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JUN - 3 2005
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY
BY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

IRENE MEOLA,
Plaintiff,
v.
KATHRYN A. REESE,
Defendant.

CASE NO. SA CV 03-0717 CJC (ANx)
MEMORANDUM OF DECISION

DOCKETED ON CM
JUN - 6 2005
BY *[Signature]* 040

I. INTRODUCTION¹

Plaintiff Irene Meola filed the present action against Defendant Kathryn A. Reece,² the owner and operator of The Aztec Hotel, asserting claims of discriminatory practices by a public accommodation. The allegations in Ms. Meola's Complaint are uncomplicated and simple: she claims she visited The Aztec Hotel and during her visit encountered architectural barriers that prevented her from fully accessing the hotel. She

¹ This Memorandum of Decision constitutes the Court's findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52.

² Ms. Reece was erroneously sued as Kathryn A. Reese. The Court will use the correct spelling of Ms. Reece's name in this Memorandum.

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1 asserts this constitutes discrimination on the basis of disability under both California and
2 federal law. Two years after she filed the Complaint, following an embittered history
3 and significant narrowing of the relief requested, a trial was conducted before this Court
4 on two basic issues: (1) did Ms. Meola visit The Aztec Hotel on January 1, 2003 and (2)
5 were Ms. Meola's requested changes, installing grab bars in the women's restroom in the
6 hotel lobby and adding a handicap accessible parking space in the parking lot, "readily
7 achievable" within the meaning of the Americans with Disabilities Act, 42 U.S.C. §
8 12101 et seq. ("ADA"). After carefully considering the evidence presented and the
9 testimony of the witnesses and parties, the Court concludes Ms. Meola has not satisfied
10 her evidentiary burden of establishing she visited The Aztec Hotel in Monrovia,
11 California on January 1, 2003. Without making the critical showing that the visit
12 actually occurred, Ms. Meola is unable to demonstrate she encountered architectural
13 barriers at The Aztec Hotel and therefore was discriminated against.³ Accordingly,
14 judgment is entered in favor of Ms. Reece.

16 **II. BACKGROUND**

18 Ms. Meola, who uses a wheelchair for mobility, filed the present action on May
19 13, 2003. In her Complaint, Ms. Meola set forth claims of discrimination on the basis of
20 disability against Ms. Reece for the failure to remove architectural barriers at a place of
21 public accommodation, The Aztec Hotel. Ms. Meola claimed she visited The Aztec
22 Hotel as a customer, and suffered embarrassment and frustration during her visit due to
23 the hotel's inaccessibility to persons with disabilities. Specifically, Ms. Meola
24 complained about the lack of van accessible designated disabled parking, the
25 inaccessible public restroom facilities, and the inaccessible paths of travel at the hotel.

27 ³ Because the Court concludes Ms. Meola does not have standing to seek relief against The
28 Aztec Hotel, the Court need not determine whether any changes to the hotel were "readily achievable."

1 Ms. Meola alleged claims of relief for violations of: (1) the ADA and (2) the California
2 Unruh Civil Rights Act, Cal. Civ. Code § 51 et seq. (“Unruh Act”).⁴ As redress, Ms.
3 Meola requested declaratory relief, injunctive relief, damages, and attorney’s fees.
4

5 By the time of trial, Ms. Meola’s claims had narrowed significantly. Ms. Reece
6 had installed grab bars in the women’s lobby restroom and added a handicap accessible
7 parking space in the parking lot. Ms. Meola accepted these structural changes as
8 satisfactory and dismissed her request for injunctive relief under the ADA. Ms. Meola
9 continued to assert, however, that she was entitled to the minimum statutory damages
10 available pursuant to Section 52 of the Unruh Act because she visited The Aztec Hotel
11 and was discriminated against. Therefore, the only issue to be decided by the Court is
12 whether Ms. Meola is entitled to \$4,000 in minimum statutory damages due to a
13 violation of the Unruh Act.⁵
14
15

16
17 ⁴ In her Complaint, Ms. Meola also asserted claims of relief for common law unfair competition,
18 negligence, negligence per se, and violations of the California Unfair Business Practices Act, Cal. Bus.
19 & Prof. Code § 17200. She did not, however, proceed with these claims at trial. Moreover, by the time
of trial, Ms. Meola limited the specific architectural barriers she complained of to the lack of disabled
parking and the lack of handicap accessible restrooms.

20 ⁵ Until recently, the focus of this litigation has been on the ability of The Aztec Hotel, which the
21 parties agree qualifies as a historic property for purposes of the ADA and Title 24 of the California Code
22 of Regulations, to comply with regulations concerning disabled access. Ms. Reece acknowledges the
23 existence of architectural barriers at the hotel, but takes the position that due to the hotel’s status as a
24 historic building and recipient of federal funds, she is unable to make any changes to the hotel absent
25 proper authorization. Specifically, Ms. Reece argues that the hotel has received a federal grant due to its
26 historic nature, and that this grant is subject to revocation if she makes any changes to the hotel without
27 the authorization of government officials in charge of preserving the historic status of buildings. These
28 officials, according to Ms. Reece, will not approve changes until the property’s official historic
assessment had been completed, thereby rendering removal of architectural barriers not “readily
achievable.” Upon realizing, during the course of the hearings for Plaintiff’s Motion for Summary
Judgment, that the only changes sought by Ms. Meola were the addition of a handicap parking space and
grab rails in the women’s restroom, and not a complete overhaul of the hotel’s accessibility, Ms. Reece
obtained the requisite approval and made these changes. Ms. Reece continues to argue, however, that
these changes were not “readily achievable” prior to the Motion for Summary Judgment.

1 **III. STATUTORY PROHIBITIONS AGAINST DISCRIMINATION ON THE**
2 **BASIS OF DISABILITY**

3 **A. THE UNRUH ACT**
4

5 The Unruh Act prohibits discrimination on the basis of disability. It provides:
6 “[a]ll persons within the jurisdiction of this state are free and equal, and no matter what
7 their . . . disability, or medical condition are entitled to the full and equal
8 accommodations, advantages, facilities, privileges, or services in all business
9 establishments of any kind whatsoever.” Cal. Civ. Code § 51(b). A plaintiff seeking
10 recovery for a violation of the Unruh Act must show that she was denied the full and
11 equal accommodations of a business establishment. Cal. Civ. Jury Instructions BAJI
12 7.92. A violation of the rights of any individual under the ADA constitutes a violation of
13 the Unruh Act. Cal. Civ. Code § 51(f).
14

15 A civil action under the Unruh Act may be brought by a “person aggrieved” for
16 conduct in violation of Section 51. Cal. Civ. Code § 52. The language of the Unruh Act
17 “strongly suggests that it was intended to provide recourse for those individuals *actually*
18 denied full and equal treatment by a business establishment.” *Midpeninsula Citizens for*
19 *Fair Housing v. Westwood Investors*, 221 Cal. App. 3d 1377, 1383 (1990) (emphasis
20 added). The California Legislature “has specifically conferred standing to sue under the
21 Unruh Act upon the victims of discriminatory practices and certain designated others,
22 i.e., the district or city attorneys or the Attorney General.” *Id.* at 1386. Stated succinctly,
23 “the statute limits standing to persons aggrieved and to certain identified public agency
24 plaintiffs.” *Id.* at 1389. As a result, one must actually suffer discrimination at the hands
25 of a business establishment to have a remedy under the Unruh Act.⁶
26

27 ⁶ The Court acknowledges that under *Arnold v. United Artists Theatre Circuit, Inc.*, “deterrence”
28 claims have been recognized as actionable under the Unruh Act and that plaintiffs may be entitled to
damages if they are able to establish that they were deterred from accessing a business establishment due

1 Pursuant to § 52 of the Civil Code, “[w]hoever denies, aids or incites a denial, or
2 makes any discrimination or distinction contrary to Section 51 . . . is liable” for such
3 discriminatory conduct. Cal. Civ. Code § 52(a). When liability is found, the Court may
4 award actual damages and an amount up to three times the actual damages for a violation
5 of the Unruh Act, “but in no case less than four thousand dollars (\$4,000).” *Id.* In order
6 to maintain an action for damages for denial of access, “an individual must take the
7 additional step of establishing that he or she was denied equal access on a particular
8 occasion.”⁷ *Donald v. Café Royale, Inc.*, 218 Cal. App. 3d 168, 183 (1990).

9

10 B. THE AMERICANS WITH DISABILITIES ACT

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12 Title III of the ADA prohibits discrimination against persons with disabilities in
13 places of public accommodation. Specifically, it establishes that “[n]o individual shall
14 be discriminated against on the basis of disability in the full and equal enjoyment of the
15 . . . accommodations of any place of public accommodation.” 42 U.S.C. § 12182(a). To
16 state a prima facie case under Title III of the ADA, a plaintiff must demonstrate that she
17 was denied full and equal treatment because of her disability by a place of public
18 accommodation. The statute requires that the plaintiff “actually be ‘subjected to

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20 to knowledge of discriminatory barriers. *Arnold v. United Artists Theatre Circuit, Inc.*, 866 F. Supp.
21 433, 439 (N.D. Cal. 1994); *see also Botosan v. Paul McNally Realty*, 216 F.3d 827 (9th Cir. 2000). The
22 Court in *Arnold* held that “where a plaintiff can prove that violations of applicable California disability
23 access standards deterred her on a particular occasion from attempting to attend a place of public
24 accommodation, that plaintiff states a claim for relief” under the Unruh Act. *Id.* This reasoning,
25 however, is inapplicable to the present action. Ms. Meola has never argued that she is entitled to
26 damages by virtue of being deterred from visiting The Aztec Hotel on a particular occasion. The
27 gravamen of her action from the onset has been that she actually did visit the hotel and was
28 discriminated during her visit. Accordingly, *Arnold* is inapplicable.

26 ⁷ Although the Court in *Donald* specifically discussed damages pursuant to Section 54 of the
27 Civil Code, this conclusion applies equally to damages under Section 52. Both provisions are geared
28 towards providing redress to individuals discriminated against because of their disabilities and language
from *Donald* has been used when discussing Section 52. *See Botosan v. Paul McNally Realty*, 216 F.3d
827, 835 (9th Cir. 2000).

1 discrimination' or be 'about to be subjected' to it." *Moreno v. G & M Oil Co.*, 88 F.
2 Supp. 2d 1116, 1117 (C.D. Cal. 2000) (*citing* 42 U.S.C. § 12188). Generalized
3 grievances regarding discrimination at sites the plaintiff has not visited are insufficient
4 for a cause of action under the ADA.⁸ *Id.*

5
6 **IV. MS. MEOLA HAS NOT SATISFIED HER EVIDENTIARY BURDEN OF**
7 **PROVING SHE ENCOUNTERED ARCHITECTURAL BARRIERS AND**
8 **THUS WAS DISCRIMINATED AGAINST**

9 The Court concludes Ms. Meola is not entitled to minimum statutory damages
10 because she is unable to carry her evidentiary burden of showing she was discriminated
11 against. Specifically, Ms. Meola does not satisfy her burden of establishing, by a
12 preponderance of the evidence, that she visited The Aztec Hotel on Wednesday, January
13 1, 2003 and suffered an injury in fact entitling her to maintain a claim against Ms. Reece.
14 As outlined above, regardless of whether she seeks to show discrimination by a direct
15 violation of the Unruh Act, or a per se violation by virtue of showing a violation of the
16 ADA, Ms. Meola is obligated to demonstrate she was actually discriminated against and
17 suffered an injury. This is because both statutes limit claims by private individuals to
18 those who *actually suffered* discrimination. Any such showing of discrimination
19 requires that Ms. Meola demonstrate she visited The Aztec Hotel and encountered
20 architectural barriers during her visit. Because Ms. Meola cannot show she actually
21 visited The Aztec Hotel, she has not established she was discriminated against and
22 cannot succeed on her claims.

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24
25 ⁸ The ADA does not require that a disabled individual engage in the "futile gesture" of visiting a
26 place of public accommodation if there is actual notice that the defendant will discriminate. 42 U.S.C. §
27 12188. In order for the doctrine to apply, the plaintiff must prove knowledge of the barriers and that she
28 would visit the place of public accommodation in the imminent future but for those barriers. *Steger v.*
Franco, Inc., 228 F.3d 889, 892 (8th Cir. 2000). No argument has been presented that this provision is
applicable to the present action.

1 **A. MS. MEOLA’S VERSION OF EVENTS**

2

3 During her direct testimony, Ms. Meola testified she visited The Aztec Hotel only

4 once, on January 1, 2003. (Rep. Tr.⁹ 15:9-11.) She asserted she remembered January 1,

5 2003 was the day of her visit because she went to the hotel to see her son, Rob Maynor,

6 who she had been unable to see for Christmas, and to give him Christmas presents.

7 (Rep. Tr. 15:13-14.) Ms. Meola also testified she was hoping to see Bobby Williams, a

8 friend of her son’s, play at The Brass Elephant, the nightclub located within The Aztec

9 Hotel. (Rep. Tr. 16:13-15.) She did not, however, expect to see Mr. Williams perform

10 because he and his band only played in the evenings, while she visited the hotel during

11 the day. (Rep. Tr. 16:19-22.) Ms. Meola testified that if Mr. Williams had played,

12 which she understood he did on a regular basis at the hotel, she would have spent the

13 night at the hotel to hear him play. (Rep. Tr. 17:2-3.) Ms. Meola acknowledged she had

14 not seen Mr. Williams or Billy Haarbauer, a band member of Mr. Williams’ and another

15 former friend of her son’s, in 15 or 20 years. (Rep. Tr. 35:24 - 36:3.)

16

17 According to Ms. Meola, during her visit to the hotel, in addition to giving Mr.

18 Maynor his regular Christmas gifts, Ms. Meola went inside the hotel and wrote a check

19 for Mr. Maynor’s rent for \$150.00: “I just remembered going up to the desk and paying a

20 lady, an elderly lady a check.” (Rep. Tr. 18:22 - 19:6.) A copy of a cancelled check

21 written to The Aztec Hotel was presented for the first time during this litigation in the

22 course of Ms. Meola’s testimony.¹⁰ (Rep. Tr. 19:7-16.) The check was endorsed on the

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24 ⁹ The Court will use “Rep. Tr.” followed by the page and line number(s) to refer to the

25 Reporter’s Transcript of Proceedings. The trial was conducted before this Court on May 12, 2005. The

26 Court uses “Tr. Exh.” to refer to exhibits that were presented and admitted into evidence during the

course of the trial.

27 ¹⁰ The parties agree this cancelled check was never disclosed during discovery. Additionally,

28 although Ms. Meola presented the check to her counsel three days prior to trial, Mr. Potter, counsel for

Ms. Meola, did not inform defense counsel of the sudden discovery of the check. This lack of disclosure

1 back with a stamp bearing the name "The Aztec Hotel and Brass Elephant" and an
2 account number. (Rep. Tr. 20:22; Tr. Exh. 24.)

3
4 During examination by the defense, Ms. Meola was questioned about her stated
5 justifications for visiting The Aztec Hotel. Although in prior responses to interrogatories
6 Ms. Meola had stated she "visited the subject facility as an invitee and customer to see a
7 band play at the bar lounge," (Rep. Tr. 22:23 - 23:3), while testifying during trial Ms.
8 Meola asserted she did not remember ever making such a statement and that it is
9 "definitely not" true that she went to The Aztec Hotel to see a band play in the bar and
10 lounge (Rep. Tr. 23:8-16). Instead, she reaffirmed that she went to The Aztec Hotel to
11 see her son and exchange Christmas gifts. (Rep. Tr. 23: 17-20.) Ms. Meola also was
12 presented with a declaration she submitted in conjunction with her Motion for Summary
13 Judgment. (Rep. Tr. 92:23 - 93:6.) In this declaration, Ms. Meola stated: "On January 1,
14 2003, I went to the Aztec Hotel, which is a beautiful and older Hotel on historic Route
15 66. My son has stayed there before and we went to watch a band play in the lounge/bar
16 areas." (Tr. Exh. 7, ¶ 3.) When questioned regarding the accuracy of this statement, Ms.
17 Meola responded: "No, I didn't say we went to watch a band play in the lounge areas."
18 (Rep. Tr. 93:11-12.)

19
20 On re-direct examination, Ms. Meola stated that on the day of her visit, she "was
21 hoping to look at the Elephant Brass [sic] and see if it could accommodate my
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23 is a violation of the Federal Rules of Civil Procedure. The parties have known, at least as of Plaintiff's
24 Motion for Summary Judgment, that whether or not Ms. Meola visited The Aztec Hotel was a hotly
25 contested and critical issue in this lawsuit. Notwithstanding the clear relevance of the check, Mr. Potter
26 has not provided a sufficient justification for why his client did not produce the check earlier. Despite
27 this violation of Federal Rules, a violation for which the Court could exclude the evidence and sanction
28 *Plaintiff for withholding evidence, the Court has accepted the check into evidence. To minimize the*
prejudice to Ms. Reece as a result of this belated disclosure, Ms. Reece was permitted to submit the
hotel's ledgers to show whether or not this check was actually received and how it was processed by the
hotel.

1 wheelchair.” (Rep. Tr. 37: 12-15.) Seeing Mr. Williams and Mr. Haarbauer, and seeing
2 the hotel, would have been “other benefits.” (Rep. Tr. 37:18-19.)

3
4 To support her claim that she visited The Aztec Hotel on January 1, 2003, Ms.
5 Meola called John Burns as a witness. According to Mr. Burns, who currently resides
6 with Ms. Meola and Mr. Maynor (Rep. Tr. 7:1), Mr. Burns and Ms. Meola visited The
7 Aztec Hotel on January 1, 2003 (Rep. Tr. 7:7-10). He asserted that the trip was around
8 noon (Rep. Tr. 7:25), and that he and Ms. Meola generally leave their home around
9 10:00 a.m. when they travel anywhere (Rep. Tr. 8:3-4). According to Mr. Burns, “it
10 takes a while to get up there.” (Rep. Tr. 8:3-4.) Mr. Burns was sure the trip was during
11 the day because he is unable to drive at night due to problems with his vision. (Rep. Tr.
12 8:11.) Mr. Burns, a wheelchair-user himself, testified he drove Ms. Meola to the hotel
13 in his “ramp van,” a van that is specially designed to accommodate wheelchairs. (Rep.
14 Tr. 7:12-14.) Although he claimed to have parked in the last parking stall in the parking
15 lot alongside the hotel because there was no disabled parking (Rep. Tr. 9:3-8), Mr. Burns
16 could not remember the name of the street next to the parking lot of the hotel (Rep. Tr.
17 11:12-13), nor could he recall the route he used to drive to the hotel on January 1, 2003
18 (Rep. Tr. 11:8-9).

19
20 Mr. Burns stated that he and Ms. Meola went to The Aztec Hotel and the two
21 visited with Mr. Maynor and a fourth person. (Rep. Tr. 9:24.) Based on Mr. Burns’
22 testimony, the four individuals stayed in the patio area of the hotel and exchanged
23 belated Christmas gifts. (Rep. Tr. 9: 22- 10:3.) In his own words, “I went over to the
24 patio area and I stayed there.” (Rep. Tr. 9:22.) Later, however, Mr. Burns commented
25 that he went inside the hotel after being out on the patio. (Rep. Tr. 12:21 - 13:1.) Mr.
26 Burns also stated that while they were at The Aztec Hotel, he saw Ms. Meola make out a
27 check and pay the rent for her son. (Rep. Tr. 10:19.) He asserted that, based on what
28

1 Ms. Meola had told him, as of January 1, 2003, Mr. Maynor had been staying at the hotel
2 for at least a week. (Rep. Tr. 13:5-8.)
3

4 **B. MS. MEOLA'S TESTIMONY IS UNPERSUASIVE**

5 Ms. Meola's stated justifications for visiting The Aztec Hotel have changed
6 throughout the lawsuit. In the context of the summary judgment proceedings, Ms.
7 Meola, by the admission of a declaration under penalty of perjury, stated to the Court
8 that she visited The Aztec Hotel in order to listen to a band play in the lounge area.
9 Specifically, her declaration stated: "On January 1, 2003, I went to the Aztec Hotel,
10 which is a beautiful and older Hotel on historic Route 66. My son has stayed there
11 before and we went to watch a band play in the lounge/bar areas." In contrast, at trial,
12 Ms. Meola was adamant that she traveled to The Aztec Hotel in order to visit with her
13 son and exchange belated Christmas gifts. As noted above, when confronted with her
14 declaration, Ms. Meola responded: "I didn't say we went to watch a band play in the
15 lounge areas." While commenting that seeing "Bobby and Billy"¹¹ would be an "other
16 benefit" to her trip, Ms. Meola specifically said that it was "definitely not" true that she
17 went to the hotel for the purpose of listening to the band. The context and purpose of
18 Ms. Meola's trip has entirely changed since the summary judgment stage. Indeed, only
19 after Ms. Reece provided evidence that The Brass Elephant did not have a band playing
20 in the lounge on Wednesday, January 1, 2003 did Ms. Meola begin to assert that the
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26 ¹¹ The Court notes that throughout her testimony, Ms. Meola confused Mr. Williams and Mr.
27 Haarbauer's names. She referred to "Billy Williams," although Mr. Williams' first name is Bobby, and
28 ultimately concluded that either Billy or Bobby had the last name Williams and she could not remember
the last name of the other. (Rep. Tr. 26:17-24.)

1 purpose of her trip was exchanging Christmas gifts.¹² The Court finds this alteration in
2 the story line significant.

3
4 Additionally, Ms. Meola's stated time of visit contradicts the chronology of events
5 provided by Ms. Reece and Mr. Haarbauer, two witnesses the Court finds consistent and
6 credible. Both Ms. Reece and Mr. Haarbauer testified that Mr. Maynor first arrived at
7 The Aztec Hotel on the evening of January 1, 2003. Ms. Reece testified that Mr. Maynor
8 came to the hotel on the evening of January 1, 2003 after Mr. Williams and Mr.
9 Haarbauer, her two bandmates and Mr. Maynor's former roommates, telephoned her and
10 requested that she assist Mr. Maynor by renting a room to him at a discounted rate.
11 (Rep. Tr. 52:1-24.) According to Ms. Reece, Mr. Maynor was brought to the hotel
12 between 7:00 p.m. and 8:00 p.m. (Rep. Tr. 52:12-13), and Mr. Williams paid \$150 for
13 the first week of Mr. Maynor's stay (Rep. Tr. 70:10-25). Ms. Reece testified that Mr.
14 Maynor did not stay at the hotel on the night of January 1, 2003 because "he had to pick
15 up some things" (Rep. Tr. 53:11-12), but returned on January 2, 2003 (Rep. Tr. 53:21-
16 24). Similarly, Mr. Haarbauer testified that on the evening of January 1, 2003, at his and
17 Mr. William's request, Ms. Reece provided a discounted room to Mr. Maynor (Rep. Tr.
18 85:7-24), for which Mr. Williams made a payment (Rep. Tr. 87:6, 90:8-9). Since Mr.
19 Maynor was not at the hotel until the evening of January 1, 2003, the Court is not
20 persuaded that Ms. Meola and Mr. Burns visited him there during the day and had a
21 pleasant afternoon on the hotel patio.

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26 _____
27 ¹² Both during the summary judgment proceedings and at trial, Ms. Reece provided evidence
28 that the band in which Mr. Williams and Mr. Haarbauer play, Kathy and the Boyz (Ms. Reece is the lead
singer), plays only on Friday and Saturday nights. On Wednesday nights in 2003, the hotel hosted a
karaoke event.

1 **B. MR. BURNS' TESTIMONY IS INCONCLUSIVE**

2
3 Mr. Burns, Ms. Meola's friend and roommate, provided testimony that he drove
4 Ms. Meola to The Aztec Hotel on January 1, 2003. Despite his statement that he visited
5 the hotel, however, Mr. Burns was unable to remember the route driven to the hotel, nor
6 could he recall the names of the street near the hotel. Mr. Burns stated the two went to
7 the hotel around noontime, and based this on the fact that when he and Ms. Meola travel
8 anywhere, they usually leave around 10:00 a.m. and "it takes a while to get up there."
9 The distance between Ms. Meola and Mr. Burns' residence in Huntington Beach,
10 California and The Aztec Hotel in Monrovia, California is about 44 miles, however, a
11 distance the Court finds difficult to believe takes a couple of hours by car. Ms. Meola
12 even acknowledged in her declaration submitted in conjunction with her Motion for
13 Summary Judgment that she lives only about 30 minutes away from the hotel. (Tr. Exh.
14 7, ¶ 3.) Additionally, Mr. Burns testified that while at The Aztec Hotel he "went over to
15 the patio area and [he] stayed there." Later, however, Mr. Burns contradicted his prior
16 testimony and commented that he went inside the hotel and saw Ms. Meola make a rent
17 payment. The remainder of Mr. Burns' testimony was superficial, vague, and lacking in
18 detail. Accordingly, Mr. Burns' testimony does not convince the Court that Ms. Meola
19 traveled to The Aztec Hotel on January 1, 2003.

20
21 **C. THE "SURPRISE" CHECK**

22
23 During her testimony, a check written by Ms. Meola to The Aztec Hotel for \$150
24 was produced. (Tr. Exh. 24.) This check was dated January 1, 2003. As testified to by
25 Ms. Reece, the endorsement on the back of the check shows that it was deposited into the
26 hotel's "security deposits" account. (Rep. Tr. 72:12-13, 76:12-14.) According to Ms.
27 Reece, deposits made into this account are limited to deposits paid by hotel guests as
28

1 security for the contents of and potential damage to the room. (Rep. Tr. 72:1-5.) Upon a
2 guest's departure from the hotel, assuming all contents in the room remain in place and
3 there is no damage to the room, the security deposit is returned to the guest. (Rep. Tr.
4 73:3-8.)

5
6 Although Ms. Meola asserted that during her visit to The Aztec Hotel on January
7 1, 2003 she went inside the hotel to the front desk and wrote the check and gave it to an
8 elderly lady, the Court is not persuaded. Ms. Reece, a credible witness, stated that in
9 2003 she personally deposited all checks for the hotel (Rep. Tr. 78:3-4), and all checks
10 were deposited daily before 4:00 p.m. (Rep. Tr. 72:23). Therefore, in the ordinary course
11 of business, if Ms. Meola's check had been submitted to the hotel on January 1, 2003, it
12 would have been deposited into the deposits account of The Aztec Hotel on January 2,
13 2003. It was not – the check was deposited on January 3, 2003. Similarly, the ledger for
14 The Aztec Hotel indicates that a check was provided as a deposit for Mr. Maynor's room
15 on January 2, 2003. (Tr. Exh. 27.) While there was a \$150 payment for Mr. Maynor's
16 room received on January 1, 2003 (Tr. Exh. 26), both Ms. Reece and Mr. Haarbauer
17 testified that Mr. Williams made a \$150 payment on January 1, 2003. Moreover, outside
18 of Ms. Meola's testimony that she provided the check, there is nothing in the evidence to
19 corroborate her version of the events. The only witness called who stated he saw Ms.
20 Meola provide a check to the hotel on January 1, 2003 was Mr. Burns. But, if Mr. Burns
21 stayed outside on the patio during his entire stay at the hotel, as he first contended, then
22 the Court is unable to understand how he could see Ms. Meola go inside the hotel to the
23 front desk and pay the rent for her son's room.

24
25 In light of the documentary evidence, the Court does not doubt a check from Ms.
26 Meola's checkbook, signed by Ms. Meola and dated January 1, 2003, somehow reached
27 The Aztec Hotel and was deposited into the hotel's security deposits account. The Court
28

1 is not convinced, however, this check was given to the hotel during a personal visit by
2 Ms. Meola on January 1, 2003. It is not the Court's duty or role to surmise as to the
3 different ways the check could have reached The Aztec Hotel. The Court's only
4 obligation is to determine if, during a visit to the hotel on January 1, 2003, Ms. Meola
5 provided the check to the hotel. The Court concludes she has not proven she did so.

6
7 **D. A CRITICAL WITNESS IS MISSING**

8
9 According to the testimony of all witnesses, Mr. Maynor was crucial to the events
10 of January 1, 2003. The thrust of Ms. Meola's entire testimony for visiting The Aztec
11 Hotel was that she visited her son to exchange Christmas gifts with him. Yet Mr.
12 Maynor, who lives with Ms. Meola and has previously provided a declaration on her
13 behalf,¹³ did not come before the Court to corroborate her story. The testimony of Mr.
14 Maynor could have established Ms. Meola's presence at the hotel on the date in
15 question. While the Court acknowledges the ability of counsel and parties to present the
16 case as they deem appropriate, the Court is confounded as to the absence of this
17 individual at trial. As it is Ms. Meola's burden to establish her presence at The Aztec
18 Hotel on January 1, 2003, the Court can only believe Mr. Maynor's testimony would
19 have been detrimental to Ms. Meola.

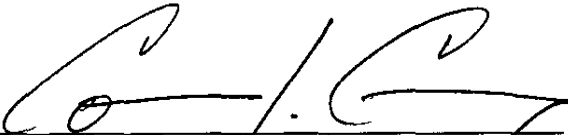
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¹³ Mr. Maynor submitted a declaration on March 3, 2005 in conjunction with Ms. Meola's Reply
26 for her Motion for Summary Judgment. In his declaration, Mr. Maynor stated he stayed as a paying
27 guest at The Aztec Hotel for a number of weeks, including January 1, 2003. Maynor Decl. ¶ 2. Mr.
28 Maynor also stated he visited with his mother at the hotel on January 1, 2003. Maynor Decl. ¶ 3.
According to Mr. Maynor, "She came both to visit me and because I had told her that singer/guitarist
Bobby Williams was playing at the Aztec Hotel on a regular basis." Id.

1 **IV. CONCLUSION**

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3 Based on the foregoing, the Court concludes Ms. Meola has not satisfied her
4 evidentiary burden of establishing she actually suffered discrimination at The Aztec
5 Hotel and is entitled to relief for such discrimination. Accordingly, judgment in favor of
6 Ms. Reece is appropriate. Counsel for Ms. Reece is hereby directed to file and serve a
7 proposed judgment within seven (7) days of the date of this Memorandum.
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10 DATED: June 3, 2005

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12 CORMAC J. CARNEY
13 UNITED STATES DISTRICT JUDGE
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