

EXHIBIT A

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8 UNITED STATES DISTRICT COURT
9 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
10

11 MAURIZIO ANTONINETTI, et al,
12 Plaintiffs,

13 v.
14

15 CHIPOTLE MEXICAN GRILL, INC., a
Delaware Corporation and DOES 1-10,
16 Defendants.
17
18

CASE NO. 06cv2671 BTM
(WMC)

SECOND AMENDED COMPLAINT
DEMAND FOR JURY TRIAL

19
20 **INTRODUCTION**

21 1. Defendant Chipotle Mexican Grill, Inc. ("Chipotle")
22 specifically intends to provide its customers with the "Chipotle
23 Experience" in which Chipotle customers have the opportunity to
24 "build their perfect burrito," to ask for "a little more salsa, a
25 little less guacamole," to see the appetizing display of food
26 choices, to see into the open kitchen and to see freshly
27 marinated meats being grilled, to experience a "feast for the
28 eyes," and to be brought "more completely into the dining

Second Amended Complaint
06cv2671 BTM (WMC)

1 experience." All of these benefits and opportunities are part of
2 "the Chipotle Experience." The Chipotle Experience is supposed
3 to be a "fast" experience, in a casual setting, consistent with
4 Chipotle's description of its restaurants as providing "fast
5 casual" fare. Plaintiffs and the class of people with mobility
6 disabilities they represent were denied full and equal access to
7 the Chipotle Experience by Chipotle.

8 2. Chipotle originally designed and constructed its
9 restaurants in California with walls approximately 46 inches high
10 ("the walls") located between the customers and the food ordering
11 and preparation areas, in violation of the Americans with
12 Disabilities Act ("the ADA"). The walls obstructed the view of
13 the kitchen and food preparation areas for people with mobility
14 impairments who require the use of wheelchairs or other mobility
15 devices (hereafter collectively referred to as "people in
16 wheelchairs") and who, because of their mobility disabilities,
17 are denied full and equal access to the Chipotle Experience.
18 Those who can see over the walls have the opportunity to see into
19 the open kitchen, to see large pans of appetizing ingredients,
20 tantalizingly displayed, to see and select the specific
21 ingredients they want in their entrees, to direct the amount of
22 each of the chosen ingredients to be placed in the entrees, and
23 to watch the actual construction of their entrees. People who
24 can see over the walls can "direct" the construction of their
25 "perfect" burrito. Plaintiffs and the class of people they
26 represent, however, have no such opportunity because they cannot
27 see the food on display or the making of their entrees because of
28 the walls.

1 Chipotle is incorporated in the State of Delaware, with its
2 principal place of business in Denver, Colorado.

3 6. Venue over Plaintiffs' claims is proper in the Southern
4 District of California because Defendant operates approximately
5 14 restaurants in the Southern District of California, Mr.
6 Antoninetti resided in the Southern District, Mr. Perkins wants
7 to visit Chipotle restaurants in the Southern District and
8 because the events, acts, and omissions giving rise to at least
9 two of the Plaintiffs' claims occurred in the Southern District
10 of California.

11 **PARTIES**

12 7. Plaintiffs Livia Antoninetti, as successor in interest
13 to Maurizio Antoninetti, Jean Riker, Jay Rifkin as successor in
14 interest to Michael Rifkin, James Perkins, Karen Friedman, Susan
15 Chandler, Kory Barnett, Raymond Berry, Pedro Garcia, Mimi
16 Greenberg, Michael Hanby, Rufus Martin, Jeremy McGhee, Kyle
17 Minnis, Michael Neth, Tamela Ridley, Jack Robertson, and Albert
18 G. Sayles (hereinabove and hereafter collectively referred to as
19 "the Plaintiffs") are each individuals with physical disabilities
20 within the meaning of all applicable statutes, including the ADA,
21 42 U.S.C. § 12101, et seq., Section 504, 29 U.S.C. §794, and
22 California Civil Code § 51, et seq. All of these Plaintiffs
23 utilize wheelchairs or motorized scooters for mobility because
24 their abilities to walk and stand are substantially limited.

25 8. This action is brought on behalf of the named
26 Plaintiffs and on behalf of all persons similarly situated. The
27 class which the Plaintiffs seek to represent is composed of all
28 persons with mobility disabilities who use wheelchairs or other

1 mobility aides, such as scooters, and who, because of their
2 mobility disabilities, have been or will be denied full and equal
3 access to the Chipotle Experience because of the walls
4 (hereinafter "the Class.")

5 9. Defendant Chipotle Mexican Grill, Inc., headquartered
6 in Denver, Colorado, is a corporation authorized to do business
7 and doing business within the State of California. Plaintiffs
8 are informed and believe and thereon allege that Chipotle
9 operates more than 83 restaurants within the State of California,
10 all of which are similarly designed and constructed with respect
11 to the food service lines and the walls. This case arises out of
12 Defendant's denial of access to the Chipotle Experience to
13 customers who, because of mobility disabilities, are unable to
14 see over the walls.

15 10. The Defendants whose identities are unknown are sued
16 herein under the names DOES 1 through 10 ("DOES"). Plaintiffs
17 are informed and believe and thereon allege that all of the
18 Defendants, including the DOES, are in some manner responsible
19 for the injuries and damages herein alleged.

20 **FACTS APPLICABLE TO ALL CAUSES OF ACTION**

21 11. Each and every allegation set forth in each and every
22 statement of the Complaint is hereby incorporated by reference in
23 each and every other averment and allegation of this First
24 Amended Complaint.

25 12. Maurizio Antoninetti had paraplegia. He used a
26 wheelchair for mobility. In November and December of 2006, Mr.
27 Antoninetti visited the Chipotle restaurants located on Rosecrans
28 Street and at San Diego State University in San Diego,

1 California. During his visits to Chipotle restaurants, the walls
2 at the food preparation areas prevented Mr. Antoninetti from
3 seeing food on display and/or the making of his entrees. He
4 wanted to return to Chipotle's restaurants, including other
5 restaurants in the San Diego area, and he wanted to be provided
6 with full and equal access to the Chipotle Experience. He was
7 deterred from returning to Chipotle's restaurants because they
8 were constructed with the same wall design, which denied him full
9 and equal access to the Chipotle Experience.

10 13. Jean Riker has hemiplegia. She uses a wheelchair for
11 mobility. Ms. Riker visited the Chipotle restaurant on Capitol
12 Avenue in Sacramento, California in November of 2006. During her
13 visit to the Chipotle restaurant, the wall at the food
14 preparation area prevented Ms. Riker from seeing food on display
15 and/or the making of her entree. Ms. Riker was deterred from
16 returning to Chipotle's restaurants because of the discrimination
17 she experienced during her visit and because of the common wall
18 design of the restaurants. She would like to return to
19 Chipotle's restaurants and to be provided full and equal access
20 to the Chipotle Experience.

21 14. Michael Rifkin had multiple sclerosis and used a
22 motorized chair for mobility. Mr. Rifkin visited the Chipotle
23 restaurant on Victoria Avenue in Ventura, California in August of
24 2006. During his visit to the Chipotle restaurant, the wall at
25 the food preparation area prevented Mr. Rifkin from seeing food
26 on display and/or the making of his entree. Mr. Rifkin was
27 deterred from returning to any Chipotle because of the
28 discrimination he experienced during his visit.

1 15. Karen Friedman has multiple sclerosis, among other
2 disabling conditions. She uses a wheelchair or a motorized
3 scooter for mobility. She visited the Chipotle restaurant on
4 State Street in Santa Barbara, California. During her visit to
5 the Chipotle restaurant, the wall at the food preparation area
6 prevented Ms. Friedman from seeing food on display and/or the
7 making of her entree. She was deterred from returning to any
8 Chipotle restaurant because all Chipotle restaurants were
9 constructed with the same wall design, which denied her full and
10 equal access to the Chipotle Experience. She would like to
11 return to Chipotle's restaurants and to be provided full and
12 equal access to the Chipotle Experience.

13 16. Dr. Perkins uses a wheelchair for mobility. From about
14 2006 to 2008, Dr. Perkins visited Chipotle restaurants located in
15 Ventura, Norco, Riverside, and Valencia, California. During each
16 of his visits to the Chipotle restaurants, the walls at the food
17 preparation areas prevented Dr. Perkins from seeing food on
18 display and/or the making of his entrees. Dr. Perkins would have
19 visited other Chipotle restaurants in the Ventura, San Diego, Los
20 Angeles, Riverside and Santa Barbara County areas of California,
21 but he was deterred from doing so by the high walls that
22 prevented him from seeing the food on display at those
23 restaurants previously visited by him. At all times relevant
24 herein, Dr. Perkins wanted to, and still wants to, return to
25 Chipotle's restaurants and to be provided full and equal access
26 to the Chipotle Experience.

27 17. Susan Chandler has paraplegia and she uses a wheelchair
28 for mobility. In about 2005, she visited a Chipotle restaurant

1 in Sacramento, California. During her visit to the Chipotle
2 restaurant, the wall at the food preparation area prevented Ms.
3 Chandler from seeing food on display and/or the making of her
4 entree. She was deterred from returning to any other Chipotle
5 restaurant because all Chipotle restaurants were constructed with
6 the same wall design, which denied her full and equal access to
7 the Chipotle Experience. She would like to return to Chipotle's
8 restaurants and to be provided full and equal access to the
9 Chipotle Experience.

10 18. Plaintiffs Kory Barnett, Raymond Berry, Pedro Garcia,
11 Mimi Greenberg, Michael Hanby, Rufus Martin, Jeremy McGhee, Kyle
12 Minnis, Michael Neth, Tamela Ridley, Jack Robertson, and Albert
13 G. Sayles are each individuals with physical disabilities within
14 the meaning of the ADA. Each of these Plaintiffs were denied full
15 and equal access to the Chipotle Experience at a restaurant
16 operated by Defendant in California because of the design of the
17 walls at the restaurants' ordering lines.

18 19. As a result of the above, Defendants have failed to
19 comply with federal requirements not to discriminate against
20 people with disabilities, as set forth in *Antoninetti v. Chipotle*
21 *Mexican Grill, Inc.*, 614 F.3d 971 (9th Cir. 2010). Chipotle was
22 and is required, under Title III of the ADA, to ensure that the
23 Class has full and equal access to the Chipotle Experience that
24 is provided to non-Class patrons of Chipotle.

25 20. Chipotle has also failed to comply with California
26 state requirements relating to providing full and access to
27 people with disabilities. See, *Antoninetti v. Chipotle Mexican*
28 *Grill, Inc.*, 614 F.3d 971 (9th Cir. 2010). Chipotle was notified

1 by other wheelchair users, beginning at least as early as 2002,
2 about the lack of full and equal access to the Chipotle
3 Experience for people such as the Plaintiffs and the class of
4 people they represent. Chipotle, despite this notice, took no
5 action prior to the filing of the instant action to provide the
6 Plaintiffs and Class members with full and equal access to the
7 Chipotle Experience.

8 21. Accordingly, Plaintiffs bring this action seeking
9 injunctive and declaratory relief in order to compel Defendants
10 to comply with their obligations to provide Plaintiffs and Class
11 members with full and equal access to the Chipotle Experience.
12 The named Plaintiffs also seek statutory minimum damages, on
13 behalf of themselves and the Class, in addition to their
14 attorneys' fees and costs.

15 **CLASS ACTION ALLEGATIONS**

16 22. Plaintiffs bring this action on their own behalf and on
17 behalf of all persons similarly situated. The Class which
18 plaintiffs seek to represent is composed of "all persons with
19 mobility disabilities who use wheelchairs or other mobility
20 aides, such as scooters, and who, because of their mobility
21 impairments, have been or will be denied their rights under the
22 ADA and California state law to full and equal access to the
23 Chipotle Experience at Chipotle's restaurants within the State of
24 California because of the walls." (Class definition).

25 23. This suit is properly maintainable as a class action
26 under Federal Rules of Civil Procedure, Rule 23 (b) (2), because
27 Defendants have acted or refused to act on grounds generally
28 applicable to the Class, at each of the more than 83 California

1 Chipotle Mexican Grill restaurants, thereby making appropriate
2 final injunctive relief or declaratory relief with respect to the
3 Class as a whole an appropriate remedy. Class claims are brought
4 for the purpose of obtaining declaratory and injunctive relief
5 and for statutory minimum damages under California Civil Code §
6 52 only, which provides for a minimum of \$4,000.00 for each and
7 every offense. Class damages claims are limited to the minimum
8 statutory damages recoverable under California Civil Code § 52.

9 24. This suit is further properly maintainable as a class
10 action under Federal Rules of Civil Procedure, Rule 23(b) (3)
11 because questions of law or fact common to Class members
12 predominate over any questions affecting only individual members,
13 and a class action is superior to other available methods for
14 fairly and efficiently adjudicating the claims alleged herein.

15 25. The persons in the Class are so numerous that joinder
16 of all such persons is impracticable and the disposition of their
17 claims in a class action is a benefit to the parties and to the
18 Court. There are at least two hundred Class members and the
19 combined claims of all Class members exceeds \$5,000,000.00
20 exclusive of interest and costs. The Plaintiffs are citizens of
21 a different state than the Defendant.

22 26. There is a well-defined community of interest in the
23 questions of law and fact affecting the parties to be represented
24 in that Chipotle denied the Class full and equal access to the
25 Chipotle Experience at each of its restaurants, despite the
26 requirements of federal law. The design of the walls, and the
27 methods of accommodation adopted by Chipotle to compensate for
28 the obstruction created by the walls, violated the ADA. (See,

1 *Antoninetti v. Chipotle Mexican Grill, Inc.*, 614 F.3d 971 (9th
2 Cir. 2010).)

3 27. Legal and factual questions common to each of the Class
4 members include, but are not limited to, the following:

5 A. Whether Defendants violated Title III of the ADA, 42
6 U.S.C. §§ 12181, et seq., by designing and constructing food
7 service lines with walls which deny the Plaintiffs and the Class
8 full and equal access to the Chipotle Experience (seeing the food
9 items available for selection, being brought more fully into the
10 dining experience, watching freshly marinated meats being
11 continuously grilled and seeing the construction of their
12 entrees.) This legal issue was resolved against Chipotle in
13 *Antoninetti v. Chipotle Mexican Grill, Inc.*, 614 F.3d 971 (9th
14 Cir. 2010).

15 B. Whether Defendants violated California Civil Code §§
16 51, et seq. with respect to denial of full and equal access to
17 the Chipotle Experience. This legal issue was resolved against
18 Chipotle in *Antoninetti v. Chipotle Mexican Grill, Inc.*, 614 F.3d
19 971 (9th Cir. 2010).

20 C. Whether the Defendants are liable to each and every
21 Class member for minimum statutory damages for each and every
22 offense, as provided by California Civil Code § 52.

23 28. The claims of the named Plaintiffs are typical of those
24 of the Class and Plaintiffs will fairly and adequately represent
25 the interests of the Class.

26 29. The attorneys representing the Plaintiffs are
27 experienced civil rights attorneys with specific experience in
28 cases involving persons with disabilities. The attorneys

1 representing Plaintiffs are also considered able practitioners in
2 statutory adjudication and federal court litigation.

3 30. References to Plaintiffs shall be deemed to include the
4 named Plaintiffs and each member of the Class, unless otherwise
5 indicated.

6 **FIRST CAUSE OF ACTION**

7 **Title III of the Americans with Disabilities Act**
8 **42 U.S.C. §§ 12181 et seq.**

9 31. Plaintiffs incorporate by reference each and every
10 allegation contained in the foregoing paragraphs.

11 32. Congress enacted the ADA upon finding, among other
12 things, that "society has tended to isolate and segregate
13 individuals with disabilities" and that such forms for
14 discrimination continue to be a "serious and pervasive social
15 problem." 42 U.S.C. § 12101(a)(2).

16 33. In response to these findings, Congress explicitly
17 stated that the purpose of the ADA is to provide "a clear and
18 comprehensive national mandate for the elimination of
19 discrimination against individuals with disabilities" and "clear,
20 strong, consistent, enforceable standards addressing
21 discrimination against individuals with disabilities." 42 U.S.C.
22 § 12101(b)(1)-(2).

23 34. The ADA provides, inter alia, that it is discriminatory
24 to subject an individual or class of individuals on the basis of
25 a disability "to a denial of the opportunity of the individual or
26 class to participate in or benefit from the goods, services,
27 facilities, privileges, advantages, or accommodations of an
28 entity." 42 U.S.C. § 12182(a)(i).

1 35. The ADA further provides that it is discriminatory "to
2 afford an individual or class of individuals, on the basis of a
3 disability ... with the opportunity to participate in or benefit
4 from a good, service, facility, privilege, advantage, or
5 accommodation that is not equal to that afforded to other
6 individuals." 42 U.S.C. § 12182(a)(ii).

7 36. The ADA further provides that it is discriminatory to
8 fail "to design and construct facilities for first occupancy
9 later than 30 months after the date of enactment of this Act
10 [enacted July 26, 1990] that are readily accessible to and usable
11 by individuals with disabilities, except where an entity can
12 demonstrate that it is structurally impracticable to meet the
13 requirements of such subsection in accordance with standards set
14 forth or incorporated by reference in regulations issued under
15 this title [42 USCS § § 12181 et seq.]." 42 U.S.C. §
16 12183(a)(1).

17 37. Defendants' acts and omissions alleged herein are in
18 violation of the ADA, 42 U.S.C. §§ 12101, et seq., and the
19 regulations promulgated thereunder.

20 38. Chipotle restaurants are places of public accommodation
21 covered by Title III of the ADA. 42 U.S.C. § 12181(7)(I).

22 39. Plaintiffs are persons with mobility disabilities and
23 thus are specifically protected under the ADA. 42 U.S.C. §
24 12102(2) and 28 C.F.R. § 36.104.

25 40. Plaintiffs and the Class were denied full and equal
26 access to the Chipotle Experience, in violation of the ADA,
27 because of the walls. Plaintiffs and the Class want to return to
28 Chipotle's restaurants in California to enjoy the Chipotle

1 Experience. Plaintiffs and the Class were deterred from
2 returning to Chipotle's restaurants in California because they
3 were denied full and equal access to the Chipotle Experience
4 because of the walls.

5 41. Defendants' conduct constitutes multiple ongoing and
6 continuous violations of the ADA and, unless restrained from
7 doing so, Defendants will continue to violate said laws. Said
8 conduct, unless enjoined, will continue to inflict injuries for
9 which Plaintiffs and the Class have no adequate remedy at law.
10 Consequently, Plaintiffs and the Class are entitled to, and seek,
11 injunctive and declaratory relief pursuant to Section 308 of the
12 ADA. 42 U.S.C. § 12188.

13 42. Plaintiffs and the Class are also entitled to, and
14 seek, reasonable attorneys' fees, litigation expenses and costs
15 pursuant to Section 505 of the ADA. 42 U.S.C. § 12205.

16 **SECOND CAUSE OF ACTION**

17 **Unruh Civil Rights Act**
18 **California Civil Code §§ 51, et seq.**

19 43. Plaintiffs incorporate by reference each and every
20 allegation contained in the foregoing paragraphs.

21 44. California's Unruh Civil Rights Act ("the Unruh Act")
22 prohibits discrimination against individuals with disabilities.
23 Section 51 of the California Civil Code provides, in relevant
24 part:

25 All persons within the jurisdiction of this
26 state are free and equal, and no matter what
27 their...disability...are entitled to the full
and equal accommodations, advantages,
facilities, privileges, or services in all

1 business establishments of every kind
2 whatsoever.

3 Cal. Civ. Code § 51(b).

4 45. The Unruh Act also provides that “[a] violation of the
5 right of any individual under the Americans with Disabilities
6 Act...shall also constitute a violation of this section.” Cal.
7 Civ. Code § 51(f).

8 46. As set forth above, Defendants discriminated against
9 the Plaintiffs by instituting policies and/or by designing and
10 constructing facilities that discriminate against people with
11 mobility disabilities, including Plaintiffs and members of the
12 Class.

13 47. Defendants’ actions or inactions constitute a violation
14 of, among other laws, the Americans with Disabilities Act.

15 48. Plaintiffs’ mobility disabilities limit major life
16 activities such as standing and walking; thus Plaintiffs are
17 protected under the Unruh Act. Cal. Civ. Code § 51(e)(1); Cal.
18 Gov’t. Code §12926(k).

19 49. Chipotle is a business establishment regulated by the
20 Unruh Act. Cal. Civ. Code § 51(b).

21 50. As a direct and proximate result of Defendants’
22 conduct, Plaintiffs and the Class have suffered damages.

23 51. As such, the named Plaintiffs and the Class are
24 entitled to the minimum amount of \$4,000.00 in damages against
25 Chipotle for each and every offense. Plaintiffs and the Class
26 are also entitled to their attorneys’ fees. Cal. Civ. Code
27 § 52(a), (e) and § 52.1(h). The amount of all statutory damages

1 of Plaintiffs and the Class exceeds \$5,000,000.00, exclusive of
2 interest and costs.

3 52. Plaintiffs and the Class are also entitled to, and
4 seek, injunctive and declaratory relief. Cal. Civ. Code
5 § 52.1(b).

6 **THIRD CAUSE OF ACTION**

7 **Declaratory Relief**

8 53. Plaintiffs incorporate by reference each and every
9 allegation contained in the foregoing paragraphs.

10 54. Defendants have denied, and continue to deny, that
11 Defendants failed to provide Plaintiffs and the Class with full
12 and equal access to the Chipotle Experience, in violation of the
13 ADA and various state civil rights statutes, including the Unruh
14 Act, all to the detriment of Plaintiffs and the Class.

15 55. In addition, Defendants deny, and continue to deny,
16 that they have violated or breached any of their legal
17 obligations to Plaintiffs and the Class.

18 56. A judicial declaration is necessary and appropriate at
19 this time in order that each of the parties may know their
20 respective rights and duties and act accordingly.

21 **PRAYER FOR RELIEF**

22 **WHEREFORE,** Plaintiffs and the Class pray for judgment as
23 follows:

24 1) Declaring that Defendants violated the ADA and its
25 implementing regulations by failing to provide full and equal
26 access to the Chipotle Experience to Plaintiffs and the Class;

27 2) Declaring that Defendants violated the Unruh Civil
28

1 Rights Act by failing to provide full and equal access to the
2 Chipotle Experience to Plaintiffs and the Class;

3 3) Granting a permanent injunction directing
4 Defendants: (a) to provide Plaintiffs and the Class with full and
5 equal access to the Chipotle Experience; (b) if Defendants have
6 modified the walls at the restaurants so that the Chipotle
7 Experience is now accessible to Plaintiffs and the Class, that
8 Defendants maintain those accessible walls at the restaurants;
9 and (c) that each restaurant constructed after the date of the
10 Court's injunction be designed and constructed so that it
11 provides Plaintiffs and the Class with full and equal access to
12 the Chipotle Experience.

13 4) Granting a permanent injunction directing
14 Defendants: (a) to provide Plaintiffs and the Class with full and
15 equal access to the Chipotle Experience; (b) if Defendants have
16 modified the walls so that the Chipotle Experience is now
17 accessible to Plaintiffs and the Class, that Defendants maintain
18 the accessible walls at the restaurants; and (c) that each
19 restaurant constructed after the date of the Court's injunction
20 be designed and constructed so that it provides Plaintiffs and
21 the Class with full and equal access to the Chipotle Experience.

22 5) Awarding Plaintiffs and the Class statutory
23 minimum damages of \$4,000.00 for each and every offense, as
24 provided by California Civil Code § 52;

25 6) Awarding Plaintiffs and the Class attorneys' fees,
26 litigation expenses, and all costs incurred by bringing this
27 action; and

1 7) Granting such other relief as the Court deems just
2 and fair.

3 NOTE: Plaintiffs have not asserted, and do not now assert,
4 any claims or rights under Cal. Civ. Code § 55.

5 DATED: July 18, 2013

LAW OFFICES OF AMY B. VANDEVELD

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