore the premises, a provision requiring the disabled tenant to pay an amount into an escrow account, not to exceed a reasonable estimate of the cost of restoring the premises.

(B) Any person renting, leasing, or otherwise providing real property for compensation shall not refuse to make reasonable accommodations in rules, policies, practices, or services, when those accommodations may be necessary to afford individuals with a disability equal opportunity to use and enjoy the premises.

(4) Nothing in this subdivision shall require any person renting, leasing, or providing for compensation real property to modify his or her property in any way or provide a higher degree of care for an individual with a disability than for an individual who is not

disabled.

(5) Except as provided in paragraph (6), nothing in this part shall require any person renting, leasing, or providing for compensation real property, if that person refuses to accept tenants who have dogs, to accept as a tenant an individual with a disability who has a dog.

(6) (A) It shall be deemed a denial of equal access to housing accommodations within the meaning of this subdivision for any person, firm, or corporation to refuse to lease or rent housing accommodations to an individual who is blind or visually impaired on the basis that the individual uses the services of a guide dog, an individual who is deaf or hearing impaired on the basis that the individual uses the services of a signal dog, or to an individual with any other disability on the basis that the individual uses the services of a service dog, or to refuse to permit such an individual who is blind or visually impaired to keep a guide dog, an individual who is deaf or hearing impaired to keep a signal dog, or an individual with any other disability to keep a service dog on the premises.

(B) Except in the normal performance of duty as a mobility or signal aid, nothing contained in this paragraph shall be construed to prevent the owner of a housing accommodation from establishing terms in a lease or rental agreement that reasonably regulate the presence of guide dogs, signal dogs, or service dogs on the premises of a housing accommodation, nor shall this paragraph be construed to relieve a tenant from any liability otherwise imposed by law for real and personal property damages caused by such a dog when proof of the same exists.

(C) (i) As used in this subdivision, "guide dog" means any guide dog that was trained by a person licensed under Chapter 9.5 (commencing with Section 7200) of Division 3 of the Business and Professions Code or as defined in the regulations implementing Title III of the Americans with Disabilities Act of 1990 (Public Law 101-336).

(ii) As used in this subdivision, "signal dog" means any dog trained to alert an individual who is deaf or hearing impaired to intruders or sounds.

(iii) As used in this subdivision, "service dog" means any dog individually trained to the requirements of the individual with a disability, including, but not limited to, minimal protection work, rescue work, pulling a wheelchair, or fetching dropped items.

(7) It shall be deemed a denial of equal access to housing accommodations within the meaning of this subdivision for any person, firm, or corporation to refuse to lease or rent housing accommodations to an individual who is blind or visually impaired, an individual who is deaf or hearing impaired, or other individual with a disability on the basis that the individual with a disability is partially or wholly dependent upon the income of his or her spouse, if the spouse is a party to the lease or rental agreement. Nothing in this subdivision, however, shall prohibit a lessor or landlord from considering the aggregate financial status of an individual with a disability and his or her spouse.

(c) Visually impaired or blind persons and persons licensed to train guide dogs for individuals who are visually impaired or blind pursuant to Chapter 9.5 (commencing with Section 7200) of Division 3 of the Business and Professions Code or guide dogs as defined in the regulations implementing Title III of the Americans with Disabilities Act of 1990 (Public Law 101-336), and persons who are deaf or hearing impaired and persons authorized to train signal dogs for individuals who are deaf or hearing impaired, and other individuals with a disability and persons authorized to train service dogs for individuals with a disability, may take dogs, for the purpose of training them as guide dogs, signal dogs, or service dogs in

any of the places specified in subdivisions (a) and (b). These persons shall ensure that the dog is on a leash and tagged as a guide dog, signal dog, or service dog by identification tag issued by the county clerk, animal control department, or other agency, as authorized by Chapter 3.5 (commencing with Section 30850) of Division 14 of the Food and Agricultural Code. In addition, the person shall be liable for any provable damage done to the premises or facilities by his or her dog.

(d) A violation of the right of an individual under the Americans with Disabilities Act of 1990 (Public Law 101-336) also constitutes a violation of this section, and nothing in this section shall be construed to limit the access of any person in violation of that act.

(e) Nothing in this section shall preclude the requirement of the showing of a license plate or disabled placard when required by enforcement units enforcing disabled persons parking violations pursuant to Sections 22507.8 and 22511.8 of the Vehicle Code.

# 2

**REGINA LERMA, Plaintiff,**
**v.**
**CALIFORNIA EXPOSITION AND STATE FAIR POLICE, et al., Defendants.**
**No. 2:12-cv-1363 KJM GGH PS**
**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA**
**Dated: January 2, 2014**

FINDINGS AND RECOMMENDATIONS

Plaintiff is proceeding pro se with this action.[1] On November 14, 2013, defendants filed a motion for summary judgment pursuant to Federal Rule of Civil Procedure 56. (ECF No. 29.) The motion was noticed for hearing on December 12, 2013. (Id.) Pursuant to this court's Local Rules, plaintiff was obligated to file and serve a written opposition or statement of non-opposition to the pending motion at least fourteen (14) days prior to the hearing date, i.e., by December 2, 2013.[2] See E.D. Cal. L.R. 230(c).[3] That deadline passed without plaintiff having filed a written

Page 2

opposition or statement of non-opposition with respect to the motion for summary judgment. On December 3, 2013, plaintiff was ordered to show cause for her failure to file an opposition to the motion, and to file an opposition by December 17, 2013. Plaintiff was warned at that time that failure to comply with the order might result in dismissal of this action. Plaintiff has not filed an opposition.

DISCUSSION

Defendants' motion seeks summary judgment or, in the alternative, summary adjudication pursuant to Fed. R. Civ. P. 56(c) alleging that it is entitled to judgment as a matter of law.

I. Legal Standards for Motion for Summary Judgment

The "purpose of summary judgment is to pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L.Ed.2d 538 (1986). Summary judgment is appropriate when it is demonstrated that there exists "no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Under summary judgment practice, the moving party:

> always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," which it believes demonstrate the absence of a genuine issue of material fact.

Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S. Ct. 2548, 91 L.Ed.2d 265 (1986).

If the moving party meets its initial responsibility, the burden then shifts to the opposing party to establish that a genuine issue as to any material fact actually does exist. See Matsushita, 475 U.S. at 585-86. In attempting to establish the existence of this factual dispute, the opposing party may not rely upon the allegations or denials of its pleadings but is required to tender evidence of specific facts in the form of affidavits, and/or admissible discovery material, in

Page 3

support of its contention that the dispute exists. See Matsushita, 475 U.S. at 586. The opposing party must demonstrate that the fact in contention is material, i.e., a fact that might affect the outcome of the suit under the governing law, see Anderson v. Liberty Lobby,

Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L.Ed.2d 202 (1986); T.W. Elec. Serv. v. Pacific Elec. Contractors Ass'n, 809 F.2d 626, 630 (9th Cir.1987), and that the dispute is genuine, i.e., the evidence is such that a reasonable jury could return a verdict for the nonmoving party, see Anderson, 477 U.S. at 248.

In the endeavor to establish the existence of a factual dispute, the non-moving party need not establish a material issue of fact conclusively in its favor. It is sufficient that "the claimed factual dispute be shown to require a jury or judge to resolve the parties' differing versions of the truth at trial." T.W. Elec. Serv., 809 F.2d at 630. The evidence of the non-moving party is to be believed and all justifiable inferences are to be drawn in its favor. See Anderson, 477 U.S. at 255. Nevertheless, inferences are not drawn out of the air, and it is the opposing party's obligation to produce a factual predicate from which the inference may be drawn. See Richards v. Nielsen Freight Lines, 602 F.Supp. 1224, 1244-45 (E.D.Cal.1985), aff'd, 810 F.2d 898 (9th Cir.1987). To demonstrate a genuine issue, the opposing party "must do more than simply show that there is some metaphysical doubt as to the material facts. . . Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial." Matsushita, 475 U.S. at 586-87 (internal citation and quotation omitted).

II. Legal Standards Relating to Unopposed Motion for Summary Judgment

A district court may not grant a motion for summary judgment simply because the nonmoving party does not file opposing material. See Heinemann v. Satterberg, 731 F.3d 914 (9th. Cir. 2013). Under Rule 56(e), a section entitled "Failing to Properly Support or Address a Fact," "[i]f a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact . . . the court may: (1) give an opportunity to properly support or address the fact; (2) consider the fact undisputed for purposes of the motion; (3) grant summary judgment if the motion and supporting materials-including the facts considered undisputed-show that the movant is entitled to it; or (4) issue any other appropriate order." Fed. R. Civ. P. 56(e) (2010). Thus, in order to grant summary judgment, district courts must assess the movant's

Page 4

motion and supporting materials and may consider the movant's assertions of fact undisputed in doing so. Id.; see also Heinemann, 731 F.3d 914.

The hearing on defendants' motion was continued and plaintiff was given the opportunity to file an opposition. Plaintiff failed to comply with the order to show cause and has filed absolutely nothing. The motion for summary judgment is therefore unopposed. As discussed below, and as is evident from the record, the case involves plaintiff's attempt to bring a pet Cocker Spaniel puppy into an amusement park and pass it off as a trained service animal under the ADA. On a separate prior occasion, plaintiff attempted to enter the same park without the puppy, instead attempting to bring in outside food of a commercial nature that was no different than the food sold inside the park, but which she claimed she needed pursuant to her disability as a borderline diabetic and her children's status as anemic. Defendants' motion clearly establishes these facts, showing that plaintiff's filing of this action has clearly wasted the court's and defendants' time and diverted the court's attention away from cases which truly merit attention and plaintiffs who are truly disabled.

The court will assess defendants' motion on the present record.

III. Standards Relating to Service Animals Under the ADA

The Americans with Disabilities Act ("ADA") provides in part:

> No 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 by any person who owns, leases (or leases to), or operates a place of public accommodation.

42 U.S.C. § 12182(a).

> To state a claim under Title III of the ADA, a plaintiff must show that he or she is disabled within the meaning of the ADA; that the defendant is a private entity that owns, leases, or operates a place of public accommodation; and that the plaintiff was denied public accommodation by the defendant because of his or her disability.

Moeller v. Taco Bell Corp., 816 F.Supp.2d 831, 847 (N.D. Cal. 2011), citing Arizona ex rel. Goddard v. Harkins Amusement Enters., Inc., 603 F.3d 666, 670 (9th Cir.2010).

> Service animal means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or

Page 5

> other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual's disability. .... The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.

28 C.F.R. § 36.104 (2013). A dog which provides the owner with a sense of security and comfort does not meet the statutory definition of a service animal. Baugher v. City of Ellensburg, WA, 2007 WL 858627, *5 (E.D. Wash. Mar. 19, 2007).

> Federal regulations require[] that a particular service animal be trained to work for a disabled individual. Access Now, Inc. v. Town of Jasper, Tenn., 268 F.Supp.2d 973, 980 (E.D.Tenn.2003). Courts that have considered the training requirement for service animals recognize that federal regulations do not set forth any standards or requirements specifying the amount or type of training that an animal must receive to qualify as a service animal, nor the type or amount of work a service animal must provide for the disabled person. Id. ("the issue of whether the horse is a service animal does not turn on the amount or type of training"). See also Bronk v. Ineichen, 54 F.3d 425, 430-31 (7th Cir.1995) (federal law does not require the service animal to be trained at an accredited training school); Green v. Housing Auth. of Clackamas Co., 994 F.Supp. 1253, 1256 (D. Oregon 1998) ("there is no federal ... certification process or requirement for hearing dogs, guide dogs, companion animals, or any type of service animal."); Vaughn v. Rent-A-Center, Inc., 2009 WL 723166 at *10 (S.D.Ohio 2009). "The relevant question for the court is whether

> the animal helps the disabled person perform tasks to ameliorate the ADA disability." Vaughn, 2009 WL 723166 at *10 (citing Access Now, Inc., 268 F.Supp.2d at 980; Bronk, 54 F.3d at 431).

Miller v. Ladd, 2010 WL 2867808, *4 (N.D. Cal. Jul. 20, 2010).

"A public accommodation may ask an individual with a disability to remove a service animal from the premises if: ... (ii) [t]he animal is not housebroken." 28 C.F.R. § 36.302(c)(2).

"If a public accommodation properly excludes a service animal under § 36.302(c)(2), it shall give the individual with a disability the opportunity to obtain goods, services, and accommodations without having the service animal on the premises." Id., (c)(3).

IV. Undisputed Facts

As plaintiff filed no opposition, defendants' facts are undisputed. On May 13, 2012, plaintiff attempted to enter the Raging Waters amusement park ("Park") with two children and

Page 6

prohibited food, stating that she was diabetic and that the children were anemic. (Siegrist Dec. at ¶ 11.) According to California Exposition and State Fair police officer Siegrist, plaintiff stated that per the ADA, she could bring her own food into the park and would sue anyone who interfered. (Id.) Officer Siegrist observed that plaintiff had three Subway sandwiches, chips, and "lunchables." She did not claim that these foods were for special dietary needs. When staff informed her that she could keep the "lunchable" containers inside the Park but not the remainder of the food, and that she could leave during the day to consume this food outside and then return to the Park, plaintiff found this suggestion unacceptable. (Id. at ¶ 12.) In this regard, plaintiff testified at her deposition that the reason she did not want to purchase similar food sold inside the Park was that she could not use her food stamps to buy food there, but was able to use food stamps to purchase the food she purchased outside and brought to the Park. (Griggs Decl., Ex. 1 at 148.)

On May 20, 2012, Officer Siegrist recognized plaintiff from the previous week at the Park as she again attempted to gain entry, this time with her two children and a puppy which she claimed was a "service dog." (Siegrist Decl. at ¶ 4.) When Officer Siegrist asked plaintiff what task the dog had been trained to perform, plaintiff responded by stating "all I have to tell you is it's a service dog and I'm going to sue you." (Id. at ¶ 6.) When asked how she would handle the dog's need to relieve itself or whether it was housebroken, she responded again that she was going to sue the officer. (Id.) Officer Siegrist could not determine whether the puppy was housebroken or whether it was a service animal as defined by the ADA. He therefore informed plaintiff that based on the limited information provided by plaintiff, he could not determine that the puppy met the ADA requirements and directed plaintiff to remove it from the property. He informed her that she could return to the Park without the puppy if she agreed to comply with local, state and federal laws. (Id. at ¶ 7.) With plaintiff's driver's license number, Officer Siegrist was able to confirm that plaintiff was known to the Sacramento County CJ system.[4] (Id.

Page 7

at ¶ 8.) Officer Siegrist prepared a crime report on that date, charging plaintiff with fraudulently representing herself as a service dog owner, pursuant to Cal. Penal Code § 365.7. (Id. at ¶ 9, Ex. 1.)

At her deposition, plaintiff admitted the aforementioned facts as described by Officer Siegrist. (Griggs Decl., Ex. 1 at 164-66, 168, 136-37, 161-62, 145 - 48.) She also admitted that her dog was not individually trained to perform any task for her, but that it was limited to having been house trained and trained to be friendly and obedient. (Id. at 136-37.) In fact, plaintiff conceded at her deposition that she took

the dog to the Park because she "needed the dog to be able to get through the day," to help her feel better, and because the children wanted to bring it there. (Id. at 172.) She also admitted that she does not take this dog everywhere she goes, but it is based on her "health" and how she feels. (Id. at 130.)

V. Analysis

In their motion, defendants argue that plaintiff was properly denied access to the park under the ADA because her dog was not a service animal under the Act's definition. This third prong of the ADA analysis is the only one at issue in this case. The undisputed facts clearly establish that plaintiff's puppy was not a service animal within the regulatory definition provided above. Plaintiff testified that her dog was not individually trained to perform tasks for her benefit as an individual with a disability, but only received housetraining and typical obedience training. These types of tasks are not directly related to plaintiff's claimed disability. Furthermore, plaintiff conceded that her dog's purpose was to help her get through the day and feel better, a type of emotional support and comfort, which is exactly the type of aid specifically excluded as work or tasks under the definition provided. 28 C.F.R. § 36.104. Also excluded is companionship, which is the reason plaintiff's children wanted her dog to accompany them to the park, according to her testimony. Just as in Davis v. Ma, 848 F.Supp.2d 1105, 1115 (C.D. Cal. 2012), plaintiff's puppy was not trained as a service animal, but had only some basic obedience training, and therefore no triable issue of fact is created.

Furthermore, plaintiff refused to respond to the park officer's question whether the dog was housetrained, and therefore it was permissible for him to deny her access on this basis. 28



C.F.R. § 36.302(c)(2). Finally, Officer Siegrist complied with the ADA in advising plaintiff that she could return to the park without her dog if she so desired. 28 C.F.R. § 36.302(c) (3).

Therefore, defendants were permitted to deny access to plaintiff's dog as a matter of law. Plaintiff has not only brought a frivolous lawsuit which has wasted both the time and expense of opposing counsel and the court, but has failed to prosecute her action by utterly neglecting to file an opposition to defendants' motion.

CONCLUSION

Accordingly, IT IS HEREBY RECOMMENDED that defendants' November 14, 2013 motion for summary judgment, (ECF No. 29), be GRANTED, and judgment be entered in favor of defendants.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(l). Within fourteen days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections shall be served and filed within fourteen days after service of the objections. The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Gregory G. Hollows
UNITED STATES MAGISTRATE JUDGE

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Notes:

[1] This case proceeds before the undersigned pursuant to E.D. Cal. L.R. 302(c)(21) and 28 U.S.C. § 636(b)(1).

[2] Because November 28 and 29, 2013 were court holidays, the filing deadline was extended to the next available court date which was Monday, December 2, 2013. Fed. R. Civ. P. 6(a).

[3] More specifically, Eastern District Local Rule 230(c) provides:

> **(c) Opposition and Non-Opposition.** Opposition, if any, to the granting of the motion shall be in writing and shall be filed and served not less than fourteen (14) days preceding the noticed (or continued) hearing date. A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect, specifically designating the motion in question. No party will be entitled to be heard in opposition to a motion at oral arguments if opposition to the motion has not been timely filed by that party. . . .

[4] Defendants contend that at her deposition, plaintiff admitted that that she was a convicted felon; however, the deposition pages cited in support are missing from the record. (Griggs Decl., Ex. 1 at 189-194.) In any event, this fact is not relevant to the determination.

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# 3

**U.S. Department of Justice**
Civil Rights Division
*Disability Rights Section*

**ADA**
**2010 Revised Requirements**

# Service Animals

The Department of Justice published revised final regulations implementing the Americans with Disabilities Act (ADA) for title II (State and local government services) and title III (public accommodations and commercial facilities) on September 15, 2010, in the Federal Register. These requirements, or rules, clarify and refine issues that have arisen over the past 20 years and contain new, and updated, requirements, including the 2010 Standards for Accessible Design (2010 Standards).

## Overview

This publication provides guidance on the term "service animal" and the service animal provisions in the Department's revised regulations.

- Beginning on March 15, 2011, only dogs are recognized as service animals under titles II and III of the ADA.
- A service animal is a dog that is individually trained to do work or perform tasks for a person with a disability.
- Generally, title II and title III entities must permit service animals to accompany people with disabilities in all areas where members of the public are allowed to go.

## How "Service Animal" Is Defined

**Service animals are defined as dogs that are individually trained to do work or perform tasks for people with disabilities.** Examples of such work or tasks include guiding people who are blind, alerting people who are deaf, pulling a wheelchair, alerting and protecting a person who is having a seizure, reminding a person with mental illness to take prescribed medications, calming a person with Post Traumatic Stress Disorder (PTSD) during an anxiety attack, or performing other duties. Service animals are working animals, not pets. The work or task a dog has been trained to provide must be directly related to the person's disability. Dogs whose sole function is to provide comfort or emotional support do not qualify as service animals under the ADA.

(continued, page 2)

This definition does not affect or limit the broader definition of "assistance animal" under the Fair Housing Act or the broader definition of "service animal" under the Air Carrier Access Act.

Some State and local laws also define service animal more broadly than the ADA does. Information about such laws can be obtained from that State's attorney general's office.

## Where Service Animals Are Allowed

**Under the ADA, State and local governments, businesses, and nonprofit organizations that serve the public generally must allow service animals to accompany people with disabilities in all areas of the facility where the public is normally allowed to go.** For example, in a hospital it would be inappropriate to exclude a service animal from areas such as patient rooms, clinics, cafeterias, or examination rooms. However, it may be appropriate to exclude a service animal from operating rooms or burn units where the animal's presence may compromise a sterile environment.

## Service Animals Must Be Under Control

**Under the ADA, service animals must be harnessed, leashed, or tethered, unless these devices interfere with the service animal's work or the individual's disability prevents using these devices.** In that case, the individual must maintain control of the animal through voice, signal, or other effective controls.

## Inquiries, Exclusions, Charges, and Other Specific Rules Related to Service Animals

- When it is not obvious what service an animal provides, only limited inquiries are allowed. Staff may ask two questions: (1) is the dog a service animal required because of a disability, and (2) what work or task has the dog been trained to perform. Staff cannot ask about the person's disability, require medical documentation, require a special identification card or training documentation for the dog, or ask that the dog demonstrate its ability to perform the work or task.

- Allergies and fear of dogs are not valid reasons for denying access or refusing service to people using service animals. When a person who is allergic to dog dander and a person who uses a service animal must spend time in the same room or facility, for example, in a school classroom or at a homeless shelter, they both should be accommodated by assigning them, if possible, to different locations within the room or different rooms in the facility.

- A person with a disability cannot be asked to remove his service animal from the premises unless: (1) the dog is out of control and the handler does not take effective action to control it or (2) the dog is not housebroken. When there is a legitimate reason to ask that a service animal be removed, staff must offer the person with the disability the opportunity to obtain goods or services without the animal's presence.

- Establishments that sell or prepare food must allow service animals in public areas even if state or local health codes prohibit animals on the premises.

- People with disabilities who use service animals cannot be isolated from other patrons, treated less favorably than other patrons, or charged fees that are not charged to other patrons without animals. In addition, if a business requires a deposit or fee to be paid by patrons with pets, it must waive the charge for service animals.

- If a business such as a hotel normally charges guests for damage that they cause, a customer with a disability may also be charged for damage caused by himself or his service animal.

- Staff are not required to provide care or food for a service animal.

## Miniature Horses

**In addition to the provisions about service dogs, the Department's revised ADA regulations have a new, separate provision about miniature horses that have been individually trained to do work or perform tasks for people with disabilities.** (Miniature horses generally range in height from 24 inches to 34 inches measured to the shoulders and generally weigh between 70 and 100 pounds.) Entities covered by the ADA must modify their policies to permit miniature horses where reasonable. The regulations set out four assessment factors to assist entities in determining whether miniature horses can be accommodated in their facility. The assessment factors are (1) whether the miniature horse is housebroken; (2) whether the miniature horse is under the owner's control; (3) whether the facility can accommodate the miniature horse's type, size, and weight; and (4) whether the miniature horse's presence will not compromise legitimate safety requirements necessary for safe operation of the facility.

## For more information about the ADA, please visit our website or call our toll-free number.

ADA Website
**www.ADA.gov**
To receive e-mail notifications when new ADA information is available, visit the ADA Website's home page and click the link near the top of the middle column.

**ADA Information Line**
800-514-0301 (Voice) and 800-514-0383 (TTY)
24 hours a day to order publications by mail.
M-W, F 9:30 a.m. – 5:30 p.m., Th 12:30 p.m. – 5:30 p.m. (Eastern Time)
to speak with an ADA Specialist. All calls are confidential.

For persons with disabilities, this publication is available in alternate formats.

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