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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Michael Lopez,
Plaintiff,

v.

**Joseph K. and Inez Eichenbaum
Foundation;
RM El Torito LLC,** a Delaware
Limited Liability Company; and
Does 1-10,
Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For** Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act

Plaintiff Michael Lopez complains of Defendants Joseph K. and Inez Eichenbaum Foundation; RM El Torito LLC, a Delaware Limited Liability Company; and Does 1-10 ("Defendants"), and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is a paraplegic who uses a wheelchair.
2. Defendant Joseph K. and Inez Eichenbaum Foundation owned the real

1 property located at or about 3133 E. Garvey Ave., N. West Covina, California,
2 in November 2016.

3 3. Defendant Joseph K. and Inez Eichenbaum Foundation owns the real
4 property located at or about 3133 E. Garvey Ave., N. West Covina, California,
5 currently.

6 4. Defendant RM El Torito, LLC owned the El Torito located at or about
7 3133 E. Garvey Ave., N. West Covina, California, in November 2016.

8 5. Defendant RM El Torito, LLC owns the El Torito (“Restaurant”) located
9 at or about 3133 E. Garvey Ave., N. West Covina, California, currently.

10 6. Plaintiff does not know the true names of Defendants, their business
11 capacities, their ownership connection to the property and business, or their
12 relative responsibilities in causing the access violations herein complained of,
13 and alleges a joint venture and common enterprise by all such Defendants.
14 Plaintiff is informed and believes that each of the Defendants herein,
15 including Does 1 through 10, inclusive, is responsible in some capacity for the
16 events herein alleged, or is a necessary party for obtaining appropriate relief.
17 Plaintiff will seek leave to amend when the true names, capacities,
18 connections, and responsibilities of the Defendants and Does 1 through 10,
19 inclusive, are ascertained.

20
21 **JURISDICTION & VENUE:**

22 7. This Court has subject matter jurisdiction over this action pursuant to
23 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
24 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

25 8. Pursuant to supplemental jurisdiction, an attendant and related cause
26 of action, arising from the same nucleus of operative facts and arising out of
27 the same transactions, is also brought under California’s Unruh Civil Rights
28 Act, which act expressly incorporates the Americans with Disabilities Act.

1 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
2 founded on the fact that the real property which is the subject of this action is
3 located in this district and that Plaintiff's cause of action arose in this district.
4

5 **FACTUAL ALLEGATIONS:**

6 10. Plaintiff went to the Restaurant in November 2016 to eat.

7 11. The Restaurant is a facility open to the public, a place of public
8 accommodation, and a business establishment.

9 12. Restrooms are also one of the facilities, privileges, and advantages
10 offered by Defendants to patrons of the Restaurant.

11 13. The restroom doorway clear passage width was less than 32 inches and
12 inaccessible to wheelchair users on the day of plaintiff's visit. Indeed, the clear
13 width was about 28.5 inches.

14 14. The toilet stall was improperly configured and too small for wheelchair
15 users. The clear floor space in front of the toilet measures about 37 inches in
16 width and about 40 inches in depth. There was simply no way for plaintiff to
17 get into the toilet area and maneuver his wheelchair.

18 15. The restroom mirror was mounted on the wall so that its bottom edge
19 was more than 40 inches above the finish floor.

20 16. The restroom provides soap dispensers, which are located near the
21 mirror above the sink. There was sufficient clear floor space to permit a parallel
22 approach by wheelchair users. However, wheelchair users were required to do
23 a side reach over an obstruction (the counter) that was 34.5 inches and,
24 therefore, higher than the maximum 34 inches permitted by law.

25 17. The plumbing underneath the sink was not wrapped to protect against
26 burning contact.

27 18. Currently, the restroom doorway clear passage width is less than 32
28 inches and inaccessible to wheelchair users.

1 19. Currently, the toilet stall is improperly configured and too small for
2 wheelchair users. The clear floor space in front of the toilet measures about 37
3 inches in width and about 40 inches in depth. There is simply no way for
4 plaintiff to get into the toilet area and maneuver his wheelchair.

5 20. Currently, the restroom mirror is mounted on the wall so that its bottom
6 edge is more than 40 inches above the finish floor.

7 21. Currently, the plumbing underneath the sink is not wrapped to protect
8 against burning contact.

9 22. Currently, the restroom provides soap dispensers, which are located
10 near the mirror above the sink. There is sufficient clear floor space to permit a
11 parallel approach by wheelchair users. However, wheelchair users are required
12 to do a side reach over an obstruction (the counter) that was 34.5 inches and,
13 therefore, higher than the maximum 34 inches permitted by law.

14 23. Plaintiff encountered these barriers.

15 24. The barriers caused Plaintiff difficulty and frustration.

16 25. Paths of travel are another one of the facilities, privileges, and
17 advantages offered by Defendants to patrons of the Restaurant.

18 26. However, and even though plaintiff did not personally confront the
19 barriers, the path of travel to the bar area requires a person to navigate two
20 steps for which there is no ramp.

21 27. Plaintiff would like to return and patronize the Restaurant but will be
22 deterred from visiting until the defendants cure the violations.

23 28. The defendants have failed to maintain in working and useable
24 conditions those features required to provide ready access to persons with
25 disabilities.

26 29. The violations identified above are easily removed without much
27 difficulty or expense. They are the types of barriers identified by the
28 Department of Justice as presumably readily achievable to remove and, in fact,

1 these barriers are readily achievable to remove. Moreover, there are numerous
2 alternative accommodations that could be made to provide a greater level of
3 access if complete removal were not achievable.

4 30. Plaintiff is and has been deterred from returning and patronizing the
5 Restaurant because of his knowledge of the illegal barriers that exist. Plaintiff
6 will, nonetheless, return to assess ongoing compliance with the ADA and will
7 return to patronize the Restaurant as a customer once the barriers are
8 removed.

9 31. Given the obvious and blatant violation, the plaintiff alleges, on
10 information and belief, that there are other violations and barriers on the site
11 that relate to his disability. Plaintiff will amend the complaint, to provide
12 proper notice regarding the scope of this lawsuit, once he conducts a site
13 inspection. However, please be on notice that the plaintiff seeks to have all
14 barriers related to his disability remedied. See *Doran v. 7-11*, 524 F.3d 1034
15 (9th Cir. 2008) (holding that once a plaintiff encounters one barrier at a site,
16 he can sue to have all barriers that relate to his disability removed regardless of
17 whether he personally encountered them).

18 32. Additionally, on information and belief, the plaintiff alleges that the
19 failure to remove these barriers was intentional because: (1) these particular
20 barriers are intuitive and obvious; (2) the defendants exercised control and
21 dominion over the conditions at this location and, therefore, the lack of
22 accessible facilities was not an “accident” because had the defendants
23 intended any other configuration, they had the means and ability to make the
24 change.

1 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
2 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
3 Defendants.) (42 U.S.C. section 12101, et seq.)

4 33. Plaintiff re-pleads and incorporates by reference, as if fully set forth
5 again herein, the allegations contained in all prior paragraphs of this
6 complaint.

7 34. Under the ADA, it is an act of discrimination to fail to ensure that the
8 privileges, advantages, accommodations, facilities, goods and services of any
9 place of public accommodation is offered on a full and equal basis by anyone
10 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
11 § 12182(a). Discrimination is defined, inter alia, as follows:

- 12 a. A failure to make reasonable modifications in policies, practices,
13 or procedures, when such modifications are necessary to afford
14 goods, services, facilities, privileges, advantages, or
15 accommodations to individuals with disabilities, unless the
16 accommodation would work a fundamental alteration of those
17 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 18 b. A failure to remove architectural barriers where such removal is
19 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
20 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
21 Appendix “D.”
- 22 c. A failure to make alterations in such a manner that, to the
23 maximum extent feasible, the altered portions of the facility are
24 readily accessible to and usable by individuals with disabilities,
25 including individuals who use wheelchairs or to ensure that, to the
26 maximum extent feasible, the path of travel to the altered area and
27 the bathrooms, telephones, and drinking fountains serving the
28 altered area, are readily accessible to and usable by individuals

1 with disabilities. 42 U.S.C. § 12183(a)(2).

2 35. All doors to restrooms must have a minimum clear opening of 32 inches
3 with the door open 90 degrees, measured between the face of the door and the
4 opposite stop. 1991 Standards § 4.22.2; 4.13.5; 2010 Standards § 404.2.3.

5 36. Here, the failure to provide the 32 inch wide restroom doorway opening
6 is a violation of the ADA.

7 37. Mirrors shall be mounted with the bottom edge of the reflecting surface
8 no higher than 40 inches above the finish floor. 1991 Standards § 4.19.6;
9 2010 Standards § 603.3.

10 38. Here, the mirror was mounted higher than the maximum permitted and
11 is a violation of the ADA.

12 39. Hot water and drain pipes under lavatories must be insulated or
13 otherwise configured to protect against contact. 1991 Standards § 4.19.4;
14 2010 Standards § 606.5.

15 40. Here, the failure to wrap the plumbing underneath the sink is a violation
16 of the ADA.

17 41. In order for a bathroom to be considered accessible, it must provide
18 unobstructed 60 inches in diameter of turning space. 1991 Standards §
19 4.23.3; 4.2.3; 2010 Standards § 603.2.1; 304.3.1.

20 42. Here, there is no such turning radius in the toilet stall and the restroom
21 is not accessible.

22 43. Where a toilet stall is provided in a restroom in existing facilities, the size
23 and arrangement of the standard toilet stall shall comply with either Fig. 30(a)
24 (standard stall) or Figure 30(b) (alternate stall). 1991 Standards § 4.17.3. A
25 standard stall must be at least 60 inches wide by 56 inches deep (if the toilet is
26 wall mounted) or 59 inches deep if the toilet is floor mounted. 1991 Standards
27 § Figure 30(a). An alternate stall must meet one of two configurations: either
28 (1) be exactly 36 inches by at least 66 inches deep (if the toilet is wall mounted)

1 or 69 inches (if the toilet is floor mounted) and provide front transfer grab bars
2 or (2) be at least 48 inches wide by at least by at least 66 inches deep (if the
3 toilet is wall mounted) or 69 inches (if the toilet is floor mounted) and provide
4 side transfer grab bars. 1991 Standards § Figure 30(b).

5 44. Here, the toilet stall does not meet any option under the ADA and is in
6 violation of the law.

7 45. Where the clear floor space allows parallel approach by a person in a
8 wheelchair but the reach is over an obstruction, the maximum height of the
9 obstruction cannot exceed 34 inches. 1991 Standards § 4.2.6 & Fig. 6(c).
10 Additionally, the maximum depth of that reach cannot be greater than 24
11 inches. *Id.* Here, the failure to comply with the height and reach requirements
12 for the soap dispensers is a violation of the law.

13 46. A public accommodation must maintain in operable working condition
14 those features of its facilities and equipment that are required to be readily
15 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

16 47. Here, the failure to ensure that the accessible facilities were available
17 and ready to be used by the plaintiff is a violation of the ADA.

18 48. Given its location and options, plaintiff will continue to desire to
19 patronize the Restaurant but he has been and will continue to be discriminated
20 against due to the lack of accessible facilities and, therefore, seeks injunctive
21 relief to remove the barriers.

22
23 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
24 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
25 Code § 51-53.)

26 49. Plaintiff re-pleads and incorporates by reference, as if fully set forth
27 again herein, the allegations contained in all prior paragraphs of this
28 complaint.

1 50. Because the defendants violated the plaintiff's rights under the ADA,
2 they also violated the Unruh Civil Rights Act and are liable for damages. (Cal.
3 Civ. Code § 51(f), 52(a).)

4 51. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
5 discomfort or embarrassment for the plaintiff, the defendants are also each
6 responsible for statutory damages, i.e., a civil penalty. (Cal. Civ. Code §
7 55.56(a)-(c).)

8
9 **PRAYER:**

10 Wherefore, Plaintiff prays that this Court award damages and provide
11 relief as follows:


12 1. For injunctive relief, compelling Defendants to comply with the
13 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
14 plaintiff is not invoking section 55 of the California Civil Code and is not
15 seeking injunctive relief under the Disabled Persons Act at all.

16 2. Damages under the Unruh Civil Rights Act and/or the California
17 Disabled Persons Act, which provides for actual damages and a statutory
18 minimum of \$4,000.

19 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
20 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

21
22 Dated: January 11, 2017

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23
24 
25 By: _____
26 Russell Handy, Esq.
27 Attorneys for plaintiff
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