

EXHIBIT B

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Superior Court of California
County of Los Angeles

MAR 07 2018

Sherri R. Carter, Executive Officer/Clerk
By: Crystal Vargas, Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES

10 RAMON CARTER, on behalf of himself
11 and all others similarly situated,

12 Plaintiff,

13 vs.

14 MARIE CALLENDER PIE SHOPS, LLC,

15 Defendant.

Case No.: BC692819

First
AMENDED CLASS ACTION COMPLAINT
FOR:

- 16 (1) VIOLATIONS OF THE UNRUH ACT,
17 CALIFORNIA CIVIL CODE § 51, *et seq.*
- 18 (2) VIOLATIONS OF THE CDPA,
19 CALIFORNIA CIVIL CODE § 54.1, *et*
20 *seq.*
- 21 (3) VIOLATIONS OF CAL. CIV. CODE §
22 55.1, *et seq.*

JURY TRIAL DEMANDED BY FAX

23 Plaintiff Ramon Carter ("Plaintiff"), by and through his attorneys, alleges the following
24 based upon personal knowledge as to his own acts, and upon information and belief and his
25 attorneys' investigation as to all other facts.

26 1. Plaintiff, on behalf of himself and on behalf of a Class of mobility
27 impaired/wheelchair bound persons, alleges that defendant Marie Callender Pie Shops, LLC
28 ("Marie Callender's" or "Defendant"), is in violation of California's anti-discrimination state
statutes, the Unruh Civil Rights Act, California Code § 51 *et seq.* ("Unruh Act"), the California
Disabled Persons Act, California Civil Code § 54 *et seq.* ("CDPA"), and Cal. Civ. Code § 55 *et*
seq.

1 process located at c/o CT Corporation System, 818 W Seventh Street, St. 930, Los Angeles, CA
2 90017.

3 15. Upon information and belief, Defendant operates over 50 restaurants in the State
4 of California. Defendant's restaurants that are located in the State of California are required to
5 comply with California state law and be fully accessible to the mobility impaired.

6 **JURISDICTION AND VENUE**

7 16. This Court has original jurisdiction of the Unruh Act and CDPA claims pursuant
8 to Cal. Civ. Code §§ 51, 54, and 55.

9 17. Venue lies in this district as Defendant is found and/or does substantial business
10 here, and a part of the property that is the subject of the action is so situated.

11 **CLASS ACTION ALLEGATIONS**

12 18. Class actions are certified when the question is one of a common or general
13 interest, of many persons, or when the parties are numerous, and it is impracticable to bring them
14 all before the court. Cal. Civ. Proc. Code § 382. The California Supreme Court has stated that a
15 class should be certified when the party seeking certification has demonstrated the existence of a
16 "well-defined community of interest" among the members of the proposed class. *Richmond v.*
17 *Dart Indus., Inc.*, 29 Cal.3d 462, 470 (1981); *see also Daar v. Yellow Cab Co.*, 67 Cal.2d 695,
18 704 (1967).

19 19. Class actions are especially valuable in a context such as this one, in which
20 individual damages are modest. It is well settled that Plaintiff need not prove the merits of his
21 action at the class certification stage.

22 20. Rather, the decision of whether to certify a class is "essentially a procedural one"
23 and the appropriate analysis is whether, assuming the merits of the claims, they are suitable for
24 resolution on a class-wide basis:

25 As the focus in a certification dispute is on what types of questions common or
26 individual are likely to arise in the action, rather than on the merits of the case, in
27 determining whether there is substantial evidence to support a trial court's
28 certification order, we consider whether the theory of recovery advanced by the
proponents of certification is, as an analytical matter, likely to prove amenable to
class treatment.

1 *Sav-On Drug Markets, Inc. v. Superior Court*, 34 Cal.4th 319, 327 (2004) (citations omitted).

2 21. In addition, the assessment of suitability for class certification entails addressing
3 whether a class action is superior to individual lawsuits or alternative procedures for resolving
4 the controversy. *Capitol People First v. State Dept. of Developmental Services* (2007) 155
5 Cal.App.4th 676, 689.

6 22. The Class consists of all mobility impaired/wheelchair-bound persons located in
7 the State of California who have patronized the Marie Callender's restaurants identified herein,
8 who have been, or who were, prior to the filing of the Complaint, denied the full and equal
9 enjoyment of the goods, services, programs, facilities, privileges, advantages, or
10 accommodations of any of the Marie Callender's restaurants identified herein (the Class).

11 23. The Class is believed to consist of thousands of members. Upon information and
12 belief, census statistics demonstrate that there are over 150,000 non-institutionalized people
13 sixteen years of age or older in California who use wheelchairs. The members of the Class are
14 so numerous that joinder of all members is impracticable.

15 24. Common questions of law and fact exist as to all members of the Class, and
16 predominate over any questions affecting solely individual members of the Class. Among the
17 questions of law and fact common to the Class are:

18 (a) Whether Defendant provides goods, services, programs, facilities,
19 privileges, advantages, or accommodations to individuals with disabilities in an
20 integrated setting;

21 (b) Whether Defendant's restaurants have made reasonable modifications in
22 policies, practices, and procedures when such modifications are necessary to afford such
23 goods, services, programs, facilities, privileges, advantages, or accommodations to
24 individuals with disabilities;

25 (c) Whether Defendant has failed to take steps to ensure that individuals with
26 disabilities are not excluded, denied services, segregated, or otherwise treated differently
27 than other individuals because of the absence of auxiliary aids and services;

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1 (d) Whether Defendant has failed to remove architectural and communication
2 barriers in existing restaurants where such removal is readily achievable and technically
3 feasible, or have failed to make such goods, services, programs, facilities, privileges,
4 advantages, or accommodations available through alternative methods, if removal of the
5 barriers is not readily achievable or technically feasible;

6 (e) Whether violations of the ADA also constitute per se violations of the
7 California anti-discrimination statutes Cal. Civ. Code §§ 51, 54, and/or 55 *et. seq.*;

8 (f) Whether Defendant has violated and/or continues to violate the state anti-
9 discrimination statutes identified above by denying equal access to disabled persons at
10 places of public accommodation;

11 (g) Whether the state anti-discrimination statutes identified above provide for a
12 private right of action;

13 (h) Whether the state anti-discrimination statutes identified above provide for
14 injunctive relief;

15 (j) Whether to recover under the Unruh Act a plaintiff must plead and prove
16 intentional discrimination;

17 (k) Whether a plaintiff must prove intentional conduct to recover under the
18 CDPA; and

19 (l) Whether injunctive relief is available as a cumulative remedy for
20 violations of state disability access laws regardless of if a plaintiff elects to recover under
21 the Unruh Act or CDPA.

22 25. Plaintiff's claims are typical of the claims of the members of the Class, as
23 Plaintiff and members of the Class sustained and continue to sustain injuries arising out of the
24 Defendant's conduct or omissions in violation of state law as complained of herein. Plaintiff,
25 like all other members of the Class, claim that Defendant has violated state law by violating the
26 ADA and Title 24 by failing to make its restaurants accessible to individuals with disabilities and
27 by excluding the Plaintiff, and other similarly situated persons, from full and equal enjoyment of
28 the goods, services, programs, facilities, privileges, advantages, or accommodations of

1 Defendant's restaurants, and subjecting Plaintiff to discrimination by failing to provide its
2 facilities and other goods, services, programs, facilities, privileges, advantages or
3 accommodations to the Plaintiff, as well as other similarly situated persons.

4 26. Plaintiff will fairly and adequately protect the interests of the members of the
5 Class, and has retained counsel competent and experienced in class action litigation. Plaintiff
6 has no interests antagonistic to, or in conflict with, those of the Class.

7 27. A class action is superior to other available methods for the fair and efficient
8 adjudication of the controversy, since joinder of all members is impracticable. Furthermore,
9 because the damages suffered by the individual Class members may be relatively small, the
10 expense and burden of individual litigation make it impossible for members of the Class
11 individually to redress the wrongs done to them.

12 28. There will be no difficulty in the management of this action as a class action.
13 Moreover, judicial economy will be served by the maintenance of this lawsuit as a class action,
14 in that it is likely to avoid the burden which would be otherwise placed upon the judicial system
15 by the filing of thousands of similar suits by disabled people across the California. There are no
16 obstacles to effective and efficient management of the lawsuit as a class action.

17 **MARIE CALLENDER'S RESTAURANTS OWNED/OPERATED BY DEFENDANT**
18 **IN VIOLATION OF CALIFORNIA'S ACCESS LAWS**

19 29. On November 18, 2017, Plaintiff patronized the Marie Callender's located at
20 2149 East Convention Way, Ontario, CA to have a later dinner, and suffered discrimination as a
21 result of being denied full and equal access. Specifically, this restaurant denied Plaintiff equal
22 access because it did not provide an accessible parking lot and/or restroom area. First, Plaintiff
23 was deterred from parking in a handicap accessible parking space because the parking lot did not
24 provide handicap accessible parking signage with language below the symbol of accessibility
25 stating "minimum fine \$250.00" and/or warning signs regarding the penalty for unauthorized use
26 of designated disabled parking spaces in order to deter the use of handicap spaces by non-
27 handicapped persons. As a result, Plaintiff was unable to park in a handicap accessible parking
28 space. Once inside the restaurant, Plaintiff was denied equal access to the restaurant's restroom.
Initially, Plaintiff was unable to access the restroom without assistance because the restroom

1 door closer was not adjusted to allow the bathroom door to remain open for at least three (3)
2 seconds so that he could wheel himself inside unassisted, and because restroom door was so
3 heavy, the force required by him to open the door made it impossible for him to wheel himself
4 inside without asking for help. Once inside the restroom, Plaintiff was deterred from using the
5 facilities because toilet stall door hardware in the men's restroom is not handicap accessible, and
6 because the height of the toilet seat in the stall was such that a wheelchair-bound person is not
7 able to make the transfer from wheelchair seat to toilet seat. Finally, prior to exiting the
8 restroom, Plaintiff was deterred from washing his hands because the pipes under the lavatory are
9 not covered and he feared burning his legs. In addition, the restroom soap and paper towel
10 dispensers, as well as the auto-dryer and restroom mirror were all mounted excessively high and
11 out of reach to a wheelchair-bound person. As a result, Plaintiff was unable to use the restroom.

12 30. Thereafter, on November 21, 2017, Plaintiff attempted to resolve this dispute
13 without the need for litigation by providing Defendant with written notice and the opportunity to
14 cure by requesting that Defendant make accessible the 2149 East Convention Way, Ontario, CA
15 location. In his correspondence to the store manager, Plaintiff informed him or her that the
16 store's parking lot and restroom is not accessible to him for the above reasons, and asked that
17 these problems be fixed within 30 days. Plaintiff did not seek any monies or statutory damages.

18 31. Plaintiff received no response to his November 21, 2017, letter. As a result, he is
19 now being deterred from patronizing all of Defendant's locations.

20 32. Plaintiff has retained attorneys to prosecute the claims alleged herein, who in turn,
21 retained professional building experts to investigate, identify and document Defendant's
22 discriminatory barriers. Those investigations, which are still ongoing, have to date identified the
23 restaurants listed below as being in serious violation of state law as a result of their violations of
24 the California Standards governing the physical accessibility of public accommodations and/or
25 the ADA which results in a violation of both Unruh Act and/or CDPA. This information has
26 been disseminated to the Plaintiff providing him with actual notice of the violations at
27 Defendant's restaurants listed below:

28 1. 2149 East Convention Way, Ontario, CA

- 1 2. 3117 East Garvey Ave., West Covina, CA
- 2 3. 330 F. St., Chula Vista, CA
- 3 4. 540 N. Euclid St., Anaheim, CA
- 4 5. 3505 Merrill Ave., Riverside, CA
- 5 6. 2631 Oswell St., Bakersfield, CA
- 6 7. 160 East Rincon St., Corona, CA
- 7 8 820 S. Baldwin Ave., Arcadia, CA
- 8 9. 5711 E. La Palma Ave., Anaheim, CA
- 9 10. 126 E. Yorba Linda Blvd., Placentia, CA
- 10 11. 5525 Sunrise Blvd., Citrus Heights, CA
- 11 12. 3801 California Ave., Bakersfield, CA
- 12 13. 3500 Coffee Rd., Modesto, CA
- 13 14. 515 West 13th Ave., Escondido, CA
- 14 15. 31791 Del Obispo St., San Juan Capistrano, CA
- 15 16. 1295 South Victoria Ave., Ventura, CA
- 16 17. 12180 Mariposa Rd., Victorville, CA
- 17 18. 5960 Orangethorpe Ave., Buena Park, CA
- 18 19. 21211 Hawthorne Blvd., Torrance, CA

19 33. Despite receiving notice and an opportunity to cure from Plaintiff, Defendant has
20 refused to address its accessibility violations. The aforementioned violations are ongoing and
21 continue to result in Plaintiff and unnamed mobility impaired class members suffering
22 discrimination as a result of being denied full and equal access to these restaurants.

23 34. Defendant has discriminated and is discriminating against Plaintiff, and others
24 similarly situated by failing to, *inter alia*, have accessible facilities, as described below, and
25 required by both the California Standards and by the ADA. The following list describes
26 Defendant's violations in the Marie Callender's listed above:

- 27 1. **2149 East Convention Way**
28 **Ontario, CA 91764**

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Violation 1

There is no additional sign or language below the symbol of accessibility stating “minimum fine \$250.00.” This is a violation of Title 24 Code 1129B.4.

Violation 2

There is no warning sign regarding the penalty for unauthorized use of designated disabled parking spaces and where they are towed. This is in violation of Title 24 Code 1129B.4.

Violation 3

The curb ramps do not have a detectable warning surface that extends the full width and depth of the curb ramp. This is in violation of Title 24 Code 1127B.5.7; ADAAG – Section 4.7.7.

Violation 4

The pipes under the lavatory are not covered. This is in violation of Title 24 Code 1115B.2.1.2.1; ADAAG – Section 4.19.4.

Violation 5

The height of the toilet seat or water closet is 16” from the floor and is not accessible. This is in violation of Title 24 Code 1115B.2.1.1; ADAAG – Section 4.16.3.

Violation 6

The restroom door force is 9 lbs. and is not accessible. This is in violation of Title 24 Code 1133B2.5; ADAAG – Section 4.13.11(2)(b).

Violation 7

The toilet stall door hardware is not compliant. This is in violation of Title 24 Code 1115B.7.1.4; ADAAG – Section 4.13.9.

Violation 8

The mirror in the restroom is 44” from the floor and is not compliant. This is in violation of Title 24 Code 1115B.9.2; ADAAG – Section 4.22.6.

Violation 9

The restroom door closer is not adjusted to allow the bathroom door to remain open for at least three (3) seconds. This is in violation of Title 24 Code 1115B.7.1.4; ADAAG – Section 4.13.10.

Violation 10

The restroom signage is not compliant. This is in violation of Title 24 Code 1117B.5.8.1.1; ADAAG - Section 4.1.2.

Violation 11

The soap dispenser in the restroom is located 45” above the floor. This is in violation of Title 24 Code 1115B.8.3; ADAAG – Section 4.23.7.

Violation 12

1 The paper towel dispenser in the restroom is located 44" above the floor. This is
2 in violation of Title 24 Code 1115B.8.3; ADAAG – Section 4.23.7.

3 **Violation 13**

4 The auto-dryer in the restroom is located 45" above the floor. This is in violation
5 of Title 24 Code 1115B.8.3; ADAAG – Section 4.23.7.

6 **2. 3117 East Garvey Ave.**
7 **West Covina, CA 91791**

8 **Violation 1**

9 There is no additional sign or language below the symbol of accessibility stating
10 "minimum fine \$250.00." This is a violation of Title 24 Code 1129B.4.

11 **Violation 2**

12 There is no warning sign regarding the penalty for unauthorized use of designated
13 disabled parking spaces and where they are towed. This is in violation of Title 24
14 Code 1129B.4.

15 **Violation 3**

16 The accessible parking spaces do not have accessible aisles. This is in violation
17 of Title 24 Code 1129B.4.1; ADAAG - Section 4.6.3.

18 **Violation 4**

19 There is no van accessible parking signage. This is in violation of Title 24 Code
20 1129B.5; ADAAG – Section 4.6.4.

21 **Violation 5**

22 The curb ramps do not have a detectable warning surface that extends the full
23 width and depth of the curb ramp. This is in violation of Title 24 Code
24 1127B.5.7; ADAAG – Section 4.7.7.

25 **Violation 6**

26 The surface slope of the ramp exceeds 1:12 or 8.33%. This is in violation of Title
27 24 Code 1133B.5.3; ADAAG - Section 4.8.2.

28 **Violation 7**

The ramp is greater than 6" rise and 72" in length and handrails not provided.
This is in violation of Title 24 code 1133b.5.5.1; ADAAG - Section 4.8.5.

Violation 8

The restroom door force is 7 lbs. and is not accessible. This is in violation of
Title 24 Code 1133B2.5; ADAAG – Section 4.13.11(2)(b).

Violation 9

The restroom door closer is not adjusted to allow the bathroom door to remain
open for at least three (3) seconds. This is in violation of Title 24 Code
1115B.7.1.4; ADAAG – Section 4.13.10.

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Violation 10

The soap dispenser in the restroom is located 43” above the floor. This is in violation of Title 24 Code 1115B.8.3; ADAAG – Section 4.23.7.

**3. 330 F. Street
Chula Vista, CA 91910**

Violation 1

There is no van accessible parking signage. This is in violation of Title 24 Code 1129B.5; ADAAG – Section 4.6.4.

Violation 2

The restroom door force is 9 lbs. and is not accessible. This is in violation of Title 24 Code 1133B2.5; ADAAG – Section 4.13.11(2)(b).

Violation 3

The toilet stall door hardware is not compliant. This is in violation of Title 24 Code 1115B.7.1.4; ADAAG – Section 4.13.9.

Violation 4

The mirror in the restroom is 43” from the floor and is not compliant. This is in violation of Title 24 Code 1115B.9.2; ADAAG – Section 4.22.6.

Violation 5

The restroom signage is not compliant. This is in violation of Title 24 Code 1117B.5.8.1.1; ADAAG - Section 4.1.2.

Violation 6

The soap dispenser in the restroom is located 42” above the floor. This is in violation of Title 24 Code 1115B.8.3; ADAAG – Section 4.23.7.

Violation 7

The paper towel dispenser in the restroom is located 52” above the floor. This is in violation of Title 24 Code 1115B.8.3; ADAAG – Section 4.23.7.

Violation 8

The toilet seat cover dispenser in the restroom is located 42” above the floor. This is in violation of Title 24 Code 1115B.8.3; ADAAG – Section 4.23.7.

Violation 9

The auto-dryers in the restroom is located 46” above the floor. This is in violation of Title 24 Code 1115B.8.3; ADAAG – Section 4.23.7.

Violation 10

The restroom clothing hooks are located 67” from the floor. This is in violation of Title 24 Code 1110B.1.7; ADAAG – Section 4.35.5.

**4. 540 N. Euclid Street
Anaheim, CA 92801**

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Violation 1

There is not the required number of van accessible spaces. This is in violation of Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(b).

Violation 2

The curb ramps do not have a detectable warning surface that extends the full width and depth of the curb ramp. This is in violation of Title 24 Code 1127B.5.7; ADAAG – Section 4.7.7.

Violation 3

The center of the toilet or water closet is 19” from the wall and is not accessible. This is in violation of Title 24 Code 1115B.7.1.2; ADAAG – Section 4.17.3.

Violation 4

The toilet paper dispenser is not located on the side wall within 7"-9" from the front edge of the toilet seat. This is in violation of Title 24 Code 1115B.9.3; ADAAG – Sections 4.22.4, 4.23.4, 4.16.6, and 4.17.3.

Violation 5

The restroom door force is 9 lbs. and is not accessible. This is in violation of Title 24 Code 1133B.2.5; ADAAG – Section 4.13.11(2)(b).

Violation 6

The restroom signage is not compliant. There are no signs. This is in violation of Title 24 Code 1117B.5.8.1.1; ADAAG - Section 4.1.2.

Violation 7

The paper towel dispenser in the restroom is located 45” above the floor. This is in violation of Title 24 Code 1115B.8.3; ADAAG – Section 4.23.7.

Violation 8

The toilet seat cover dispenser in the restroom is located 44” above the floor. This is in violation of Title 24 Code 1115B.8.3; ADAAG – Section 4.23.7.

Violation 9

The restroom clothing hooks are located 69” from the floor. This is in violation of Title 24 Code 1110B.1.7; ADAAG – Section 4.35.5.

**5. 3505 Merrill Avenue
Riverside, CA 92506**

Violation 1

There is not the required number of accessible parking spaces. This is in violation of Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(a).

Violation 2

There is no accessible parking signage. This is in violation of Title 24 Code 1129B.5; ADAAG – Section 4.6.4.

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Violation 3

There is no additional sign or language below the symbol of accessibility stating “minimum fine \$250.00.” This is a violation of Title 24 Code 1129B.4.

Violation 4

The restroom door force is 9 lbs. and is not accessible. This is in violation of Title 24 Code 1133B2.5; ADAAG – Section 4.13.11(2)(b).

Violation 5

The toilet stall door hardware is not compliant. This is in violation of Title 24 Code 1115B.7.1.4; ADAAG – Section 4.13.9.

Violation 6

The mirror in the restroom is 45” from the floor and is not compliant. This is in violation of Title 24 Code 1115B.9.2; ADAAG – Section 4.22.6.

Violation 7

The restroom signage is not compliant. This is in violation of Title 24 Code 1117B.5.8.1.1; ADAAG - Section 4.1.2.

Violation 8

The paper towel dispenser in the restroom is located 49” above the floor. This is in violation of Title 24 Code 1115B.8.3; ADAAG – Section 4.23.7.

**6. 2631 Oswell Street
Bakersfield, CA 93306**

Violation 1

There is no additional sign or language below the symbol of accessibility stating “minimum fine \$250.00.” This is a violation of Title 24 Code 1129B.4.

Violation 2

The van accessible parking spaces do not have accessible aisles. This is in violation of Title 24 Code 1129B.4.2; ADAAG – Section 4.6.3.

Violation 3

The curb ramps do not have a detectable warning surface that extends the full width and depth of the curb ramp. This is in violation of Title 24 Code 1127B.5.7; ADAAG – Section 4.7.7.

Violation 4

The toilet paper dispenser is located on the side wall 12" from the front edge of the toilet seat. This is in violation of Title 24 Code 1115B.9.3; ADAAG – Sections 4.22.4, 4.23.4, 4.16.6, and 4.17.3.

Violation 5

The restroom door force is 8 lbs. and is not accessible. This is in violation of Title 24 Code 1133B2.5; ADAAG – Section 4.13.11(2)(b).

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Violation 6
The toilet stall door hardware is not compliant. This is in violation of Title 24 Code 1115B.7.1.4; ADAAG – Section 4.13.9.

Violation 7
The toilet seat cover dispenser in the restroom is located 42” above the floor. This is in violation of Title 24 Code 1115B.8.3; ADAAG – Section 4.23.7.

Violation 8
The restroom clothing hooks are located 64” from the floor. This is in violation of Title 24 Code 1110B.1.7; ADAAG – Section 4.35.5.

**7. 160 East Rincon Street
Corona, CA 92879**

Violation 1
There is no accessible parking signage. This is in violation of Title 24 Code 1129B.5; ADAAG – Section 4.6.4.

Violation 2
There is no additional sign or language below the symbol of accessibility stating “minimum fine \$250.00.” This is a violation of Title 24 Code 1129B.4.

Violation 3
The accessible parking spaces do not have accessible aisles. This is in violation of Title 24 Code 1129B.4.1; ADAAG - Section 4.6.3.

Violation 4
The van accessible parking spaces do not have accessible aisles. This is in violation of Title 24 Code 1129B.4.2; ADAAG – Section 4.6.3.

Violation 5
The center of the toilet or water closet is 16 1/2” from the wall and is not accessible. This is in violation of Title 24 Code 1115B.7.1.2; ADAAG – Section 4.17.3.

Violation 6
The restroom door force is 8 lbs. and is not accessible. This is in violation of Title 24 Code 1133B2.5; ADAAG – Section 4.13.11(2)(b).

Violation 7
The paper towel dispenser in the restroom is located 42” above the floor. This is in violation of Title 24 Code 1115B.8.3; ADAAG – Section 4.23.7.

**8. 820 S. Baldwin Avenue
Arcadia, CA 910017**

Violation 1

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There is not the required number of accessible parking spaces. This is in violation of Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(a).

Violation 2

There is not the required number of van accessible spaces. This is in violation of Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(b).

Violation 3

The curb ramps do not have a detectable warning surface that extends the full width and depth of the curb ramp. This is in violation of Title 24 Code 1127B.5.7; ADAAG – Section 4.7.7.

Violation 4

The restroom door force is 8 lbs. and is not accessible. This is in violation of Title 24 Code 1133B2.5; ADAAG – Section 4.13.11(2)(b).

Violation 5

The mirror in the restroom is 49” from the floor and is not compliant. This is in violation of Title 24 Code 1115B.9.2; ADAAG – Section 4.22.6.

Violation 6

The paper towel dispenser in the restroom is located 52” above the floor. This is in violation of Title 24 Code 1115B.8.3; ADAAG – Section 4.23.7.

Violation 7

The toilet seat cover dispenser in the restroom is located 47” above the floor. This is in violation of Title 24 Code 1115B.8.3; ADAAG – Section 4.23.7.

**9. 5711 E. La Palma Avenue
Anaheim, CA 92807**

Violation 1

There is not the required number of accessible parking spaces. This is in violation of Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(a).

Violation 2

There is not the required number of van accessible spaces. This is in violation of Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(b).

Violation 3

There is no van accessible parking signage. This is in violation of Title 24 Code 1129B.5; ADAAG – Section 4.6.4.

Violation 4

The curb ramps do not have a detectable warning surface that extends the full width and depth of the curb ramp. This is in violation of Title 24 Code 1127B.5.7; ADAAG – Section 4.7.7.

Violation 5

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The restroom door force is 8 lbs. and is not accessible. This is in violation of Title 24 Code 1133B2.5; ADAAG – Section 4.13.11(2)(b).

Violation 6

The restroom clothing hooks are not located a maximum of 48” from the floor. This is in violation of Title 24 Code 1110B.1.7; ADAAG – Section 4.35.5.

**10. 126 E. Yorba Linda Blvd.
Placentia, CA 92870**

Violation 1

There is not the required number of accessible parking spaces. This is in violation of Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(a).

Violation 2

There is not the required number of van accessible spaces. This is in violation of Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(b).

Violation 3

There is no additional sign or language below the symbol of accessibility stating “minimum fine \$250.00.” This is a violation of Title 24 Code 1129B.4.

Violation 4

The curb ramps do not have a detectable warning surface that extends the full width and depth of the curb ramp. This is in violation of Title 24 Code 1127B.5.7; ADAAG – Section 4.7.7.

Violation 5

The restroom door force is 9 lbs. and is not accessible. This is in violation of Title 24 Code 1133B2.5; ADAAG – Section 4.13.11(2)(b).

Violation 6

The restroom signage is not compliant. This is in violation of Title 24 Code 1117B.5.8.1.1; ADAAG - Section 4.1.2.

**11. 5525 Sunrise Blvd.
Citrus Heights, CA 95610**

Violation 1

There is not the required number of van accessible spaces. This is in violation of Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(b).

Violation 2

There is no additional sign or language below the symbol of accessibility stating “minimum fine \$250.00.” This is a violation of Title 24 Code 1129B.4.

Violation 3

The restroom door force is 10 lbs. and is not accessible. This is in violation of Title 24 Code 1133B2.5; ADAAG – Section 4.13.11(2)(b).

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Violation 4

The toilet stall door hardware is not compliant. This is in violation of Title 24 Code 1115B.7.1.4; ADAAG – Section 4.13.9.

Violation 5

The restroom door closer is not adjusted to allow the bathroom door to remain open for at least three (3) seconds. This is in violation of Title 24 Code 1115B.7.1.4; ADAAG – Section 4.13.10.

**12. 3801 California Avenue
Bakersfield, CA 93309**

Violation 1

There is not the required number of van accessible spaces. This is in violation of Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(b).

Violation 2

There is no additional sign or language below the symbol of accessibility stating “minimum fine \$250.00.” This is a violation of Title 24 Code 1129B.4.

Violation 3

The curb ramps do not have a detectable warning surface that extends the full width and depth of the curb ramp. This is in violation of Title 24 Code 1127B.5.7; ADAAG – Section 4.7.7.

Violation 4

The restroom door force is 9 lbs. and is not accessible. This is in violation of Title 24 Code 1133B2.5; ADAAG – Section 4.13.11(2)(b).

Violation 5

The restroom signage is not compliant. This is in violation of Title 24 Code 1117B.5.8.1.1; ADAAG - Section 4.1.2.

**13. 3500 Coffee Road
Modesto, CA 95355**

Violation 1

There is no additional sign or language below the symbol of accessibility stating “minimum fine \$250.00.” This is a violation of Title 24 Code 1129B.4.

Violation 2

The curb ramps do not have a detectable warning surface that extends the full width and depth of the curb ramp. This is in violation of Title 24 Code 1127B.5.7; ADAAG – Section 4.7.7.

Violation 3

The restroom door force is 8 lbs. and is not accessible. This is in violation of Title 24 Code 1133B2.5; ADAAG – Section 4.13.11(2)(b).

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Violation 4

The mirror in the restroom is 42” from the floor and is not compliant. This is in violation of Title 24 Code 1115B.9.2; ADAAG – Section 4.22.6.

Violation 5

The restroom signage is not compliant. This is in violation of Title 24 Code 1117B.5.8.1.1; ADAAG - Section 4.1.2.

**14. 515 West 13th Avenue
Escondido, CA 92025**

Violation 1

There is no additional sign or language below the symbol of accessibility stating “minimum fine \$250.00.” This is a violation of Title 24 Code 1129B.4.

Violation 2

The curb ramps do not have a detectable warning surface that extends the full width and depth of the curb ramp. This is in violation of Title 24 Code 1127B.5.7; ADAAG – Section 4.7.7.

Violation 3

The restroom door force is 8 lbs. and is not accessible. This is in violation of Title 24 Code 1133B2.5; ADAAG – Section 4.13.11(2)(b).

Violation 4

The mirror in the restroom is 42 1/2” from the floor and is not compliant. This is in violation of Title 24 Code 1115B.9.2; ADAAG – Section 4.22.6.

**15. 31791 Del Obispo Street
San Juan Capistrano, CA 92675**

Violation 1

There is not the required number of van accessible spaces. This is in violation of Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(b).

Violation 2

There is no additional sign or language below the symbol of accessibility stating “minimum fine \$250.00.” This is a violation of Title 24 Code 1129B.4.

Violation 3

The restroom door force is 8 lbs. and is not accessible. This is in violation of Title 24 Code 1133B2.5; ADAAG – Section 4.13.11(2)(b).

Violation 4

The restroom door closer is not adjusted to allow the bathroom door to remain open for at least three (3) seconds. This is in violation of Title 24 Code 1115B.7.1.4; ADAAG – Section 4.13.10.

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**16. 1295 South Victoria Avenue
Ventura, CA 93003**

Violation 1

There is not the required number of van accessible spaces. This is in violation of Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(b).

Violation 2

There is no van accessible parking signage. This is in violation of Title 24 Code 1129B.5; ADAAG – Section 4.6.4.

Violation 3

The restroom door force is 8 lbs. and is not accessible. This is in violation of Title 24 Code 1133B2.5; ADAAG – Section 4.13.11(2)(b).

**17. 12180 Mariposa Road
Victorville, CA 92395**

Violation 1

There is not the required number of van accessible spaces. This is in violation of Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(b).

Violation 2

There is no additional sign or language below the symbol of accessibility stating “minimum fine \$250.00.” This is a violation of Title 24 Code 1129B.4.

Violation 3

The restroom door force is 10 lbs. and is not accessible. This is in violation of Title 24 Code 1133B2.5; ADAAG – Section 4.13.11(2)(b).

**18. 5960 Orangethorpe Avenue
Buena Park, CA 90620**

Violation 1

The pipes under the lavatory are not covered. This is in violation of Title 24 Code 1115B.2.1.2.1; ADAAG – Section 4.19.4.

Violation 2

The restroom door force is 8 lbs. and is not accessible. This is in violation of Title 24 Code 1133B2.5; ADAAG – Section 4.13.11(2)(b).

Violation 3

The soap dispenser in the restroom is located 43” above the floor. This is in violation of Title 24 Code 1115B.8.3; ADAAG – Section 4.23.7.

**19. 21211 Hawthorne Blvd.
Torrance, CA 90503**

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Violation 1

There is no accessible parking signage. This is in violation of Title 24 Code 1129B.5; ADAAG – Section 4.6.4.

Violation 2

The restroom door force is 7 lbs. and is not accessible. This is in violation of Title 24 Code 1133B2.5; ADAAG – Section 4.13.11(2)(b).

Violation 3

The restroom door closer is not adjusted to allow the bathroom door to remain open for at least three (3) seconds. This is in violation of Title 24 Code 1115B.7.1.4; ADAAG – Section 4.13.10.

35. The discriminatory violations described above are not an exclusive or exhaustive list of the Defendant’s accessibility barriers, and, upon information and belief, there are other miscellaneous violations of both the California Standards and the ADA in Defendant’s restaurants

36. The correction of these violations is readily achievable, or Defendant is obligated to have its places of public accommodation readily accessible as defined by both the ADA and the California Standards.

37. To date, barriers and other violations still exist and have not been remedied or altered in such a way as to effectuate compliance with the provisions of the California Standards or the ADA. The effect of Defendant’s failure to comply with these standards or regulations is that Defendant has discriminated against disabled persons by denying them the full and equal enjoyment of the goods, services, programs, facilities, privileges, advantages, or accommodations of the Defendant’s restaurants.

38. As a result of that failure to remedy existing barriers to accessibility, Plaintiff and others similarly situated have been denied access to the benefits of the goods, services, programs, facilities, and activities of Defendant’s restaurants, and have otherwise been discriminated against and have suffered damages caused by Defendant’s accessibility violations. Unless Defendant’s restaurants are brought into compliance, said persons will continue to suffer injury in the future.

COUNT I

(Unruh Civil Rights Act)

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3 39. Plaintiff re-alleges and incorporates by reference the above allegations set forth in
4 the Complaint as if fully set forth herein.

5 40. Defendant operates business establishments within the jurisdiction of the State of
6 California and, as such, is obligated to comply with the provisions of the Unruh Act, Cal. Civ.
7 Code, § 51, *et seq.*

8 41. The conduct alleged herein violates the Unruh Act, including Cal. Civ. Code § 51,
9 *et seq.*

10 42. The Unruh Act guarantees, *inter alia*, that persons with disabilities are entitled to
11 full and equal accommodations, advantages, facilities, privileges, or services in all business
12 establishments of every kind whatsoever within the jurisdiction of the State of California. The
13 Unruh Act also provides that a violation of the ADA is a violation of the Unruh Act.

14 43. Defendant has violated the Unruh Act by, *inter alia*, denying Plaintiff and
15 members of the proposed Class, as persons with disabilities, full and equal accommodations,
16 advantages, facilities, privileges, or services offered by Defendant. Defendant has also violated
17 the Unruh Act by violating the ADA, as set forth above.

18 44. Defendant has violated the Unruh Act, by *inter alia*, failing to operate its services
19 on a nondiscriminatory basis and failing to ensure that persons with disabilities have
20 nondiscriminatory access to its location.

21 45. In doing the acts and/or omissions alleged herein, Defendant wrongfully and
22 unlawfully denied access to its location and its facilities to individuals with disabilities and acted
23 intentionally and with knowledge of the effect its conduct was having on physically disabled
24 persons.

25 46. Defendant has violated the Unruh Act by both being in violations of the
26 California Standards and rights provided under the Americans with Disabilities Act of 1990.
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1 47. Further, Defendant has violated the Unruh Act by having, maintaining,
2 establishing, or failing to abolish policies that discriminate against the mobility impaired, which
3 have resulted in barriers in their restaurants.

4 48. Plaintiff is being deterred from patronizing Defendant's restaurants as a result of
5 his actual knowledge of the violations stated above.

6 49. Pursuant to the remedies, procedures, and rights set forth in Cal. Civ. Code § 52,
7 Plaintiff prays for judgment as set forth below.

8 **COUNT II**

9 **(California Disabled Persons Act)**

10 50. Plaintiff re-alleges and incorporates by reference the above allegations set forth in
11 the Complaint as if fully set forth herein.

12 51. Defendant operates, within the jurisdiction of the State of California, places of
13 public accommodation and/or places to which the general public is invited and, as such, is
14 obligated to comply with the provisions of the CDDA, Cal. Civ. Code § 54, *et seq.*

15 52. The conduct alleged herein violated the CDDA, including without limitation Cal.
16 Civ. Code, § 54.1, *et seq.* and relevant provisions of the California building code regulations.

17 53. The CDDA guarantees, *inter alia*, that persons with disabilities are entitled to full
18 and equal access, as other members of the general public, to accommodations, advantages,
19 facilities, and privileges of covered entities.

20 54. Defendant has violated the CDDA by, *inter alia*, denying Plaintiff and members of
21 the proposed class, as persons with disabilities, full and equal access, as other members of the
22 general public, to accommodations, advantages, and facilities offered by Defendant.

23 55. Defendant has violated the CDDA by, *inter alia*, failing to operate their services
24 on a nondiscriminatory basis and failing to ensure that persons with disabilities have
25 nondiscriminatory access to their restaurants.

26 56. In doing the acts and/or omissions alleged herein, Defendant wrongfully and
27 unlawfully denied access to its restaurants and its facilities to individuals with disabilities and
28 acted with knowledge of the effect its conduct was having on physically disabled persons.

1 57. Defendant has violated the CDPA by being, as listed above, in violation of both
2 California Standards and the ADA. Plaintiff is not required to prove intent or actual damages to
3 recovery minimum statutory damages under the CPDA.

4 58. Plaintiff is being deterred from patronizing Defendant’s restaurants as a result of
5 his actual knowledge of the violations stated above.

6 59. Pursuant to the remedies, procedures, and rights set forth in California law,
7 including Cal. Civ. Code § 54, Plaintiff prays for judgment as set forth below.

8 **COUNT III**
9 **(Cal. Civ. Code § 55)**

10 60. Plaintiff re-alleges and incorporates by reference all of the above allegations set
11 forth in the Complaint as if fully set forth herein.

12 61. Defendant operates, within the jurisdiction of the State of California, places of
13 public accommodation and/or places to which the general public is invited and, as such, is
14 obligated to comply with the provisions of Cal. Civ. Code § 55, *et seq.*

15 62. The conduct alleged herein violated the Cal. Civ. Code, § 55, *et seq.* and relevant
16 provisions of the California building code regulations.

17 63. Plaintiff brings the claim to enjoin any technical violations of the California
18 Standards or access laws.

19 64. In order to enjoin the aforementioned violations, Plaintiff is not required to prove
20 an actual attempt to access Defendant’s restaurants or to prove that the violation results from
21 discrimination.

22 65. Pursuant to the remedies, procedures, and rights set forth in California law,
23 including Cal. Civ. Code § 55, Plaintiff prays for judgment as set forth below.

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RELIEF

WHEREFORE, Plaintiff demands judgment against Defendant and requests the following relief:

- A. that this Court certify the proposed Class;
- B. that this Court certify Plaintiff as class representatives on behalf of the Class;
- C. that this Court declare that the policies, procedures, and services, and facilities at the Defendant’s restaurants located in California have been discriminatory and violative of the ADA and therefore are violative of the Unruh Act and the CDPA;
- D. that this Court declares that the policies, procedures, services, and facilities of Defendant is discriminatory and violative of the state anti-discrimination statutes of California and the California Standards;
- E. that this Court declare that Defendant’s violation of the state anti-discrimination statutes of California is intentional.
- F. that this Court Order injunctive relief to require Defendant to become in compliance and remain in compliance with state anti-discrimination statutes.
- G. that this Court award minimum statutory damages on behalf of the Plaintiff against Defendant pursuant to the state statutes identified above;
- H. that this Court award reasonable attorneys’ fees and costs (including expert fees) and other expenses of suit; and
- I. that this Court awards such other and further relief as it deems necessary, just, proper, and appropriate.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury on all issues which can be heard by a jury.

Dated: March 7, 2018

BRODSKY & SMITH, LLC



By: _____
 Evan J. Smith (SBN242352)
 9595 Wilshire Boulevard, Suite 900
 Beverly Hills, CA 90212

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Telephone: (877) 534-2590
Facsimile: (310) 247-0160

Attorneys for Plaintiff

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [California Marie Callender Restaurants Pose Wheelchair Accessibility Issues, Class Action Claims](#)
