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8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA (SAN JOSE DIVISION)

10 DEBORAH A. LANE and JOSHUA E. LOYA,)
11 Plaintiffs,)
12 v.)
13 SANTA CRUZ METROPOLITAN TRANSIT)
DISTRICT, a political subdivision of the State of)
14 California,)
15 Defendant.)

CASE NO. C 02 01808 RMW RS ADR
**DEFENDANT SANTA CRUZ
METROPOLITAN TRANSIT
DISTRICT'S MOTION TO DISMISS
PLAINTIFFS' 6TH CLAIM FOR
RELIEF FOR FAILURE TO STATE A
CLAIM UPON WHICH RELIEF MAY
BE GRANTED [F.R.C.P. §12(b)(6)]**
Date: October 18, 2002
Time: 9:00 a.m.
Courtroom: 6, 4th Floor
Judge: Hon. Ronald M. Whyte

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19 **Action Filed: April 16, 2002**
Trial Date: Not Set

20 **I. NOTICE**

21 On October 18, 2002 at 9:00 a.m., or as soon thereafter as this motion may be
22 heard, before the Honorable Ronald M. Whyte, defendant Santa Cruz Metropolitan Transit
23 District ("Metro") will, and hereby does, move for an order dismissing Plaintiffs' Debra A.
24 Lane and Joshua E. Loya's ("Plaintiffs") sixth claim for relief brought under California
25 Business & Professions Code § 17200, et seq pursuant to the provisions of section
26 12(b)(6) of the Federal Rules of Civil Procedure.

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1 This motion is based on this Notice of Motion, the accompanying Memorandum of
2 Points & Authorities, and any such other and further evidence as may be presented at the
3 hearing on this matter.

4 **II. RELIEF SOUGHT**

5 Metro seeks an Order dismissing Plaintiffs' sixth claim for relief, which alleges that
6 Metro violated the Unfair Competition Act, California Business & Professions Code §
7 17200, et seq.

8 **III. POINTS AND AUTHORITIES IN SUPPORT OF THE MOTION**

9 **A. SUMMARY OF FACTS AND ARGUMENT**

10 Defendant Santa Cruz Metropolitan Transit District ("Metro"), a political subdivision
11 of the State of California, brings this motion to dismiss plaintiffs' sixth claim for relief
12 brought under California Business & Professions Code § 17200, et seq. (hereafter the
13 "Unfair Competition Act") because Metro, a public entity, is not a "person" who may be
14 held liable under the statute.

15 Plaintiffs Deborah A. Lane and Joshua E. Loya bring this action against Metro
16 under a variety of disability-related federal and state statutes, including Title II of the
17 Americans with Disabilities Act, 42 U.S.C. § 12131, et seq., the Rehabilitation Act of 1973,
18 29 U.S.C. § 701, et seq., the Unruh Civil Rights Act, Cal. Civ. Code § 51, et seq., the
19 Public Accommodations Law, Cal. Civ. Code § 54, et seq., and California Government
20 Code § 11135, et seq., in addition to the Unfair Competition Act. Plaintiffs characterize
21 this suit as a "civil rights Complaint" being "filed by individuals with disabilities who have
22 been, are being or will be denied nondiscriminatory, safe access to bus service operated
23 by [Metro]." (First Amended Complaint ("FAC"), ¶ 1.) Plaintiffs allege that Metro is a
24 political division of the State of California created pursuant to California Public Utility Code
25 Section 98000, et seq. and is a "public entity" within the meaning of 42 U.S.C. § 12131(1)
26 and 28 C.F.R. Part 35. (FAC, ¶ 13.) Plaintiffs further allege that Metro operates a "fixed
27 route system" within the meaning of 42 U.S.C. § 12141(3) and that Metro is engaged as a
28 "common carrier in the business of transporting members of the general public. Id.

1 The gravamen of the complaint is that Metro does not comply with a federal
2 regulation which purportedly requires Metro to ". . . announce bus stops at transfer points
3 with other fixed routes, other major intersections and destination points, and intervals
4 along a route sufficient to permit individuals with visual impairments or other disabilities to
5 be oriented to their location." (FAC, ¶ 17.)

6 As a result of this asserted failure to comply with federal regulations, plaintiffs
7 contend that they have been injured by the ". . . inaccessibility of Metro's public
8 transportation system, . . ." (FAC, ¶ 29.) They contend that they have suffered ". . .
9 injuries, including without limitation emotional distress, apprehension of danger,
10 embarrassment, anguish, pain, exhaustion, inconvenience, delay, and the inability to
11 travel to appointments in a timely manner." (FAC, ¶ 30.)

12 Metro is not subject to suit under the Unfair Competition Act. Metro is a "public
13 entity," and does not fall within the definition of a "person" who may be liable under the
14 Act. Thus, Metro's statutory governmental immunity protects Metro from suits under the
15 Unfair Competition Act and plaintiffs' sixth claim for relief should be dismissed.

16 **B. ARGUMENT**

17 The Unfair Competition Act prohibits any unlawful, unfair, or fraudulent business
18 practice or act. Cal. Bus. & Prof. Code § 17200, et seq. Unfair competition is defined as
19 including ". . . any unlawful, unfair or fraudulent business act or practice and unfair,
20 deceptive, untrue and/or misleading advertising and any act prohibited by Chapter I
21 (commencing with Section 17500 of Part 3 of Division 7 of the Bus. & Prof. Code)." Id.
22 the Unfair Competition Act can be used to obtain an injunction against "[a]ny person who
23 engages, has engaged, or proposes to engage in unfair competition. . . ." Bus. & Prof.
24 Code § 17203. Bus. & Prof. Code § 17201 defines the term "person" as ". . . natural
25 persons, corporations, firms, partnerships, joint stock companies, associations and other
26 organizations of persons."

27 Government Code §815 states that "[e]xcept as otherwise provided by statute: (a)
28 A public entity is not liable for an injury, whether such injury arises out of an act or

1 omission of the public entity or a public employee or any other person." Government
2 Code §815 is a legislative declaration that governmental immunity from suit is the rule and
3 liability the exception. Trinkle v. California State Lottery, 71 Cal.App.4th 1198 [84
4 Cal.Rptr. 2d 496] (1999). "Thus, in the absence of some constitutional requirement,
5 public entities may be liable *only* if a statute declares them to be liable." Harshbarger v.
6 City of Colton 197 Cal.App.3d 1335, 1339 [243 Cal.Rptr. 463] (1988). Here, the Unfair
7 Competition Act does not list public entities as among the 'persons' who may be liable
8 under the statute. Thus, the general rule of governmental immunity applies with respect
9 to the Unfair Competition Act.

10 This is the view of at least four California appellate courts. In Trinkle, supra, 71
11 Cal.App.4th 1198, the Third Appellate District held in 1999 that the California State Lottery
12 was not subject to suit under the Unfair Competition Act for allegedly operating illegal
13 games of Keno and Scratcher. The court noted that "The state is neither a natural
14 person, partnership, corporation, association, nor other 'organization of persons.' It is a
15 sovereign entity representing the people." Id. at p. 1203. In response to the plaintiffs'
16 claim that the California State Lottery operates in the fashion of a private business and
17 directly competes with plaintiffs, the court held that ". . . there is no statute in the UCA
18 which overcomes the general rule of governmental tort immunity. If there is to be an
19 exception in this area of regulation, it is the role of the Legislature to carve one out." Id. at
20 p. 1204. Accord, Janis v. California State Lottery Commission, 68 Cal.App.4th 824 [80
21 Cal.Rptr.2d 549] (1998).

22 In California Medical Association, Inc. v. Regents of the University of California, et.
23 al. 79 Cal.App. 4th 542 [94 Cal.Rptr.2d 194](2000), the Second Appellate District held that
24 the Regents of the University of California could not be liable under the Unfair Competition
25 Act in a suit brought by anesthesiologists who alleged that they had been illegally
26 restricted from practicing at the UCLA Medical Center. Citing Trinkle v. California State
27 Lottery, supra, 71 Cal.App.4th 1198 and Janis v. California State Lottery, supra, 68
28 Cal.App.4th 824, among other cases, the court held that the University of California is a

1 "public entity," not a "person" within the meaning of the Unfair Practices Act, and therefore
2 not amenable to suit under the Act. California Medical Association v. Regents, supra, p.
3 551. The court also noted that UCLA's involvement in commercial activity did not affect
4 its conclusion that the Regents were not liable under the Unfair Competition Act. Id.
5 footnote 14. Accord, Community Memorial Hospital of San Buena Ventura et al., v.
6 County of Ventura, 50 Cal.App.4th 199 [56 Cal.Rptr.732](1996).

7 **C. CONCLUSION**

8 Under unequivocal California law, as established by at least four California
9 appellate court decisions, public entities are not subject to suit under the Unfair
10 Competition Act. Accordingly, this Court should grant Metro's Motion to Dismiss the sixth
11 claim for relief.

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13 DATED: July 3, 2002

Respectfully submitted,

RIVKIN RADLER LLP

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15
16 By: /s D. Douglas Shureen
17 D. Douglas Shureen
18 Attorneys for Defendant
19 SANTA CRUZ METROPOLITAN
20 TRANSIT DISTRICT

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