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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
10

11 JOSE ESCOBEDO,

12 Plaintiff,

13 vs.

14 EDDY FUNAHASHI; RATHA NOP dba
STAR RESTAURANT;

15 Defendants.
16
17

) No.

) **COMPLAINT ASSERTING DENIAL OF**
) **RIGHT OF ACCESS UNDER**
) **AMERICANS WITH DISABILITIES ACT**
) **FOR INJUNCTIVE RELIEF,**
) **DECLARATORY RELIEF, DAMAGES,**
) **ATTORNEYS' FEES AND COSTS (ADA)**

18 **I. SUMMARY**

19 1. This is a civil rights action by plaintiff JOSE ESCOBEDO ("Plaintiff") for
20 discrimination at the building, structure, facility, complex, property, land, development, and/or
21 surrounding business complex known as:

22 Star Restaurant
23 122 West 6th Street
Hanford, CA 93230
24 (hereafter "the Facility")

25 2. Plaintiff seeks damages, injunctive and declaratory relief, attorney fees and
26 costs, against EDDY FUNAHASHI and RATHA NOP dba STAR RESTAURANT
27 (hereinafter collectively referred to as "Defendants"), pursuant to the Americans with
28 Disabilities Act of 1990 (42 U.S.C. §§ 12101 et seq.) ("ADA") and related California statutes.

1 **II. JURISDICTION**

2 3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343 for ADA
3 claims.

4 4. Supplemental jurisdiction for claims brought under parallel California law –
5 arising from the same nucleus of operative facts – is predicated on 28 U.S.C. § 1367.

6 5. Plaintiff’s claims are authorized by 28 U.S.C. §§ 2201 and 2202.

7 **III. VENUE**

8 6. All actions complained of herein take place within the jurisdiction of the United
9 States District Court, Eastern District of California, and venue is invoked pursuant to 28 U.S.C.
10 § 1391(b), (c).

11 **IV. PARTIES**

12 7. Defendants own, operate, and/or lease the Facility, and consist of a person (or
13 persons), firm, and/or corporation.

14 8. Plaintiff is substantially limited in his ability to walk, must use a cane or walker
15 for mobility, suffers from arthritis, and is missing a digit on his dominant hand, substantially
16 limiting his ability to grasp and manipulate objects. Consequently, Plaintiff is “physically
17 disabled,” as defined by all applicable California and United States laws, and a member of the
18 public whose rights are protected by these laws.

19 **V. FACTS**

20 9. The Facility is open to the public, intended for non-residential use, and its
21 operation affects commerce. The Facility is therefore a public accommodation as defined by
22 applicable state and federal laws.

23 10. Plaintiff visited the Facility and encountered barriers (both physical and
24 intangible) that interfered with, if not outright denied, Plaintiff’s ability to use and enjoy the
25 goods, services, privileges and accommodations offered at the Facility. Plaintiff personally
26 encountered the following barriers at the Facility during Plaintiff’s visit to the Facility on or
27 about April 7, 2015:

28 a) There was a steep ramp in front of the entrance of the Facility, and the

- 1 doorway had a high threshold. It was hard for Plaintiff to ascend the
2 ramp and step over the raised threshold to enter the restaurant.
- 3 b) Plaintiff could not find an accessible seating space at the bar counter.
4 The seating consisted of fixed swivel stools located on a raised platform,
5 and it was hard for Plaintiff to balance as he approached and sat down
6 on the stool.
- 7 c) The transaction counter was too high, which made it difficult for
8 Plaintiff to reach up to pay for his meal over the counter.
- 9 d) Plaintiff needed to use the restroom while at the Facility. Along the
10 route to the restroom, the ground was cracked and uneven which made it
11 hard for Plaintiff to make his way to and from the restroom.
- 12 e) Plaintiff encountered a set of double doors on the way to and from the
13 restroom. When he opened one door, the clear width was too narrow for
14 him to pass through and he was required to open both doors at the same
15 time, which was difficult to do while holding his cane.
- 16 f) The door leading into the toiletrroom was also narrow, and it had a round
17 doorknob. It was difficult for Plaintiff to grasp and turn the knob to open
18 the door, and to enter through the narrow doorway.
- 19 g) The toilet in the restroom was low and lacked grab bars, making it hard
20 for Plaintiff to lower himself onto and stand up from the toilet.

21 11. The barriers identified in paragraph 10 herein are only those that Plaintiff
22 personally encountered. Plaintiff is presently unaware of other barriers which may in fact exist
23 at the Facility and relate to his disabilities. Plaintiff will seek to amend this Complaint once
24 such additional barriers are identified as it is Plaintiff's intention to have all barriers which
25 exist at the Facility and relate to his disabilities removed to afford him full and equal access.

26 12. Plaintiff was, and continues to be, deterred from visiting the Facility because
27 Plaintiff knows that the Facility's goods, services, facilities, privileges, advantages, and
28 accommodations were and are unavailable to Plaintiff due to Plaintiff's physical disabilities.

1 Plaintiff enjoys the goods and services offered at the Facility, and will return to the Facility
2 once the barriers are removed.

3 13. Defendants knew, or should have known, that these elements and areas of the
4 Facility were inaccessible, violate state and federal law, and interfere with (or deny) access to
5 the physically disabled. Moreover, Defendants have the financial resources to remove these
6 barriers from the Facility (without much difficulty or expense), and make the Facility
7 accessible to the physically disabled. To date, however, Defendants refuse to either remove
8 those barriers or seek an unreasonable hardship exemption to excuse non-compliance.

9 14. At all relevant times, Defendants have possessed and enjoyed sufficient control
10 and authority to modify the Facility to remove impediments to wheelchair access and to
11 comply with the 1991 ADA Accessibility Guidelines and/or the 2010 Standards for Accessible
12 Design. Defendants have not removed such impediments and have not modified the Facility to
13 conform to accessibility standards. Defendants have intentionally maintained the Facility in its
14 current condition and have intentionally refrained from altering the Facility so that it complies
15 with the accessibility standards.

16 15. Plaintiff further alleges that the (continued) presence of barriers at the Facility is
17 so obvious as to establish Defendants' discriminatory intent. On information and belief,
18 Plaintiff avers that evidence of this discriminatory intent includes Defendants' refusal to adhere
19 to relevant building standards; disregard for the building plans and permits issued for the
20 Facility; conscientious decision to maintain the architectural layout (as it currently exists) at
21 the Facility; decision not to remove barriers from the Facility; and allowance that Defendants'
22 property continues to exist in its non-compliant state. Plaintiff further alleges, on information
23 and belief, that the Facility is not in the midst of a remodel, and that the barriers present at the
24 Facility are not isolated (or temporary) interruptions in access due to maintenance or repairs.

25 **VI. FIRST CLAIM**

26 **Americans with Disabilities Act of 1990**

27 **Denial of "Full and Equal" Enjoyment and Use**

28 16. Plaintiff incorporates the allegations contained in paragraphs 1 through 15 for

1 this claim.

2 17. Title III of the ADA holds as a “general rule” that no individual shall be
3 discriminated against on the basis of disability in the full and equal enjoyment (or use) of
4 goods, services, facilities, privileges, and accommodations offered by any person who owns,
5 operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).

6 18. Defendants discriminated against Plaintiff by denying Plaintiff “full and equal
7 enjoyment” and use of the goods, services, facilities, privileges and accommodations of the
8 Facility during each visit and each incident of deterrence.

9 Failure to Remove Architectural Barriers in an Existing Facility

10 19. The ADA specifically prohibits failing to remove architectural barriers, which
11 are structural in nature, in existing facilities where such removal is readily achievable. 42
12 U.S.C. § 12182(b)(2)(A)(iv).

13 20. When an entity can demonstrate that removal of a barrier is not readily
14 achievable, a failure to make goods, services, facilities, or accommodations available through
15 alternative methods is also specifically prohibited if these methods are readily achievable. *Id.*
16 § 12182(b)(2)(A)(v).

17 21. Here, Plaintiff alleges that Defendants can easily remove the architectural
18 barriers at the Facility without much difficulty or expense, and that Defendants violated the
19 ADA by failing to remove those barriers, when it was readily achievable to do so.

20 22. In the alternative, if it was not “readily achievable” for Defendants to remove
21 the Facility’s barriers, then Defendants violated the ADA by failing to make the required
22 services available through alternative methods, which are readily achievable.

23 Failure to Design and Construct an Accessible Facility

24 23. Plaintiff alleges on information and belief that the Facility was designed and
25 constructed (or both) after January 26, 1993 – independently triggering access requirements
26 under Title III of the ADA.

27 24. The ADA also prohibits designing and constructing facilities for first occupancy
28 after January 26, 1993, that aren’t readily accessible to, and usable by, individuals with

1 disabilities when it was structurally practicable to do so. 42 U.S.C. § 12183(a)(1).

2 25. Here, Defendants violated the ADA by designing and constructing (or both) the
3 Facility in a manner that was not readily accessible to the physically disabled public –
4 including Plaintiff – when it was structurally practical to do so.¹

5 Failure to Make an Altered Facility Accessible

6 26. Plaintiff alleges on information and belief that the Facility was modified after
7 January 26, 1992, independently triggering access requirements under the ADA.

8 27. The ADA also requires that facilities altered in a manner that affects (or could
9 affect) its usability must be made readily accessible to individuals with disabilities to the
10 maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering an area that contains a facility's
11 primary function also requires making the paths of travel, bathrooms, telephones, and drinking
12 fountains serving that area accessible to the maximum extent feasible. *Id.*

13 28. Here, Defendants altered the Facility in a manner that violated the ADA and
14 was not readily accessible to the physically disabled public – including Plaintiff – to the
15 maximum extent feasible.

16 Failure to Modify Existing Policies and Procedures

17 29. The ADA also requires reasonable modifications in policies, practices, or
18 procedures, when necessary to afford such goods, services, facilities, or accommodations to
19 individuals with disabilities, unless the entity can demonstrate that making such modifications
20 would fundamentally alter their nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

21 30. Here, Defendants violated the ADA by failing to make reasonable modifications
22 in policies, practices, or procedures at the Facility, when these modifications were necessary to
23 afford (and would not fundamentally alter the nature of) these goods, services, facilities, or
24 accommodations.

25 31. Plaintiff seeks all relief available under the ADA (i.e., injunctive relief, attorney
26 fees, costs, legal expense) for these aforementioned violations. 42 U.S.C. § 12205.

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¹ Nothing within this Complaint should be construed as an allegation that Plaintiff is bringing this action as a private attorney general under either state or federal statutes.

1 32. Plaintiff seeks a finding from this Court (i.e., declaratory relief) that Defendants
2 violated the ADA in order to pursue damages under California's Unruh Civil Rights Act.

3 **VII. SECOND CLAIM**

4 **Unruh Act**

5 33. Plaintiff incorporates the allegations contained in paragraphs 1 through 32 for
6 this claim.

7 34. California Civil Code § 51 states, in part, that: All persons within the
8 jurisdiction of this state are entitled to the full and equal accommodations, advantages,
9 facilities, privileges, or services in all business establishments of every kind whatsoever.

10 35. California Civil Code § 51.5 also states, in part that: No business establishment
11 of any kind whatsoever shall discriminate against any person in this state because of the
12 disability of the person.

13 36. California Civil Code § 51(f) specifically incorporates (by reference) an
14 individual's rights under the ADA into the Unruh Act.

15 37. Defendants' aforementioned acts and omissions denied the physically disabled
16 public – including Plaintiff – full and equal accommodations, advantages, facilities, privileges
17 and services in a business establishment (because of their physical disability).

18 38. These acts and omissions (including the ones that violate the ADA) denied,
19 aided or incited a denial, or discriminated against Plaintiff by violating the Unruh Act.

20 39. Plaintiff was damaged by Defendants' wrongful conduct, and seeks statutory
21 minimum damages of four thousand dollars (\$4,000) for each offense.

22 40. Plaintiff also seeks to enjoin Defendants from violating the Unruh Act (and
23 ADA), and recover reasonable attorneys' fees and costs incurred under California Civil Code
24 § 52(a).

25 **VIII. THIRD CLAIM**

26 **Denial of Full and Equal Access to Public Facilities**

27 41. Plaintiff incorporates the allegations contained in paragraphs 1 through 40 for
28 this claim.

1 42. Health and Safety Code § 19955(a) states, in part, that: California public
2 accommodations or facilities (built with private funds) shall adhere to the provisions of
3 Government Code § 4450.

4 43. Health and Safety Code § 19959 states, in part, that: Every existing (non-
5 exempt) public accommodation constructed prior to July 1, 1970, which is altered or
6 structurally repaired, is required to comply with this chapter.

7 44. Plaintiff alleges the Facility is a public accommodation constructed, altered, or
8 repaired in a manner that violates Part 5.5 of the Health and Safety Code or Government Code
9 § 4450 (or both), and that the Facility was not exempt under Health and Safety Code § 19956.

10 45. Defendants' non-compliance with these requirements at the Facility aggrieved
11 (or potentially aggrieved) Plaintiff and other persons with physical disabilities. Accordingly,
12 Plaintiff seeks injunctive relief and attorney fees pursuant to Health and Safety Code § 19953.

13 **IX. PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff prays judgment against Defendants, and each of them, for:

- 15 1. Injunctive relief, preventive relief, or any other relief the Court deems proper.
- 16 2. Declaratory relief that Defendants violated the ADA for the purposes of Unruh
17 Act damages.
- 18 3. Statutory minimum damages under section 52(a) of the California Civil Code
19 according to proof.
- 20 4. Attorneys' fees, litigation expense, and costs of suit.²
- 21 5. Interest at the legal rate from the date of the filing of this action.
- 22 6. For such other and further relief as the Court deems proper.

23 Dated: June 10, 2015

MOORE LAW FIRM, P.C.

24
25 /s/ Tanya E. Moore

26 Tanya E. Moore
27 Attorney for Plaintiff
Jose Escobedo

28 ² This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

VERIFICATION

I, JOSE ESCOBEDO, am the plaintiff in the above-entitled action. I have read the foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe them to be true.

I verify under penalty of perjury that the foregoing is true and correct.

Dated: June 10, 2015

/s/ Jose Escobedo
Jose Escobedo

I attest that the original signature of the person whose electronic signature is shown above is maintained by me, and that his concurrence in the filing of this document and attribution of his signature was obtained.

/s/ Tanya E. Moore
Tanya E. Moore, Attorney for
Plaintiff, Jose Escobedo