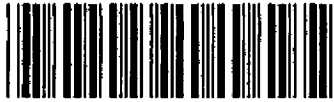


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3:05-CV-01660 ANTONINETTI V. CHIPOTLE MEXICAN

1

CMP.

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FILED
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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY  DEPUTY

8 IN THE UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 MAURIZIO ANTONINETTI,
11 Plaintiff,

12 vs.

13 CHIPOTLE MEXICAN GRILL, INC. and DOES
14 1 THROUGH 10, Inclusive,
15 Defendants.

Case No.:

05 CV 1660 J - 95F (WMC)
CIVIL COMPLAINT

DEMAND FOR JURY TRIAL
[F.R.C.P. §38(b); Local
Rule 38.1]

16
17 Plaintiff, MAURIZIO ANTONINETTI (hereinafter referred to as
18 "Plaintiff"), file this cause of action against Defendants,
19 CHIPOTLE MEXICAN GRILL, INC. (hereinafter 'CHIPOTLE MEXICAN
20 GRILL') and DOES 1 THROUGH 10, Inclusive, and would show unto the
21 Court the following:

22 I.

23 JURISDICTION AND VENUE

24 1. This Court has original jurisdiction of this civil
25 action pursuant to 28 USC §1331, 28 USC §§1343(a)(3) and
26 1343(a)(4) for claims arising under the Americans with
27 Disabilities Act of 1990, 42 USC §12101 et seq. and the Court's
28 supplemental jurisdiction, 28 USC §1367.

CR

1 alleges, that Defendants and each of them herein were, at all
2 times relevant to the action, the owners, franchisees, lessees,
3 general partners, limited partners, agents, employees, employers,
4 representing partners, subsidiaries, parent companies, joint
5 venturers and/or divisions of the remaining Defendants and were
6 acting within the course and scope of that relationship.
7 Plaintiff is further informed and believes, and thereon alleges,
8 that each of the Defendants herein gave consent to, ratified,
9 and/or authorized the acts alleged herein of each of the
10 remaining Defendants.

11 6. Plaintiff is an otherwise qualified disabled individual
12 as provided in the Americans with Disabilities Act of 1990, 42
13 USC §12102, Part 5.5 of the California Health & Safety Code and
14 the California Unruh Civil Rights Act, §§51, et seq., 52, et
15 seq., the California Disabled Persons Act, §§54, et seq. and 55,
16 and other statutory measures which refer to the protection of the
17 rights of "physically disabled persons." Plaintiff visited the
18 public accommodation owned and/or operated by Defendants and/or
19 located at the subject properties for the purpose of availing
20 himself of the goods, services, facilities, privileges,
21 advantages, or accommodations operated and/or owned by Defendants
22 and/or located on the subject properties.

23 7. Plaintiff is informed and believes and thereon alleges
24 that the subject facilities have been newly constructed and/or
25 underwent remodeling, repairs, or alterations since 1971, and
26 that Defendants have failed to comply with California access
27 standards which applied at the time of each such new construction
28 and/or alteration.

1 III.

2 FACTS

3 8. Plaintiff has a mobility impairment and uses a
4 wheelchair. Moreover, he has had a history of or has been
5 classified as having a physical impairment, as required by 42 USC
6 §12102(2)(A).

7 9. On or about February 15, 2005 and February 22, 2005 and
8 and continuing through the present date, Plaintiff was denied
9 full and equal access to the facilities owned and/or operated by
10 the Defendants because the facilities and/or subject properties
11 were inaccessible to members of the disabled community who use
12 wheelchairs for mobility. Plaintiff was denied full and equal
13 access because the food serving and viewing counters are
14 inaccessible to and not useable by people in wheelchairs. No
15 equivalent facilitation was and is provided. People in
16 wheelchairs have no opportunity to view the foods available for
17 selection, as are non-disabled people. Further, the properties
18 are inaccessible because of barriers which include, but are not
19 limited to, inaccessible parking, inaccessible entrances and
20 inaccessible restrooms. Plaintiff was also denied full and equal
21 access because of discriminatory policies and practices regarding
22 accommodating people with disabilities. Plaintiff filed this
23 lawsuit to compel compliance with access laws and regulations.

24 10. As a result of Defendants' failure to provide full and
25 equal access and to remove architectural barriers, Plaintiff
26 suffered injuries. People with disabilities, because of the
27 existing policies, practices and procedures and architectural
28 barriers, are denied full and equal access to the Defendants'

1 facilities, goods, services; benefits and advantages that are
2 otherwise available to the non-disabled.

3 11. Plaintiff is an otherwise qualified individual as
4 provided in the Americans with Disabilities Act of 1990, 42 USC
5 §12102, the Rehabilitation Act of 1973, Section 504 (as amended
6 29 USC §794) and the California Unruh Civil Rights Act, Civil
7 Code §§51, 52, 54.1, 54.3 and 55, and other statutory measures
8 which refer to the protection of the rights of "physically
9 disabled persons." Plaintiff visited the public facilities owned
10 and operated by Defendants for the purpose of availing himself of
11 the goods and services offered and provided by Defendants and/or
12 for the purpose of obtaining removal of architectural barriers
13 and/or modification of policies, practices and procedures to
14 provide accessibility to people with disabilities. Plaintiff was
15 injured in fact, as set forth more specifically herein.

16 12. Plaintiff alleges that Defendants will continue to
17 operate public accommodations which are inaccessible to him and
18 to other individuals with disabilities. Pursuant to 42 USC
19 §12188(a), Defendants are required to remove architectural
20 barriers in their existing facilities and to modify their
21 policies, practices and procedures to accommodate people with
22 disabilities.

23 13. Plaintiff has no adequate remedy at law for the
24 injuries currently being suffered in that money damages will not
25 adequately compensate Plaintiff for the amount of harm suffered
26 as a result of the failure to provide full and equal access to
27 him and as a result of the exclusion from participation in the
28 economic and social life of this state.

1 14. Plaintiff believes that architectural barriers
2 precluding Plaintiff full and equal access of the public
3 accommodation will continue to exist at Plaintiff's future
4 visits, which will result in future discrimination of Plaintiff,
5 in violation of the Americans with Disabilities Act. Plaintiff
6 is currently being subjected to discrimination because Plaintiff
7 cannot return to, make use of or obtain full and equal access to
8 the facilities, goods and/or services offered by Defendants to
9 the general public. Plaintiff seek damages for each offense
10 relating to each of Plaintiff's visits to the subject properties
11 when Plaintiff was denied full and equal access to the subject
12 properties, goods, services, privileges and advantages or was
13 deterred from attempting to avail himself of the benefits, goods,
14 services, privileges and advantages of the place of public
15 accommodation at the subject properties because of continuing
16 barriers to full and equal access.

17 IV.

18 FIRST CLAIM FOR
19 VIOLATION OF AMERICAN WITH DISABILITIES ACT
20 42 USC §12101, et seq.

21 15. Plaintiff re-alleges and incorporates by reference each
22 and every allegation contained in paragraphs 1 through 14,
23 inclusive, as though set forth fully herein.

24 16. Plaintiff was denied full and equal access to
25 Defendants' goods, services, facilities, privileges, advantages,
26 or accommodations within a public accommodation owned, leased
27 and/or operated by Defendants, in violation of 42 USC §12182(a).
28 Plaintiff was, therefore, subjected to discrimination and is
entitled to injunctive relief pursuant to 42 USC §12188 as a

1 result of the actions or inaction of Defendants.

2 17. Among other remedies, Plaintiff seeks an injunctive
3 order requiring compliance with state and federal access laws for
4 all access violations which exist at the properties, requiring
5 removal of architectural barriers, modification of policies,
6 practices and procedures and other relief as the court may deem
7 proper.

8 18. Plaintiff also seeks any other order that will redress
9 the discrimination to which he has been subjected, are being
10 subjected and/or will be subjected.

11 V.

12 SECOND CLAIM FOR
13 VIOLATION OF CALIFORNIA CIVIL CODE

14 19. Plaintiff re-alleges and incorporates by reference each
15 and every allegation contained in paragraphs 1 through 18,
16 inclusive, as though set forth fully herein.

17 20. Based on the facts plead hereinabove and elsewhere in
18 this complaint, Defendants did, and continue to, discriminate
19 against Plaintiff and persons similarly situated by denying
20 disabled persons full and equal access to and enjoyment of the
21 subject facilities and of Defendants' goods, services,
22 facilities, privileges, advantages or accommodations within a
23 public accommodation, in violation of California Civil Code §§51,
24 et seq., 52, et seq., and 54, et seq.

25 21. Defendants' actions constitute a violation of
26 Plaintiff's rights under California Civil Code §§51, et seq., 52,
27 et seq., and 54, et seq., and therefore Plaintiff is entitled to
28 injunctive relief remedying all such violations of California
access laws and standards. In addition, Plaintiff is entitled to

1 damages under California Civil Code §54.3 for each offense. The
2 amount of damages suffered by Plaintiff is not yet determined.
3 When the amount is ascertained, Plaintiff will ask the Court for
4 leave to amend this complaint to reflect this amount. Plaintiff
5 is also entitled to and requests attorneys' fees and costs.

6 22. The actions of Defendants were and are in violation of
7 the Unruh Civil Rights Act, California Civil Code §§51, et seq.
8 and therefore Plaintiff is entitled to injunctive relief
9 remedying all such violations of California access laws and
10 standards. In addition, Plaintiff is entitled to damages under
11 California Civil Code §52 for each offense. The amount of
12 damages suffered by Plaintiff is not yet determined. When the
13 amount is ascertained, Plaintiff will ask the Court for leave to
14 amend this Complaint to reflect this amount.

15 23. Plaintiff seeks all of the relief available to him
16 under Civil Code §§51, 52 et seq., 54, 54.1, 54.2, 54.3, 55, 55.1
17 and any other Civil Code Sections which provide relief for the
18 discrimination suffered by Plaintiff, including damages and
19 attorneys fees.

20 VI.

21 THIRD CLAIM FOR
22 VIOLATION OF HEALTH AND
SAFETY CODE §19950, ET SEQ.

23 24. Plaintiff re-alleges and incorporates by reference each
24 and every allegation contained in paragraphs 1 through 23,
25 inclusive, as though set forth fully herein.

26 25. Defendants' facilities are public accommodations within
27 the meaning of Health and Safety Code §19950, et seq., and
28 Plaintiff is informed and believes and thereon alleges that

1 Defendants have newly built or altered the subject properties
2 and/or the subject facility since 1971 within the meaning of
3 California Health and Safety Code §19959. The aforementioned
4 acts and omissions of Defendants constitute a denial of equal
5 access to the use and enjoyment of the Defendants' facilities by
6 people with disabilities.

7 26. Defendants' failure to fulfill their duties to provide
8 full and equal access to their facilities by people with
9 disabilities has caused Plaintiff to suffer deprivation of
10 Plaintiff's civil rights, as well as other injuries.

11 27. As a result of Defendants' violations of Health and
12 Safety Code §§19955, et seq., described herein, Plaintiff is
13 entitled to and requests injunctive relief pursuant to Health and
14 Safety Code §§19953, and to reasonable attorney's fees and costs.

15 VII.

16 FOURTH CLAIM FOR DECLARATORY RELIEF

17 28. Plaintiff re-alleges and incorporates by reference each
18 and every allegation contained in paragraphs 1 through 27,
19 inclusive, as though set forth fully herein.

20 29. An actual controversy now exists in that Plaintiff is
21 informed and believes and thereon alleges that Defendants'
22 premises and facilities are in violation of the disabled access
23 laws of the State of California including, but not limited to,
24 Civil Code §§51, et seq., §§52, et seq., §§54, et seq., Health
25 and Safety Code §§19950, et seq., Government Code §§4450, et seq.
26 and 7250, et seq., Title 24 of the California Code of
27 Regulations, and/or Title III of the Americans with Disabilities
28 Act and its implementing Accessibility Regulations.

1 30. A declaratory judgment is necessary and appropriate at
2 this time so that each of the parties may know their respective
3 rights and duties and act accordingly.

4 VIII.

5 FIFTH CLAIM FOR INJUNCTIVE RELIEF

6 31. Plaintiff re-alleges and incorporates by reference each
7 and every allegation contained in paragraphs 1 through 30,
8 inclusive, as though set forth fully herein.

9 32. Plaintiff will suffer irreparable harm unless
10 Defendants are ordered to remove architectural barriers at
11 Defendants' public accommodations, and/or to modify their
12 policies, procedures and practices regarding accommodating people
13 with disabilities. Plaintiff has no adequate remedy at law to
14 redress the discriminatory conduct of Defendants.

15 33. Plaintiff seeks injunctive relief to redress
16 Plaintiff's injuries.

17 IX.

18 JURY DEMAND

19 34. Pursuant to Rule 38 of the Federal Rules of Civil
20 Procedure, Plaintiffs hereby request a jury trial.

21 WHEREFORE, Plaintiff prays for judgment against the
22 Defendants, CHIPOTLE MEXICAN GRILL, INC. and DOES 1 through 10,
23 as follows:

24 1. An order enjoining Defendants from violating disabled
25 access laws of the United States and of the State of
26 California;


27 2. That the Court declare the respective rights and duties
28 of Plaintiff and Defendants as to the removal of

1 architectural barriers at Defendants' public
2 accommodations and/or as to the modification of
3 Defendants' policies, practices and procedures.

- 4 3. An order awarding Plaintiff actual, special and/or
5 statutory damages for violation of his civil rights and
6 for restitution including, but not limited to, damages
7 pursuant to the applicable Civil Code Sections
8 including, but not limited to, §§52 and 54.3 for each
9 and every offense of Civil Code §§51 and 54;
- 10 4. An award of compensatory damages according to proof;
- 11 5. An award of up to three times the amount of
12 actual damages pursuant to the Unruh Civil
13 Rights Act and the Disabled Persons Act; and
- 14 6. An order awarding Plaintiff reasonable attorneys' fees
15 and costs;
- 16 7. Such other and further relief as the Court deems
17 proper.

18 DATED: 8/18, 2005

LAW OFFICES OF AMY B. VANDEVELD


19
20 AMY B. VANDEVELD,
21 Attorney for Plaintiff
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CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS MAURIZIO ANTONINETTI DEFENDANTS CHIPOTLE MEXICAN GRILL, INC. and DOES through 10, inclusive, San Diego COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF (EXCEPT IN U.S. PLAINTIFF CASES) (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) Amy B. Vandeveld, Esq. LAW OFFICE OF AMY B. VANDEVELD 1850 Fifth Avenue, Suite 22 San Diego, CA 92101 (619) 231-8883 ATTORNEYS (IF KNOWN) U5 CV 1660 J (WMC)

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY) I U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party) 2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III) III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) Citizen of This State Citizen of Another State Citizen or Subject of a Foreign Country Incorporated or Principal Place of Business in This State Incorporated and Principal Place of Business in Another State Foreign Nation

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY). 42 U.S.C. Sec. 12101-12111, 12181-12184 and 12201, et. seq.

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY) CONTRACT: 110 Insurance, 150 Recovery of Overpayment & Enforcement of Judgment, 151 Medicare Act, 152 Recovery of Defaulted Student Loans (Excl. Veterans), 153 Recovery of Overpayment of Veterans Benefits, 160 Stockholders Suits, 195 Contract Product Liability. REAL PROPERTY: 210 Land Condemnation, 220 Foreclosure, 230 Rent Lease & Ejectment, 240 Ten to Land, 245 Tort Product Liability, 290 All Other Real Property. TORTS: PERSONAL INJURY: 310 Airplane, 315 Airplane Product Liability, 320 Assault, Libel & Slander, 330 Federal Employer's Liability, 340 Marine, 345 Marine Product Liability, 350 Motor Vehicle, 355 Motor Vehicle Product Liability, 360 Other Personal Injury. PERSONAL INJURY: 362 Personal Injury-Medical Malpractice, 365 Personal Injury-Product Liability, 368 Asbestos Personal Injury Product Liability. PERSONAL PROPERTY: 370 Other Fraud, 371 Truth in Lending, 380 Other Personal Property Damage, 385 Property Damage Product Liability. PRISONER PETITIONS: 510 Motions to Vacate Sentence Habeas Corpus, 530 General, 535 Death Penalty, 540 Mandamus & Other, 550 Civil Rights, 555 Prisoner Conditions. FORFEITURE/PENALTY: 610 Agriculture, 620 Other Food & Drug, 625 Drug Related Seizure of Property 21 USC 881, 630 Liquor Laws, 640 RR & Truck, 650 Airline Regs, 660 Occupational Safety/Health, 690 Other. LABOR: 710 Fair Labor Standards Act 29 Labor/Mgmt. Relations, 730 Labor/Mgmt. Reporting & Disclosure Act, 740 Railway Labor Act, 790 Other Labor Litigation, 791 Empl. Ret. Inc. Security Act. BANKRUPTCY: 422 Appeal 28 USC 158, 423 Withdrawal 28 USC 157, PROPERTY RIGHTS: 820 Copyrights, 830 Patent, 840 Trademark, SOCIAL SECURITY: 861 HIA (13958), 862 Black Lung (923), 863 DFWC/DIWW (405(g)), 864 SSID Title XVI, 865 RSI (405(a)). FEDERAL TAX SUITS: 870 Taxes (U.S. Plaintiff or Defendant), 871 IRS - Third Party 26 USC 7609. OTHER STATES: 400 State Reappointment, 410 Arbitration, 430 Banks and Banking, 450 Commerce/KC Rates/etc., 460 Deportation, 470 Racketeer Influenced and Corrupt Organizations, 810 Selective Service, 850 Securities/Commodities Exchange, 875 Customer Challenge 12 USC, 891 Agricultural Acts, 892 Economic Stabilization Act, 893 Environmental Matters, 894 Energy Allocation Act, 895 Freedom of Information Act, 900 Appeal of Fee Determination Under Equal Access to Justice, 950 Constitutionality of State, 890 Other Statutory Actions.

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY) 1 Original Proceeding 2 Removal from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23 TO BE DETERMINED AT TRIAL DEMAND \$ JURY DEMAND: YES NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE DOCKET NUMBER

DATE 8/18/05 SIGNATURE OF ATTORNEY OF RECORD [Signature]