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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

MAURIZIO ANTONINETTI,

v.
CHIPOTLE MEXICAN GRILL,

Plaintiff,

Defendant.

Case No. 05cv01660-J-WMC
**ORDER RE NINTH CIRCUIT
MANDATE AND OPINION**

On November 16, 2010, a hearing took place before the Court regarding the Ninth Circuit’s Mandate and Opinion in the above-captioned case. Pursuant to that Opinion, **the Court hereby orders the Clerk to enter judgment** against Defendant Chipotle for violation of the Americans with Disabilities Act.

On remand, three issues are now before the Court: (1) the scope of injunctive relief for this violation; (2) the amount of damages due to Plaintiff under the California Disabilities Act; and (3) the amount of attorney’s fees due to Plaintiff’s counsel under the Americans with Disabilities Act. Each issue will be addressed in turn.

I. Injunctive Relief

The Ninth Circuit held that Plaintiff’s inability to view food preparation counters (counters containing the different foods that are available to Chipotle customers and on which the customers’ individual orders are prepared) violated the Americans with Disabilities Act and remanded to the Court to determine the scope of injunctive relief necessary to

1 remedy this violation. *Antoninetti v. Chipotle*, 08-55867, slip op. at 16017. At the November
2 16, 2010 hearing, Chipotle's counsel represented that Chipotle has lowered food preparation
3 counters to a height where wheelchair-bound customers can view the counter without
4 obstruction. This modification has been made at all Chipotle restaurants in California,
5 including the two restaurants at issue in this case. Defendant argues that these actions
6 render moot the need to issue an injunction.

7 Although Plaintiff does not dispute that lowering food preparation counters to a height
8 suitable for wheelchair-bound customers would remedy the Disabilities Act violation at issue
9 in this case, Plaintiff raises two concerns. First, Plaintiff has not yet received any evidence
10 documenting these modifications. Second, Plaintiff argues that an injunction is still
11 necessary to ensure that these modifications are made permanent.

12 The Court agrees that an order on this issue would be premature at this time. The
13 Court requires a documentary record of modifications made to bring the food preparation
14 counter into compliance with the Americans with Disabilities Act. Moreover, for the Court to
15 properly follow the Ninth Circuit opinion, an appropriate measure must be in place to ensure
16 that Chipotle's food preparation counters remain permanently in compliance with this law.
17 Because an injunction is not necessarily the only means to accomplish this goal, limited
18 discovery and briefing on this issue are appropriate. Accordingly, the parties are to proceed
19 as follows:

- 20 1. Defendant is to produce all evidence showing mootness by January 7, 2011;
- 21 2. The parties then have ninety days from service of Defendant's evidence of mootness
22 to conduct discovery on this issue;
- 23 3. Plaintiff is to file a motion for summary judgment by April 22, 2011;
- 24 4. Defendant's response is due by May 6, 2011;
- 25 5. Plaintiff's reply is due by May 13, 2011.

26 All disputes regarding discovery on this issue or this briefing schedule are to be addressed
27 to this Court.

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1 **II. Damages**

2 At the hearing, Plaintiff's counsel represented that Plaintiff is seeking \$3,000 in
3 additional damages under the California Disabilities Act for litigation related visits and that
4 Plaintiff is not seeking additional damages for violations related to parking.

5 **The Court hereby refers this issue to the Magistrate Judge for a settlement**
6 **conference.** If the parties cannot reach settlement on this issue, a litigation schedule will
7 be entered by the Magistrate Judge. The Parties and their counsel shall appear before
8 Magistrate Judge McCurine on January 12, 2011 at 2pm for a settlement conference. Judge
9 McCurine may make any orders related this conference he deems appropriate.

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11 **III. Attorney's Fees**

12 Plaintiff's counsel is entitled to attorney's fees greater than the \$136,357.83 awarded
13 for work performed in the original district court action. See slip op. at 16019. Because
14 additional attorneys fees beyond this increased amount may be appropriate for work done
15 after the Ninth Circuit issued its mandate, the Court, in the interest of judicial economy, will
16 address attorney's fees after the other issues on remand are resolved.

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18 **IT IS SO ORDERED.**

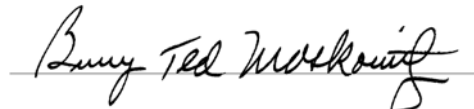
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DATED: November 29, 2010

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Honorable Barry Ted Moskowitz
United States District Judge

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