

[Attorneys Fee Provision in California Disabled Persons Act Is Not Preempted by the ADA](#)

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In *Jankey v. Song Koo Lee*, 2010 DJDAR 2024 (2010), the [California First Appellate District](#) decided an unsettled question relating to the scope of preemption of the [Americans with Disabilities Act of 1990](#), 42 U.S.C. §12101 (ADA). The court reviewed the preemption question vis-à-vis [California Civil Code §54](#), known as the *California Disabled Persons Act* (CDPA).

The plaintiff was a disabled person who used a wheelchair. The plaintiff sued the owner of a food market, seeking injunctive relief under the ADA and the CDPA. The plaintiff claimed that a step at the entry of the market was a barrier, that effectively prevented him from entering the store. The trial court granted the defendant summary judgment.

As a prevailing party, the defendant moved for attorney fees under [Civil Code Section 55](#) contained in the CDPA. Based on the case authority of *Hubbard v. SoBreck LLC*, 531 F3d. 983 (9th Cir. 2008), the plaintiff argued that the ADA preempted fee awards to prevailing defendants under Section 55 unless there is affirmative proof that the plaintiff's action was "groundless." The court disagreed and granted the defendant fees amounting to \$118,458.

The court of appeal affirmed the trial court's decision. The court noted that the federal law preempts state law when state law is an actual conflict with federal law. The court concluded that Section 55 of the CDPA mandated that a prevailing party in an action to enjoin a violation of disability access requirements is entitled to recover attorney fees.

The court noted that the ADA's preemption provision's purpose is to maximize the plaintiff's options in pursuing state law remedies. Further, it found that a conflict does not exist between the discretionary fee provision of the ADA and mandatory nature of fees under Section 55. Accordingly, the ADA did not preempt Section 55 and the trial court properly awarded the defendant reasonable attorney fees.