

1 ROCIO L. ZUNIGA, individually and dba WHITE TOP RESTAURANT (hereinafter
2 collectively referred to as “Defendants”), pursuant to the Americans with Disabilities Act of
3 1990 (42 U.S.C. §§ 12101 et seq.) (“ADA”) and related California statutes.

4 **II. JURISDICTION**

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

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

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

10 **III. VENUE**

11 6. All actions complained of herein take place within the jurisdiction of the United
12 States District Court, Eastern District of California, and venue is invoked pursuant to 28 U.S.C.
13 § 1391(b), (c).

14 **IV. PARTIES**

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

17 8. Plaintiff is substantially limited in his ability to walk, and must use a wheelchair
18 for mobility. Consequently, Plaintiff is “physically disabled,” as defined by all applicable
19 California and United States laws, and a member of the public whose rights are protected by
20 these laws.

21 **V. FACTS**

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

25 10. Plaintiff lives in the general vicinity of the Facility, attends school near the
26 Facility, and visits the area on a regular basis. Plaintiff visited the Facility on or about August
27 11, 2015 and encountered the following barriers (both physical and intangible) that interfered
28 with, if not outright denied, Plaintiff’s ability to use and enjoy the goods, services, privileges

1 and accommodations offered at the Facility:

- 2 a) The entrance door was too heavy for Plaintiff to open; accordingly, his
3 wife had to hold the door open for him while he maneuvered his
4 wheelchair through the doorway.
- 5 b) The transaction counter inside the restaurant was improperly configured,
6 which made it difficult for Plaintiff to pay for his meal.
- 7 c) Plaintiff needed to use the restroom while at the Facility; however, the
8 doorway to the restroom was not wide enough for Plaintiff's wheelchair
9 to fit inside. He was unable to enter the restroom and had to wait until he
10 found another restroom to use elsewhere.
- 11 d) The walkway leading to the restroom was not wide enough, and when
12 Plaintiff realized that he could not enter the restroom, he was unable to
13 turn around due to the lack of clear level space at the restroom doorway.
14 Plaintiff was forced to wheel off the curb into the adjacent parking lot in
15 order to return to the restaurant.

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

21 12. Plaintiff was, and continues to be, deterred from visiting the Facility because
22 Plaintiff knows that the Facility's goods, services, facilities, privileges, advantages, and
23 accommodations were and are unavailable to Plaintiff due to Plaintiff's physical disabilities.
24 Plaintiff enjoys the goods and services offered at the Facility, and will return to the Facility
25 once the barriers are removed.

26 13. Defendants knew, or should have known, that these elements and areas of the
27 Facility were inaccessible, violate state and federal law, and interfere with (or deny) access to
28 the physically disabled. Moreover, Defendants have the financial resources to remove these

1 barriers from the Facility (without much difficulty or expense), and make the Facility
2 accessible to the physically disabled. To date, however, Defendants refuse to either remove
3 those barriers or seek an unreasonable hardship exemption to excuse non-compliance.

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

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

20 VI. FIRST CLAIM

21 Americans with Disabilities Act of 1990

22 Denial of "Full and Equal" Enjoyment and Use

23 16. Plaintiff incorporates the allegations contained in paragraphs 1 through 15 for
24 this claim.

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

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

4 Failure to Remove Architectural Barriers in an Existing Facility

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

8 20. When an entity can demonstrate that removal of a barrier is not readily
9 achievable, a failure to make goods, services, facilities, or accommodations available through
10 alternative methods is also specifically prohibited if these methods are readily achievable. *Id.*
11 § 12182(b)(2)(A)(v).

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

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

18 Failure to Design and Construct an Accessible Facility

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

22 24. The ADA also prohibits designing and constructing facilities for first occupancy
23 after January 26, 1993, that aren’t readily accessible to, and usable by, individuals with
24 disabilities when it was structurally practicable to do so. 42 U.S.C. § 12183(a)(1).

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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: October 27, 2015

MOORE LAW FIRM, P.C.

24
25 /s/ Tanya E. Moore

26 Tanya E. Moore
27 Attorney for Plaintiff
Angel Aguiniga

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

VERIFICATION

I, ANGEL AGUINIGA, 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: October 27, 2015

/s/ Angel Aguiniga
Angel Aguiniga

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, Angel Aguiniga