TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2015

ON THE FOLLOWING MEASURE:
S.B. NO. 760, RELATING TO SERVICE ANIMALS.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Tuesday, February 17, 2015 **TIME:** 8:45 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): Russell A. Suzuki, Attorney General, or
Simeona A. Mariano, Deputy Attorney General

Chair Keith-Agaran and Members of the Committee:

The Department of the Attorney General provides the following comments and concerns.

The purpose of this bill is to establish the misdemeanor offense of knowing misrepresentation as owner or trainer of service dog for persons who knowingly and fraudulently represents oneself as the owner or trainer of a dog that is qualified or identified as a service dog. This offense is punishable by imprisonment of up to six months or a fine of up to $1,000, or both.

The Department has concerns about how the offense is defined, but regardless of those concerns and how the offense is crafted, the Department is certain that this offense will be extremely difficult to enforce. Because there are no licensing, certification, or registration processes in Hawaii for service dogs and, because service dogs, under the provisions of the Americans with Disabilities Act (ADA), do not have to be licensed, certified, or registered by or with any authority, it would be extremely difficult to prove that a dog is not a service dog, when it is being represented by an individual, through actions, or verbal or written communications, that a dog is a service dog. A service dog does not have to be outfitted with any special collars, vests, harnesses, or other identification.

Section 347-2.5, Hawaii Revised Statutes, defines a service dog as follows:

> [A]ny dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, intellectual, or other mental disability.

State law does not require any specific training for a dog to be qualified as a service dog.

Under the ADA, public accommodations, such as restaurants, hotels, retail stores, taxicabs, theaters, concert halls, and sports facilities may ask only two questions:

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

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

Because a state cannot require a qualified service dog to be certified and registered with the state before it falls within the scope of the ADA laws, it is extremely difficult to disprove that a dog is a service dog.

HAWAIʻI CIVIL RIGHTS COMMISSION

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

February 17, 2015
Rm. 16, 8:45 a.m.

To: The Honorable Gilbert Keith-Agaran, Chair
Members of the Senate Committee on Judiciary and Labor

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

S.B. No. 760

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.

S.B. No. 760, if enacted, will make it a misdemeanor for any person to make a knowing and fraudulent misrepresentation that the person is the owner or trainer of a service dog, punishable by imprisonment for up to six months and a fine of up to $1000.

The HCRC strongly opposes H.B. No. 760.

Background Information: Definition of "Service Animal"

Under federal law protecting the rights of persons with disabilities to access government services and public accommodations, the Americans with Disabilities Act (ADA), Title II (state and local government services) and Title III (public accommodations), the U.S. Department of Justice has defined "service animals" as dogs (and miniature horses) that are individually trained to do work or perform tasks for persons with disabilities. The ADA Title II and Title III definition of service animals expressly excludes comfort or support animals (that are not trained to perform tasks).

There is no federal or Hawaiʻi state law that provides for or requires certification of service animals.

Under the ADA Title II and Title III, any animal that is trained to perform a task for a person with a disability is a service animal as legally defined, regardless of whether they have been licensed or certified as a service animal by a state or local government.

The HCRC strongly opposes H.B. No. 760 for two reasons:

1) The creation of a criminal offense for a false representation will encourage inquiries that are unlawful under federal law.

Under Title II and Title III of the ADA, when an individual with a service animal comes to a government office or a business with a service animal, if the individual's disability and the service the animal provides is not obvious, ***only*** two limited inquiries are allowed by law: 1) whether the dog is a service animal required because of a disability; and, 2) what work or task the dog has been trained to perform. No other inquiry or request for documentation or proof is allowed.

State law should not be amended to encourage unlawful inquiries of persons who attempt to access government offices or businesses accompanied by a service animal, as is their right under the ADA, whether those inquiries are made by staff, agents, or third party proxies.

2) The creation of the proposed misdemeanor will potentially criminalize the exercise of the right of persons with disabilities to use "assistance animals" as a reasonable accommodation under federal and state law.

As discussed above, the narrow definition of "service animal" applies to Title II and Title III of the ADA, to the exclusion of other animals that are not dogs (or miniature horses) individually trained to perform tasks for persons with disabilities. However, the US DOJ and the US Department of Housing and Urban Development (HUD) have issued a joint statement that the ADA Title II and Title III service animal definition of "service animal" does not apply to or affect the rights of persons with disabilities to have the use of an assistance animal as a reasonable accommodation under the federal Fair Housing Act.

An assistance animal is a type of aid that a person with a disability may need as a reasonable accommodation. Assistance animals are animals that work, assist, or perform tasks for the benefit of a person with a disability, including animals that provide emotional support. Assistance animals can include:

service animals, support animals, therapy animals, and comfort animals. An assistance animal does not have to be a dog.

The limited scope of the right to use a service animal under Title II and Title III of the ADA does not apply to or limit the right to request the use of an assistance animal as a reasonable accommodation under federal and state fair housing law, the federal ADA Title I (employment) and state fair employment law, or state public accommodations law.

The bill proposes to criminalize the knowing false representations of a dog as a service dog. This will have the effect of chilling the rights of persons with disabilities to exercise their right to request reasonable accommodation in the use of an assistance animal, under federal and state laws other than Title II and Title III. It will also potentially criminalize persons with disabilities who mistakenly characterize their assistance animals as service animals.

The HCRC strongly opposes S.B. No. 760.

From: mailinglist@capitol.hawaii.gov
To: JDLTestimony
Cc: debbra.jackson@doh.hawaii.gov
Subject: Submitted testimony for SB760 on Feb 17, 2015 08:45AM
Date: Friday, February 13, 2015 3:45:53 PM

SB760
Submitted on: 2/13/2015
Testimony for JDL on Feb 17, 2015 08:45AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Debbie Jackson	State Government agency - DCAB	Comments Only	Yes

Comments: Support intent with 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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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 SENATE
THE TWENTY-EIGHTH LEGISLATURE
REGULAR SESSION OF 2015

Committee on Judiciary and Labor
Testimony on S.B. 760
Relating to Service Animals

Tuesday, February 17, 2015, 8:45 A.M.
Conference Room 016

Chair Keith-Agaran and Members of the Committee:

The Hawaii Disability Rights Center 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, the type of approach that is set forth in this bill, inasmuch as it seems to be a reasonable response.

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 on this measure.

HAWAII LEGISLATIVE
ACTION COMMITTEE
community
ASSOCIATIONS INSTITUTE

P.O. Box 976
Honolulu, Hawaii 96808

February 11, 2015

Honorable Gilbert S.C. Keith-Agaran
Honorable Maile S.L. Shimabukuro
Committee on Judiciary and Labor
415 South Beretania Street
Honolulu, Hawaii 96813

Re: SB760/SUPPORT

Dear Chair Keith-Agaran, Vice-Chair Shimabukuro and Committee Members:

This testimony in favor of SB760 is submitted on behalf of the Community Associations Institute ("CAI") Legislative Action Committee. Measures to address fraud and abuse are both appropriate and necessary.

False claims of entitlement to the use of an animal as a "reasonable accommodation" have become commonplace in the condominium and planned community association context. This is because applicable law and enforcement policy are such that challenging even the flimsiest claim is fraught with hazard.

Those who make such false claims deserve to be punished. Such claims disserve those who are truly disabled. The prevalence of such claims also inspires cynicism and disrespect for law.

The answer to those who oppose SB760 on the grounds that it may somehow offend federal law is to point out that California Penal Code §365.7 is to similar effect and it has withstood federal judicial scrutiny.[1] Moreover, the matter is important enough to test in the courts if necessary.

The answer to those who oppose SB760 on the grounds that it may be hard to enforce is that SB760 reflects an appropriate public policy posture all the same. Fraud is wrong and it should be punished. There should be a mechanism to punish offenders in those cases in which proof of the crime becomes available.

[1] California Penal Code §365.7 has been reviewed by at least two federal courts, see, Lerma v. California Exposition and State Fair Police, et al., No. 2:12-cv-1363 KJM (E.D. Cal. 2014) and Hurley v. Loma Linda University Medical Center, Case No. CV12-5688 DSF, (C.D. Cal. 2014) without suggestion that the law is invalid.

It is also true that the mere existence of the law will have deterrent effect. Deterrence alone is reason enough to pass SB760.

CAI represents the condominium industry, and endorses this approach. We respectfully request the Committee to pass SB 760.

Very truly yours,

Philip Nerney

Philip Nerney

PACIFIC PET ALLIANCE

Comments regarding SB 760

Sen. Keith-Agaran and members of the Senate Judiciary Committee:

The Pacific Pet Alliance is a Hawai‘i non-profit organization that promotes responsible pet ownership through education and advocacy. We respectfully submit our comments regarding SB 760 for your consideration.

Hawai‘i Revised Statutes Section 347-2.5 currently defines “service dogs” as:

> [A]ny dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, intellectual, or other mental disability. A companion or comfort animal is not a service dog unless it meets the requirements of this definition and it accompanies a person for the purpose of performing the work or tasks for which it has been trained.

The term “individually trained” is vague, ambiguous, and therefore difficult if not impossible to apply for purposes of any law enforcement action under the provisions of SB 760. (“Trained” by whom? To what standards? And how can “individual training” be verified?)

There are also several differing definitions of service animals under existing Federal laws and regulations. The American with Disabilities Act, the Air Carrier Access Act, and the Fair Housing Act all define service and/or assistance animals differently. For example, Section 382.55, “Miscellaneous provisions” of the Air Carrier Access Act, states:

> (1.) Carriers ***shall*** accept as evidence that an animal is a service animal identification cards, other written documentation, presence of harnesses or markings on harnesses, tags, **or the credible verbal assurances of the qualified individual with a disability** using the animal.

(Enphasis added.) So, if a purported service dog is accepted for air transport and arrives in Hawai‘i under these vague provisions of the Air Carrier Act on the mere basis of its owner’s “credible verbal assurances,” does that make it a “service dog” under Hawai‘i law? We respectfully suggest that it should not be surprising that pet owners in particular, and the public in general, are confused about the definition of a service animal and the types of animals that are seen in public with various type and degrees of training.

While SB 760 would establish penalties for misrepresentation of a service dog, the Pacific Pet Alliance believes that enforcement of its provisions would be very difficult given all of these definitional discrepancies.

We are also aware of individuals and organizations who claim to provide service dog training. However, given the broad and disparate definitions of “service dog” and the lack of any government body that regulates dog training or service dog training, it would appear to be very challenging to enforce SB 760 should it be enacted.

Thank you for the opportunity to offer our comments on this proposed legislation. We are, of course, available and willing to assist the Committee with any information and resources available to us.

PACIFIC PET ALLIANCE

Kenneth A. Cribbs, Director (kcribbs@hawaii.rr.com)

From: mailinglist@capitol.hawaii.gov
To: JDLTestimony
Cc:
Subject: Submitted testimony for SB760 on Feb 17, 2015 08:45AM
Date: Wednesday, February 11, 2015 1:32:08 PM

SB760
Submitted on: 2/11/2015
Testimony for JDL on Feb 17, 2015 08:45AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Richard Emery	Associa	Support	No

Comments: Associa manages more than 600 condominium associations. We strongly support the rights of the disabled but unfortunately some try to take advantage of the lack of enforcement and pet rules. There should be no argument that this Bill supports the legitimate disabled and sends a strong message about false claims.

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

THE SENATE
THE TWENTY-EIGHTH LEGISLATURE
REGULAR SESSION OF 2015

COMMITTEE ON JUDICIARY AND LABOR
Testimony on S.B. 760
Hearing: February 17, 2015

(RELATING TO SERVICE ANIMALS)

Chair Keith-Agaran, Vice Chair Shimabukuro, and members of the Committee. My name is Peter Fritz. I am an attorney and an individual with a disability. I have served on the State Rehabilitation Advisory Council and the Disability and Communication Access Board. I am familiar with the issues faced by individuals with disabilities. I have represented businesses on issues related to the Americans with Disabilities ("ADA"). I am testifying in support of this bill.

This bill would make it a misdemeanor to knowingly misrepresent oneself as the owner or trainer of a service dog.

I offer the following in support:

Move the provisions in this bill to Chapter 711, HRS.

The provisions in this bill should be moved to Chapter 711, HRS. This move is appropriate because Chapter 711, HRS already has criminal provisions relating to service animals. E.g.; § 711-1109.5 Intentional Interference With the Use of a Service Dog.

Businesses need clear consistent rules.

Under the ADA, service animals are permitted to accompany their owner into a public accommodation. The ADA limits this right only to service animals. A service animal is a dog or miniature horse that is individually trained to do work or perform tasks for people with disabilities. The work or task a dog has been trained to provide must be directly related to the person's disability. Service dogs are working dogs, not pets. Dogs whose sole function is to provide comfort or emotional support, commonly known as assistance animals, do not qualify as service dogs under the ADA.

The Hawaii Civil Rights Commission ("HCRC") originally took the position that assistance animals enjoy the same access rights as service animals under the ADA. Recent action by the HCRC has slightly modified this position and now the HCRC will defer to the Department of Health's sanitation rules which restricts access and food establishments to service animals. This may cause people to misrepresent that their assistance dog is a service animal and

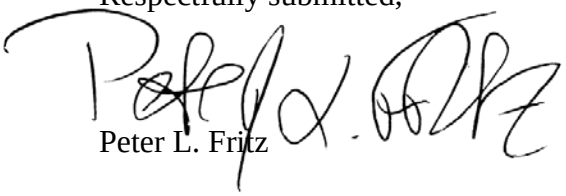
businesses need tools that help them comply with the law and restrict access to the portion of their public accommodation that is a food establishment to avoid violating the sanitation rules. This bill provides a tool to help businesses comply with their obligations under the public accommodation laws and the sanitation code.

The HCRC's change in position has created significant problems for businesses because under the HCRC's modified position, assistance animals may be allowed in certain portions of a public accommodation and not allowed in areas that are subject to the sanitation rules. This makes compliant by a business extremely difficult. To provide clarity for businesses, the committee may wish to amend the public accommodation provisions of Chapter 489, HRS so that it is consistent with the ADA and limit access to public accommodations solely to service animals as defined by the ADA. I would ask the Committee to take notice of the fact that the HCRC has never issued rules which means that the public has not had an opportunity to provide comments on any proposed rules. This may raise a due process issue should the HCRC attempt to enforce its position.

I have attached copies of a proposed Senate Draft 1, the California penal statute that was used to draft the provisions of this bill, a copy of the Federal District Court case holding that the California law did not violate the ADA and a copy of guidance from the Department of Justice regarding the questions that may be asked to determine if an animal is a service animal.

Thank you for the opportunity to testify.

Respectfully submitted,



Peter L. Fritz

1

S.B. NO.760 SD1

Proposed

A BILL FOR AN ACT

RELATING TO SERVICE ANIMALS

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that there is a growing problem with people fraudulently representing that a dog is a service dog. This has resulted in legitimate service dogs being attacked by untrained dogs and violations of the food and sanitation code. At the present time, there are no consequences for fraudulently misrepresenting that your pet or other dog is a service dog.

A service animal is a dog or miniature horse that is individually trained to do work or perform tasks for people with disabilities. The work or task a dog has been trained to provide must be directly related to the person's disability. Service dogs are working dogs, not pets. Dogs whose sole function is to provide comfort or emotional support do not qualify as service dogs under the ADA.

This bill would create a penalty for fraudulently representing that a dog was a service dog. Such penalties do not violate the ADA. A federal court in California has held that a California law that makes it a penalty to fraudulently represent that a dog is a service dog does not violate the ADA.

The United States Department of Justice has issued guidance on the questions that can be asked of a person to determine if a dog is a service dog. It does not violate the ADA to ask certain questions about whether a dog is a service dog.

The legislature finds that there should be penalty for fraudulently representing that dog is a service dog. A penalty would discourage people from fraudulently representing that a pets or a dog whose sole function is to provide comfort or emotional support is a service dog.

SECTION 2. Chapter 711, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§711-1109.5.5 Knowing Misrepresentation as owner or trainer of a service dog; penalty.

(1) A person commits the offense of misrepresentation as owner or trainer of a service dog if the person knowingly and fraudulently represents that an dog the person, through verbal or written notice, is the owner or trainer of a dog that is qualified or identified as a service dog shall be guilty of a misdemeanor punishable by imprisonment for not more than six months or a fine of not more than $1000 or both.

(2) As used in this section, "service dog" shall have the same meaning as in section 347-2.5.

(3) As used in this section ''owner'' means any person who owns a service dog.''

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

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 4. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

S.B. NO. 760
PROPOSED

Report Title:

Disabled Persons; Misrepresentation as Owner for Trainer of Service Dog

Description:

Establishes a misdemeanor for knowingly misrepresenting oneself as the owner or trainer of a service dog.

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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.

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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

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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

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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

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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.

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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

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.

4

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.

From: mailinglist@capitol.hawaii.gov
To: JDLTestimony
Cc:
Subject: Submitted testimony for SB760 on Feb 17, 2015 08:45AM
Date: Thursday, February 12, 2015 10:06:18 AM

SB760
Submitted on: 2/12/2015
Testimony for JDL on Feb 17, 2015 08:45AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Alan Takumi	Individual	Support	No

Comments: I support this bill, there should be consequences for anyone who makes a false claim for service animals. It degrades the entire system and does a disservice to the people who really need the serviced animal.

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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ART FRANK

FEBRUARY 15, 2015

SB 760 RELATING TO SERVICE DOGS

My name is Art Frank from Makaha on the Waianae Coast. As some of you know I am deaf and utilize braces and crutches for mobility. I really would love a service dog to assist me, but at my age of 71 it's too late especially since it takes a minimum of two years to train a dog to be an adequate, capable and competent service dog. What really disturbs me is I've seen or read about too man y clowns who put a harness on a their pet and call the mutt a service dog so they can take them into stores, supermarkets, airlines, etc. It offends me to see this happening not only because I am disabled but more important I am a veteran, though not a combat veteran, who know of veterans returning from IRAQ or AFGHANISTAN who really need service dogs to assist them with their injuries. I consider it insulting that some clown who probably never saw a combat zone is using a mutt, calling it a service dog because he or she is trying to pass themselves off as disabled so they can take their pet everywhere they go. THIS IS WRONG! WRONG! WRONG! and something needs to be done about this. I support this bill 101% and ask this Judiciary committee to pass same. Mahalo nui loa.

ART FRANK
Makaha, Waianae Coast

From: mailinglist@capitol.hawaii.gov
To: JDLTestimony
Cc:
Subject: Submitted testimony for SB760 on Feb 17, 2015 08:45AM
Date: Monday, February 16, 2015 11:40:47 AM

SB760
Submitted on: 2/16/2015
Testimony for JDL on Feb 17, 2015 08:45AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
John Morris	Individual	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
To: JDLTestimony
Cc:
Subject: Submitted testimony for SB760 on Feb 17, 2015 08:45AM
Date: Sunday, February 15, 2015 9:08:28 PM

SB760
Submitted on: 2/15/2015
Testimony for JDL on Feb 17, 2015 08:45AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
William R Smith	Individual	Comments Only	No

Comments: My family owns a service dog. The dog was prescribed for my two disabled minor children. My wife is the licensed owner and handler of the service dog, as minor children cannot be designated as such. When people who don't need a service dog represent themselves as having one, this misrepresentation can discredit those of us who legally do own real service dogs and require them as a medically prescribed need. This fraud should somehow be punishable by law.

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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