

Chairman Chabot, Ranking Member Nadler and members of the Subcommittee, my name is Harry Horner. Thank you for allowing me to testify before the Committee today on behalf of small businesses.

I would like to tell you about a \$200,000 financial demand one disabled attorney recently made in our small mountain community after spending a weekend there. Julian, whose history dates to the gold mining days of the 1800's, now has about 3000 residents who want to live where the pace is slower, where small town values persist and the charm of the early 20th century is maintained. Please keep in mind that many of Julian's buildings were built in the late 1800's and the ambiance of the Historical District attracts thousands of visitors each year to the town and its businesses.

Julian has been hit hard by two major forest fires in the last five years. The last one, the Cedar Fire, burned over 500 residences – this in a town of about 3000 people. For us, this was our *Katrina*. The business community, made up largely of “mom and pop” enterprises, was still recovering from the Cedar Fire and the resulting loss of business when the disabled attorney struck in the days before Thanksgiving in 2005.

Of the roughly 80 storefront businesses in Julian, the attorney sent letters to 67 of them claiming an organization he had set up was entitled to a \$200,000 investigation fee because he noticed a number of access issues during his visit. This attorney has filed over 1300 lawsuits in the last few years in San Diego County alone. In the case of Julian, he did not actually visit the majority of the businesses he cited. A lawsuit has been filed against the attorney and its outcome will undoubtedly have an impact on whether some businesses survive in Julian.

The action of this attorney was a painful “wakeup call” for most of Julian's businesses. It was for me even though I had obtained permits and inspections from the County when “building out” the retail space for my business. These inspections included checking for disabled access in the bathroom and at the entrances. When the inspector “signed off” on our construction, parking lot striping and signage, I thought I was in compliance. This assumption was not

based on a one time experience – I was a general building contractor, specializing in commercial and industrial construction for over 16 years.

Most businesses have the right number of fire extinguishers, smoke detectors and employment posters. We need to have a clear standard and a “safe harbor” whereby each of us can know **with certainty** exactly what we need to do and not do with regard to disabled access.

Nearly every business I know, including mine, wants to welcome the disabled and comply with all the access requirements. The actions of the disabled attorney in Julian might seem to be a means of achieving the ends of access for the disabled, but what has actually developed is a mechanism for unethical profiteers and opportunists to pick our pockets and line their own. The result of this application of the otherwise well-intentioned ADA is the gross waste of resources, all of which is unnecessary and certainly counterproductive. Money that could be going to improve the access and the convenience of the disabled is being spent on attorneys that are enriching themselves at the unnecessary expense of an important segment of our society and economy - small business. A method must be developed to accelerate ADA compliance in a way that will satisfy the advocates of disabled access but, at the same time, the rules that are developed need to be reliable, consistent, understandable and effective

I would like to offer three suggestions that could be first steps in moving ahead with disabled access compliance:

- #1. Identify a group of inexpensive changes, such as signs, doorknobs, faucet handles, which are absolutely required regardless of financial resources, and provide a “safe harbor to businesses of a certain size which implement those changes.
- #2. Because many businesses, which have been approved by building inspectors are often later subject to lawsuits, exempt businesses which have been approved by a building inspector within a certain period of time. Have perhaps a requirement that building permits must have an inspection by a qualified and

certified access inspector and have a specified amount or percentage of the construction costs be used for disabled access. Incentives could be given to local government from the federal government to get compliance and uniformity.

#3. Require the certification of a qualified access inspection be attached to a tax return as a prerequisite for deducting certain business expenses.

Thank You.

Harry Horner