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

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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

09 DEPUTY

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11 Attorneys for Cross-Defendant
12 Carl Karcher Enterprises, Inc.

13 UNITED STATES DISTRICT COURT
14 SOUTHERN DISTRICT OF CALIFORNIA

15 MAURIZIO ANTONINETTI,
16 Plaintiff,
17 vs.
18 CHIPOTLE MEXICAN GRILL INC., and
19 DOES 1 THROUGH 10, inclusive
20 Defendants.

21 Case No. 05-CV-1660-J(WMc)
22 CROSS-DEFENDANT CARL
23 KARCHER ENTERPRISES, INC.'S
24 ANSWER TO CROSS-CLAIM OF
25 CHIPOTLE MEXICAN GRILL, INC.
26 [DEMAND FOR JURY TRIAL]

27 CROSS CLAIM
28 CHIPOTLE MEXICAN GRILL INC.
Cross-Complainant,
vs.
CARL KARCHER ENTERPRISES, INC.
AND EL CAMINO PLAZA
ASSOCIATES A CALIFORNIA JOINT
VENTURE, and DOES 1 THROUGH 10,
Inclusive
Cross-Defendants.

Complaint Filed: August 22, 2005
Cross-Claim Filed: January 30, 2006
Trial Date: None Set

ORIGINAL

CALL, JENSEN & FERRELL
A PROFESSIONAL CORPORATION

Handwritten signature

1 Cross-Defendant Carl Karcher Enterprises, Inc. ("Cross-Defendant") answers the
2 Cross-Claim (the "Cross-Claim") of Defendant/Cross-Complainant Chipotle Mexican
3 Grill, Inc. ("Defendant/Cross-Complainant"), as follows:

4 1. In response to paragraph 1 of the Cross-Claim, Cross-Defendant admits
5 this Court currently has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1342, until such
6 time as this Defendant establishes that Plaintiff is not entitled to injunctive relief as
7 authorized by the Americans with Disabilities Act, of 42 U.S.C. § 1201 et seq. Cross-
8 Defendant is without knowledge or information sufficient to form a belief as to the truth
9 of the remaining allegations, and on that basis denies the same.

10 2. In response to paragraph 2 of the Cross-Claim, Cross-Defendant admits
11 that Venue is proper in this district under 28 U.S.C. §1319(b), (c).

12 3. In response to paragraph 3 of the Cross-Claim, Cross-Defendant is without
13 knowledge or information sufficient to form a belief as to the truth of this allegation,
14 and, on that basis, denies this allegation.

15 4. In response to paragraph 4 of the Cross-Claim, Cross-Defendant is without
16 knowledge or information sufficient to form a belief as to the truth of this allegation,
17 and, on that basis, denies this allegation.

18 5. In response to paragraph 5 of the Cross-Claim, Cross-Defendant admits
19 that on or about August 22, 2006, plaintiff filed a Complaint against Defendant/Cross-
20 Claimant Chipotle seeking damages and remedies under state and federal law. Cross-
21 Defendant is without knowledge or information sufficient to form a belief as to the truth
22 of the remaining allegations, and on that basis denies the same.

23 6. In response to paragraph 5 (erroneously listed as Paragraph 5 in
24 Defendant/Cross-Complainant's Cross-Claim) of the Cross-Claim, Cross-Defendant is
25 without knowledge or information sufficient to form a belief as to the truth of this
26 allegation, and, on that basis, denies this allegation.

1 7. In response to paragraph 6 of the Cross-Claim, Cross-Defendant is without
2 knowledge or information sufficient to form a belief as to the truth of this allegation,
3 and, on that basis, denies this allegation.

4 8. In response to paragraph 7 of the Cross-Claim, Cross-Defendant
5 incorporates the responses contained in paragraphs 1 through 7 of this Answer.

6 9. In response to paragraph 8 of the Cross-Claim, Cross-Defendant asserts
7 that the language of the Lease Agreement speaks for itself.

8 10. In response to paragraph 9 of the Cross-Claim, Cross-Defendant is without
9 knowledge or information sufficient to form a belief as to the truth of this allegation
10 and, on that basis, denies this allegation.

11 11. In response to paragraph 10 of the Cross-Claim, Cross-Defendant
12 incorporates the responses contained in paragraphs 1 through 10 of this Answer.

13 12. In response to paragraph 11 of the Cross-Claim, Cross-Defendant is
14 without knowledge or information sufficient to form a belief as to the truth of this
15 allegation and, on that basis, denies this allegation.

16 13. In response to paragraph 12 of the Cross-Claim, Cross-Defendant is
17 without knowledge or information sufficient to form a belief as to the truth of this
18 allegation and, on that basis, denies this allegation.

19 14. In response to paragraph 13 of the Cross-Claim, Cross-Defendant
20 incorporates the responses contained in paragraphs 1 through 13 of this Answer.

21 15. In response to paragraph 14 of the Cross-Claim, Cross-Defendant is
22 without knowledge or information sufficient to form a belief as to the truth of this
23 allegation and, on that basis, denies this allegation.

24 16. In response to paragraph 15 of the Cross-Claim, Cross-Defendant is
25 without knowledge or information sufficient to form a belief as to the truth of this
26 allegation and, on that basis, denies this allegation.

27 17. In response to paragraph 16 of the Cross-Claim, Cross-Defendant
28 incorporates the responses contained in paragraphs 1 through 16 of this Answer.

1 18. In response to paragraph 17 of the Cross-Claim, Cross-Defendant is
2 without knowledge or information sufficient to form a belief as to the truth of this
3 allegation and, on that basis, denies this allegation.

4 19. In response to paragraph 18 of the Cross-Claim, Cross-Defendant
5 incorporates the responses contained in paragraphs 1 through 18 of this Answer.

6 20. In response to paragraph 19 of the Cross-Claim, Cross-Defendant is
7 without knowledge or information sufficient to form a belief as to the truth of this
8 allegation and, on that basis, denies this allegation.

9 21. In response to paragraph 20 of the Cross-Claim, Cross-Defendant is
10 without knowledge or information sufficient to form a belief as to the truth of this
11 allegation and, on that basis, denies this allegation.

12
13 **FIRST SEPARATE AND ADDITIONAL DEFENSE**

14 **(Failure To State A Claim)**

15 22. The Cross-Claim filed herein and each purported claim alleged therein,
16 fails to state facts sufficient to constitute a valid cause of action against Cross-
17 Defendant.

18 **SECOND SEPARATE AND ADDITIONAL DEFENSE**

19 **(Statute of Limitation)**

20 23. The Cross-Claim and each purported claim alleged therein is barred in
21 whole or in part by the applicable statutes of limitations, including, without limitation
22 Sections 338 and 340 of the California Code of Civil Procedure.

23 **THIRD SEPARATE AND ADDITIONAL DEFENSE**

24 **(Laches)**

25 24. Defendant/Cross-Complainant, by delaying prosecution of this action until
26 the present time, is barred in whole or in part by the doctrine of laches from maintaining
27 each and every purported claim alleged in the Cross-Claim, or from recovering any
28 damages thereunder from Cross-Defendant.

1 **FOURTH SEPARATE AND ADDITIONAL DEFENSE**

2 **(Failure to Mitigate Damages)**

3 25. The alleged claims in the Cross-Claim are barred to the extent
4 Defendant/Cross-Complainant failed to mitigate its damages.

5 **FIFTH SEPARATE AND ADDITIONAL DEFENSE**

6 **(Acts or Omissions of Plaintiff)**

7 26. The alleged claims in the Cross-Claim are barred to the extent that
8 damages, if any, resulted from the acts and/or omissions of Defendant/Cross-
9 Complainant.

10 **SIXTH SEPARATE AND ADDITIONAL DEFENSE**

11 **(Unclean Hands)**

12 27. Cross-Defendant asserts that Defendant/Cross-Complainant has acted with
13 “unclean hands” and such actions are directly related to the claims asserted by
14 Defendant/Cross-Complainant in the Cross-Claim and preclude Defendant/Cross-
15 Complainant from pursuing its claims. Therefore, the Cross-Claim and each purported
16 claim alleged therein are barred, in whole or in part, by the doctrine of unclean hands.

17 **SEVENTH SEPARATE AND ADDITIONAL DEFENSE**

18 **(Not Readily Achievable)**

19 28. All of Defendant/Cross-Complainant’s claims are barred because to the
20 extent architectural barriers alleged by Plaintiff exist (which supposition is denied and
21 merely stated for the purpose of this additional defense), the modification of such
22 barriers is not readily achievable.

23 **EIGHTH SEPARATE AND ADDITIONAL DEFENSE**

24 **(Maximum Extent Feasible)**

25 29. Defendant/Cross-Complainant’s claims are barred in whole or in part on
26 the ground that Cross-Defendant has made the public accommodation at issue
27 accessible to disabled customers to the maximum extent feasible.

1 **NINTH SEPARATE AND ADDITIONAL DEFENSE**

2 **(Dimensional Tolerances)**

3 30. Defendant/Cross-Complainant's claims are barred in whole or in part
4 because, to the extent any architectural barriers alleged by Plaintiff exist (which
5 supposition is denied and merely stated for the purpose of this affirmative defense),
6 such barriers are within permissible state and federal dimensional tolerances.

7 **TENTH SEPARATE AND ADDITIONAL DEFENSE**

8 **(Failure to Plead with Certainty and Particularity)**

9 31. The allegations of the Cross-Claim, and each purported claim therein, are
10 not pled with sufficient particularity and are uncertain, vague, ambiguous and
11 unintelligible.

12 **ELEVENTH AFFIRMATIVE DEFENSE**

13 **(Estoppel)**

14 32. The Cross-Claim and each purported cause of action alleged therein is
15 barred, in whole or in part, by the doctrine of estoppel.

16 **TWELFTH AFFIRMATIVE DEFENSE**

17 **(Waiver)**

18 33. The Cross-Claim, and each cause of action contained therein, is barred, in
19 whole or in part, because Defendant/Cross-Complainant has waived any and all claims
20 it had or may have had against Cross-Defendant by virtue of its own acts or omissions
21 relating to the subject matter of this action.

22 **THIRTEENTH AFFIRMATIVE DEFENSE**

23 **(Wrongful Acts of Defendant)**

24 34. Cross-Defendant is informed and believes, and based thereon alleges, that
25 the damages alleged in the Cross-Claim, if proved, were caused by persons and entities
26 other than Cross-Defendant, including but not limited to Defendant/Cross-Complainant.
27 Such intervening and superseding conduct of others bars and/or diminishes recovery, if
28 any, by Defendant/Cross-Complainant against Cross-Defendant.

1 **FOURTEENTH AFFIRMATIVE DEFENSE**

2 **(Assumption of Risk)**

3 35. Defendant/Cross-Complainant is barred, in whole or in part, from
4 recovering damages herein because, if proved, it was solely directly caused by a risk of
5 which Defendant/Cross-Complainant had full knowledge and appreciation and
6 voluntarily assumed.

7 **FIFTEENTH AFFIRMATIVE DEFENSE**

8 **(Percentage of Fault)**

9 36. Cross-Defendant alleges that in the event it is found to be negligent, its
10 liability must be reduced to reflect its actual percentage of fault.

11 **SIXTEENTH AFFIRMATIVE DEFENSE**

12 **(Ratification and/or Consent)**

13 37. Defendant/Cross-Complainant is barred, in whole or in part, from
14 recovering damages from Cross-Defendant herein because Defendant/Cross-
15 Complainant ratified and/or consented to the conduct of Cross-Defendant now alleged
16 to be wrongful.

17 **SEVENTEENTH AFFIRMATIVE DEFENSE**

18 **(Compliance with Applicable Laws)**

19 38. Cross-Defendant is absolved from any and all liability for the wrongs
20 alleged in the Cross-Claim by reason of its full compliance with all statutes, regulations,
21 or other laws in effect at the time of the conduct alleged in the Cross-Claim.

22 **EIGHTEENTH AFFIRMATIVE DEFENSE**

23 **(Good Faith of Defendant)**

24 39. At all relevant times Cross-Defendant acted in good faith, in an effort to
25 comply with all state and federal laws and regulations.

26 //

28 //

1 **NINETEENTH SEPARATE AND ADDITIONAL DEFENSE**

2 **(Additional Defenses)**

3 40. Cross-Defendant reserves the right to allege additional defenses as they
4 become known during discovery, and to amend their Answer accordingly.

5
6 WHEREFORE, this answering Cross-Defendant prays for judgment as follows:

- 7 1. That Defendant/Cross-Complainant take nothing by way of this Cross-
8 Claim;
- 9 2. That Judgment be rendered in favor of Cross-Defendant against
10 Defendant/Cross-Complainant and that the Cross-Claim be dismissed with
11 prejudice;
- 12 3. That Cross-Defendant be awarded its costs of suit incurred in the defense
13 of this action;
- 14 4. That Cross-Defendant be awarded its attorneys' fees of suit incurred in the
15 defense of this action; and
- 16 5. For such other relief as the Court deems proper.

17
18 Dated: March 29, 2006

CALL, JENSEN & FERRELL
A Professional Corporation
SCOTT J. FERRELL
JULIE R. TROTTER

19
20
21 By: _____
22 JULIE R. TROTTER

23 Attorneys for Cross-Defendant Carl
24 Karcher Enterprises, Inc.

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DEMAND FOR JURY

Cross-Defendant hereby demands a jury pursuant to FRCP 38(b) on all issues raised in the Cross-Claim of Defendant/Cross-Complainant.

Dated: March 29, 2006

CALL, JENSEN & FERRELL
A Professional Corporation
SCOTT J. FERRELL
JULIE R. TROTTER

By: Julie R. Trotter
JULIE R. TROTTER

Attorneys for Cross-Defendant Carl
Karcher Enterprises, Inc.

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF ORANGE

3 I am employed in the County of Orange, State of California. I am over the age of
4 18 and not a party to the within action; my business address is 610 Newport Center
5 Drive, Suite 700, Newport Beach, CA 92660.

6 On March 29, 2006, I served the foregoing document described as **CROSS-**
7 **DEFENDANT CARL KARCHER ENTERPRISES, INC.'S ANSWER TO**
8 **CROSS-CLAIM OF CHIPOTLE MEXICAN GRILL, INC. [DEMAND FOR**
9 **JURY TRIAL]** on the following person(s) in the manner indicated:

9 Any B. Vandeveld, Esq.
10 Law Office of Amy B. Vandeveld
11 1850 5th Avenue, Suite 22
12 San Diego, CA 92101
13 Tel: (619) 231-8883
14 Fax: (619) 231-8329
15 abvandeveldesq@hotmail.com

Attorneys for

Plaintiff Maurizio Antoninetti

14 Catherine M. Corfee, Esq.
15 Corfee Stone & Associates
16 5441 Fair Oaks Boulevard, Suite B-1
17 Carmichael, CA 95608
18 Tel: (916) 487-5441
19 Fax: (916) 487-5440
20 catherine@corfeestone.com

Attorneys for

Defendant and Cross-Complainant

Chipotle Mexican Grill, Inc.

21 **SEE ATTACHED SERVICE LIST**

22 **[X] (BY MAIL)** I am familiar with the practice of Call, Jensen & Ferrell for
23 collection and processing of correspondence for mailing with the United States Postal
24 Service. Correspondence so collected and processed is deposited with the United States
25 Postal Service that same day in the ordinary course of business. On this date, a copy of
26 said document was placed in a sealed envelope, with postage fully prepaid, addressed as
27 set forth herein, and such envelope was placed for collection and mailing at Call, Jensen
28 & Ferrell, Newport Beach, California, following ordinary business practices.

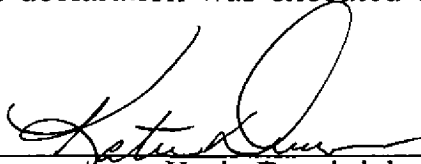
29 **[] (BY FEDEX)** I am familiar with the practice of Call, Jensen & Ferrell for
30 collection and processing of correspondence for delivery by overnight courier.
31 Correspondence so collected and processed is deposited in a box or other facility
32 regularly maintained by FedEx that same day in the ordinary course of business. On this
33 date, a copy of said document was placed in a sealed envelope designated by FedEx
34 with delivery fees paid or provided for, addressed as set forth herein, and such envelope
35 was placed for delivery by FedEx at Call, Jensen & Ferrell, Newport Beach, California,
36 following ordinary business practices.

1
2 [] (BY FACSIMILE TRANSMISSION) On this date, at the time indicated on the
3 transmittal sheet, attached hereto, I transmitted from a facsimile transmission machine,
4 which telephone number is (949) 717-3100, the document described above and an
5 unsigned copy of this declaration to the person, and at the facsimile transmission
6 telephone numbers, set forth herein. The above-described transmission was reported as
complete and without error by a properly issued transmission report issued by the
facsimile transmission machine upon which the said transmission was made
immediately following the transmission.

7 [] (BY E-MAIL) I transmitted a copy of the foregoing document(s) by e-mail to
8 the addressee(s).

9 [X] (FEDERAL) I declare that I am employed in the office of a member of the Bar
of this Court at whose direction the service was made.

10 I declare under penalty of perjury under the laws of the State of California that
11 the foregoing is true and correct, and that this declaration was executed on March 29,
12 2006, at Newport Beach, California.

13
14 
Katie Dominick