

USDC SCAN INDEX SHEET



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

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3 5441 FAIR OAKS BLVD., SUITE B-1
4 CARMICHAEL, CA 95608
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7 Attorneys for Chipotle Mexican Grill, Inc.

FILED
06 JAN 30 PM 4:10
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY: *[Signature]* DEPUTY

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

FILED BY FAX

10 MAURIZIO ANTONINETTI
11 Plaintiff,
12 v.
13 CHIPOTLE MEXICAN GRILL INC., and
14 DOES 1 THROUGH 10, inclusive
15 Defendants.
16
17 CROSS CLAIM
18
19 CHIPOTLE MEXICAN GRILL INC.
20 Cross-Complainant,
21 v.
22 CARL KARCHER ENTERPRISES, INC.
23 AND EL CAMINO PLAZA ASSOCIATES A
24 CALIFORNIA JOINT VENTURE , and DOES
25 1 THROUGH 10, inclusive
26 Defendants.

Case No.: 05-CV-1660-J(WMc)
CROSS CLAIM OF CHIPOTLE
MEXICAN GRILL INC. AGAINST CARL
KARCHER ENTERPRISES, INC. AND EL
CAMINO PLAZA ASSOCIATES A
CALIFORNIA JOINT VENTURE

24 Pursuant to Rule 13(g) of the Federal Rules of Civil Procedure, Cross-Claimant
25 CHIPOTLE MEXICAN GRILL INC ("Chipotle"), files this Cross-Claim against CARL
26 KARCHER ENTERPRISES, INC. AND EL CAMINO PLAZA ASSOCIATES A
27 CALIFORNIA JOINT VENTURE, (collectively "Landlords" or "Cross-Defendants") and alleges
28 as follows:

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I.
JURISDICTION AND VENUE

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3 1. This cross claim arises out of the transactions and occurrences that are the subject
4 matter of Plaintiffs' Complaint and on file herein and relates to properties that is the subject
5 matter of said action. This Court has jurisdiction over this cross-claim and the parties to it under
6 28 USC §1331 and 1343, and Fed. R. of Civ. Proc. Rule 13.

7 2. Venue is proper in this district under 28 USC §1391(b), (c) because the events or
8 omissions giving rise to the claim occurred here and the subject property is situated here.

II.
PARTIES / FACTS

9
10 3. Chipotle is informed and believes that Carl Karcher Enterprises, Inc is a
11 Corporation doing business in the State of California and is the owner and landlord of the
12 property complained of by Plaintiff, CA which is the subject of this litigation.

13 4. Chipotle is informed and believes that El Camino Plaza Associates, is a California
14 Joint Venture, and is the owner and landlord of the property complained of by Plaintiff, CA
15 which is the subject of this litigation.

16 5. In or about August 22, 2005, Plaintiff filed a Complaint against Defendant/Cross
17 Claimant Chipotle seeking damages and remedies under state and federal law. He alleges that he
18 was denied equal and full access to a public accommodation because of his disability. The public
19 accommodation was leased, in part, by Cross-Complainant from Cross-Defendants, the
20 Landlords.

21 5. Pursuant to a lease agreement entered into between Chipotle and the Landlords,
22 Cross-Defendants promised to indemnify and defend Chipotle for any and all claimed injuries by
23 Plaintiff (including alleged statutory violations) relating to the common/parking areas of the
24 leased premises. Pursuant to that agreement, Cross-Defendants are responsible for any of
25 Plaintiff's alleged violations and/or injuries caused by its negligence, conduct and/or inaction
26 relating to the common/parking areas.

27 6. On or about December 9, 2005, Chipotle notified, demanded, and informed Cross-
28 Defendants that it must make ADA accessibility changes to the common areas pursuant to
Plaintiff's Complaint, which was attached. Chipotle did not receive a response.

1 **FIRST CAUSE OF ACTION AGAINST ALL CROSS-DEFENDANTS FOR INDEMNITY**
2 **AND DEFENSE REGARDING AMERICAN WITH DISABILITIES ACT 42 USC §12101,**
3 **ET SEQ.**

4 7. Chipotle incorporates herein by references and realleges each and every allegation
5 set forth in paragraphs 1 through 6 above.

6 8. Pursuant to Rule 13(g) of the Federal Rules of Civil Procedure, Chipotle files this
7 Cross claim against CARL KARCHER ENTERPRISES UND., and EL CAMINO PLAZA
8 ASSOCIATES for indemnity and defense pursuant to the Lease Agreement (Agreement). The
9 Cross-Defendants/landlords are liable for the common areas as alleged by Plaintiff. Chipotle
10 seeks the landlords to assume liability for the common areas as alleged by Plaintiff.

11 9. Chipotle seeks an award of its attorneys fees and costs incurred to defend the
12 underlying Action by Plaintiffs, as to the common areas only, and to enforce the terms and
13 provisions of the Agreement by way of this Cross Complaint.

14 **INDEMNITY AND DEFENSE AGAINST CROSS-DEFENDANTS REGARDING**
15 **PLAINTIFF'S SECOND CAUSE OF ACTION FOR VIOLATION OF CALIFORNIA**
16 **CODES**

17 10. Chipotle incorporates herein by references and realleges each and every
18 allegation set forth in paragraphs 1 through 9 above.

19 11. Chipotle seeks the landlords to assume liability for the common areas as alleged
20 by Plaintiff. Cross-Defendants must defend and indemnify Chipotle in this regard pursuant to the
21 lease agreement.

22 12. Chipotle seeks an award of its attorneys fees and costs incurred to defend the
23 underlying Action by Plaintiffs, as to the common areas only, and to enforce the terms and
24 provisions of the Agreement by way of this Cross Complaint.

25 **INDEMNITY AND DEFENSE AGAINST CROSS-DEFENDANTS REGARDING**
26 **PLAINTIFF'S THIRD CAUSE OF ACTION FOR VIOLATION OF**
27 **HEALTH AND SAFETY CODE §19950, ET SEQ.**

28 13. Chipotle incorporates herein by references and realleges each and every
allegation set forth in paragraphs 1 through 12 above.

1 14. Chipotle seeks the landlords to assume liability for the common areas as alleged
2 by Plaintiff. Chipotle seeks the landlords to assume liability for the common areas as alleged by
3 Plaintiff.

4 15. Chipotle seeks an award of its attorneys fees and costs incurred to defend the
5 underlying Action by Plaintiffs, as to the common areas only, and to enforce the terms and
6 provisions of the Agreement by way of this Cross Complaint.

7 **FOURTH CAUSE OF ACTION FOR DECLARATORY RELIEF**

8 16. Chipotle incorporates herein by references and realleges each and every
9 allegation set forth in paragraphs 1 through 15 above.

10 17. Chipotle seeks an award of its attorneys fees and costs incurred to defend the
11 underlying Action by Plaintiffs, as to the common areas only, and to enforce the terms and
12 provisions of the Agreement by way of this Cross Complaint. Chipotle seeks the landlords to
13 assume liability for the common areas as alleged by Plaintiff. Chipotle seeks the landlords to
14 assume liability for the common areas as alleged by Plaintiff.

15 **FIFTH CAUSE OF ACTION FOR INJUNCTIVE RELIEF**

16 18. Chipotle incorporates herein by references and realleges each and every
17 allegation set forth in paragraphs 1 through 17 above.

18 19. Chipotle seeks an award of its attorneys fees and costs incurred to defend the
19 underlying Action by Plaintiffs, as to the common areas only, and to enforce the terms and
20 provisions of the Agreement by way of this Cross Complaint. Chipotle seeks the landlords to
21 assume liability for the common areas as alleged by Plaintiff.

22 20. Chipotle seeks the landlords to assume liability for the common areas as alleged
23 by Plaintiff.

24 WHEREFORE, Defendant/Cross-Claimant prays for relief and judgment as follows::

- 25 1. That this Answering Defendant's Cross-Claim against the Landlords be granted;
- 26 2. That an Order declare that Landlords must defend and defend the Landlords for
- 27 Plaintiffs' claims in the Action to the extent they address the common areas of the subject
- 28 property, including for reasonable attorneys fees and costs incurred by Chipotle in having to

1 defend against said claims.

2 3. Declaratory relief/judgment that the Landlords are partially, according to proof,
3 responsible to cure or remediate the accessibility barriers complained of by Plaintiff, if any such
4 exist to the common areas of the subject property;

5 4. Award of reasonable attorneys fees and costs incurred to defend the underlying
6 Action by Plaintiffs and to enforce the terms and provisions of the Agreement, as to the common
7 areas of the subject property, by way of this Cross Complaint; and

8 5. For such other and further relief as the Court may deem just and proper.

9 Dated: January 30, 2006

CORFEE STONE & ASSOCIATES

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12 _____
13 CATHERINE M. CORFEE
14 Attorney for Defendant/Cross-Complainant
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1 Case Title: *Antoninetti v. Chipotle*
 2 COURT: *Southern District Court*
 3 CASE NO.: *05-CV-1660-J(WMc)*

PROOF OF SERVICE

4 I am a resident of the State of California, over the age of eighteen years, and not a party to
 5 the within action. My business address is Corfee Stone & Associates, 5441 Fair Oaks Blvd.,
 6 Suite B-1, Carmichael, California 95608. On January 30, 2006, I served the within documents
 7 described as:

8 (BY FACSIMILE) by transmitting via facsimile the document(s) listed above to the fax
 9 number(s) set forth below on this date before 5:00 p.m.

10 (BY U.S. MAIL) by placing the document(s) listed above in a sealed envelope with
 11 postage thereon fully prepaid, in the United States mail at Sacramento, California
 12 addressed as set forth below.

13 (BY OVERNIGHT MAIL) I caused such document(s) to be sent by overnight mail by
 14 using Federal Express® (_____). Under that practice it would be deposited
 15 that same day in a Federal Express® drop box for delivery the next business day.

16 (BY PERSONAL SERVICE) by causing personal delivery by _____ of the
 17 document(s) listed above to the person(s) at the address(es) set forth below.

18 (BY PERSONAL SERVICE) by personally delivering the document(s) listed above to the
 19 person(s) at the address(es) set forth below.

20 Amy Vandeveld
 21 Law Office of Amy Vandeveld
 22 1850 Fifth Avenue, Suite 22
 23 San Diego, CA 92101
 24 Facsimile: 619-231-8329

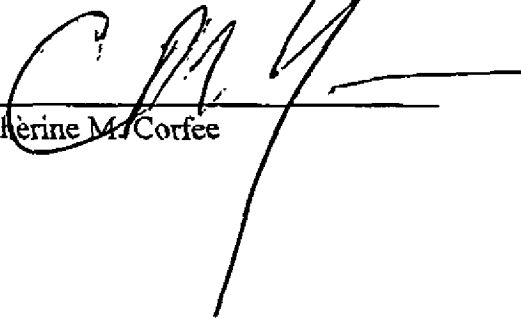
25 Carl Karcher Enterprises, Inc
 26 1200 North Harbor Blvd
 27 Anaheim, CA 92803

28 El Camino Plaza Assoc.
 1254 Irvine Blvd., Suite 210
 Tustin, CA 92780

I am readily familiar with the firm's practice of collection and processing correspondence
 for mailing. Under that practice it would be deposited with U.S. postal service on that same day
 with postage thereon fully prepaid.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on January 30, 2006, at Carmichael, California.



Catherine M. Corfee