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13  
14 IN THE UNITED STATES DISTRICT COURT  
15 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
16 SAN JOSE DIVISION

16 JESSE ZAMORA, LONIA SMITH, ROY  
17 RIOS, and DANIEL ONN, individually and on  
18 behalf of all others similarly situated,

18 Plaintiffs,

19 v.

20 WENDY’S INTERNATIONAL, LLC,  
21

22 Defendant

Case No.:

**COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF**

DEMAND FOR JURY TRIAL

CLASS ACTION

25 Plaintiffs Jesse Zamora, Lonia Smith, Roy Rios, and Daniel Onn allege the following  
26 based upon information and belief and the investigation by their counsel. Plaintiffs believe that  
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1 substantial additional evidentiary support exists for the allegations set forth herein and will be  
2 available after a reasonable opportunity for discovery.

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4 **NATURE OF THE ACTION**

5 1. This class action seeks to put an end to systemic civil rights violations committed  
6 by Wendy's International, LLC ("Wendy's") against visually-impaired people in the United  
7 States. Wendy's denies the visually-impaired equal access to the goods and services that Wendy's  
8 provides during "late-night" operating times at thousands of their restaurants throughout the  
9 United States.

10 2. In an effort to increase profits and make their products available to the public for  
11 longer periods of time, Wendy's restaurants offer "late-night" hours. During these late evening  
12 and early morning operating times, patrons are not allowed to physically enter Wendy's  
13 restaurants and must access Wendy's products and services via "drive-thru" windows. These  
14 drive-thrus are only accessible by motor vehicle and are the exclusive means by which a customer  
15 can independently purchase Wendy's products during late-night hours.

16 3. Despite being accessible to the general public, Wendy's drive-thrus lack any  
17 meaningful accommodation for visually-impaired individuals who are unable to operate motor  
18 vehicles. Since they are unable to drive, and because it is not safe for them to walk through the  
19 drive-thru, visually-impaired individuals are totally precluded from accessing Defendant's  
20 products during late-night hours.

21 4. While Wendy's sighted customers have the opportunity to independently browse,  
22 select, and pay for products at Defendant's drive-thrus without the assistance of others, visually-  
23 impaired people must hope for a companion with a car or paid taxi services to assist them in  
24 selecting and purchasing Wendy's food.  
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1 5. By failing to make its restaurants accessible to Plaintiffs and class members,  
2 Wendy’s is violating basic equal access requirements under federal law. Congress provided a  
3 clear and national mandate for the elimination of discrimination against individuals with  
4 disabilities when it enacted the Americans with Disabilities Act. This includes removing barriers  
5 to full integration, independent living, and equal opportunity for persons with disabilities,  
6 including those barriers created by drive-thru restaurants and other public accommodations that  
7 are inaccessible to blind and visually impaired persons.  
8

9 **JURISDICTION**

10 6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.  
11 §§ 1343 and 1367.  
12

13 **VENUE**

14 7. Venue is proper in the Northern District pursuant to 28 U.S.C. §§ 1391 (b)-(c).

15 8. Wendy’s owns, operates, and leases restaurants in California, including in the  
16 Northern District of California. Defendant is committing the acts alleged herein in the Northern  
17 District of California. A substantial part of the acts and omissions giving rise to the claims  
18 asserted herein have occurred in the Northern District of California.  
19

20 **INTRADISRICT ASSIGNMENT**

21 9. Plaintiff Daniel Onn resides in this Division. Upon information and belief, a  
22 substantial portion of Plaintiff Onn’s claims herein sued upon occurred in this Division.  
23

24 **PARTIES**

25 10. Plaintiff Jesse Zamora is a citizen and resident of Atwater, California. Plaintiff  
26 Zamora’s eyesight has been compromised by a condition known as diabetic retinopathy. This  
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1 condition renders him unable to operate a motor vehicle and as such he is a member of a protected  
2 class under the Americans with Disabilities Act.

3 11. Plaintiff Lonia Smith is a citizen and resident of Vallejo, California. Plaintiff  
4 Smith has limited vision in one eye and no vision in the other. These conditions render her unable  
5 to operate a motor vehicle and as such she is a member of a protected class under the Americans  
6 with Disabilities Act.  
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8 12. Plaintiff Roy Rios is a citizen and resident of Buena Park, California. Plaintiff  
9 Davis’ eyesight has been compromised by a condition known as Leber's congenital amaurosis.  
10 This condition renders him unable to operate a motor vehicle and as such he is a member of a  
11 protected class under the Americans with Disabilities Act.  
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13 13. Plaintiff Daniel Onn is a citizen and resident of Santa Clara County, California.  
14 Plaintiff Onn’s eyesight has been compromised by a corneal transplant. This condition renders  
15 him unable to operate a motor vehicle and as such he is a member of a protected class under the  
16 Americans with Disabilities Act.  
17

18 14. Defendant is an Ohio-based, for-profit corporation. Defendant owns, operates  
19 and/or leases Wendy’s restaurant buildings at thousands of locations throughout the United States.  
20

21 **FACTUAL ALLEGATIONS**

22 15. Defendant owns, operates and/or leases the well-known chain of restaurants  
23 known as “Wendy’s.”

24 16. Upon information and belief, there are more than 6500 Wendy’s restaurants in the  
25 United States.

26 17. Some Wendy’s restaurants are owned and operated entirely by the Defendant,  
27 while others are co-owned and/or co-operated by franchisees and Wendy’s.  
28

1 18. Wendy's promulgates a system of rules, directives, and/or commands that all  
2 Wendy's-branded restaurants are required to follow. This system is known as the "Wendy's  
3 System."

4 19. Wendy's operates all Wendy's-branded restaurants by implementing, maintaining,  
5 and enforcing the Wendy's System as to all Wendy's-branded restaurants.  
6

7 20. The Wendy's system is codified and enforced by manuals and franchise  
8 agreements ("Wendy's System Documents") that are authored, owned, promulgated and enforced  
9 by Wendy's.  
10

11 21. By written agreement, all franchisees are required by Defendant to comply with  
12 the Wendy's System and the Wendy's System Documents.

13 22. Franchisees have no authority under the terms of their agreements with Wendy's  
14 to alter, modify, or violate any aspect of the Wendy's System.

15 23. In all its agreements with Franchisees, Wendy's specifically reserves the unilateral  
16 right to change, add, or remove any aspect of the Wendy's System as it applies to any  
17 Franchisee(s).  
18

19 24. As a condition of becoming and continuing to be a Wendy's Franchisee,  
20 Franchisees must adhere to new or changed Wendy's System requirements. Franchisees must also  
21 implement new services as may be specified by Wendy's.  
22

23 25. As it exists today, the Wendy's System does not include any policy, procedure,  
24 protocols, or infrastructure for assisting, aiding, or serving visually-impaired would-be customers  
25 of Wendy's-branded restaurants when the interiors of those restaurants are closed to the public  
26 but while the drive-thrus of those restaurants are still open to the public.  
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1 26. Wendy's restaurants offer two kinds of service: counter service and drive thru  
2 service.

3 27. Counter service is available to patrons who physically enter Wendy's restaurants.  
4 Patrons approach a sales counter and relay their orders to Wendy's representatives who process  
5 payment and serve food.  
6

7 28. During periods of time when a Wendy's restaurant's interior is closed to the public,  
8 counter service is not available to customers.

9 29. Wendy's restaurants also provide drive-thru service. Drive-thru service is  
10 provided via specialized automobile driveway lanes which stretch around Defendant's restaurants.  
11 In order to obtain drive-thru service Wendy's customers maneuver their automobiles into the  
12 drive-thru lane and then relay their food order to a Wendy's representative via microphone.  
13 Customers then drive their car further along the lane and retrieve their food from a series of  
14 windows on the side of Defendant's restaurants.  
15

16 30. Unlike counter service, Wendy's drive-thru service is available to customers  
17 during some periods of time when the interior of a given Wendy's restaurant is closed to the  
18 public.  
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20 31. Drive-thrus are specifically utilized by the Defendant to maximize the accessibility  
21 of their products to customers and thus increase profits.  
22

23 **The Blind and Late-Night Drive-Thru**

24 32. Many thousands of Wendy's restaurants remain open late serving food only via  
25 the drive-thru. At these restaurants, like the ones encountered by Plaintiffs, late-night service is  
26 available exclusively through the drive-thru and customers are not permitted to physically enter  
27 to order food.  
28

1           33.     Wendy's specifically prohibits pedestrians from walking up to the drive-thru  
2 windows and ordering food.

3           34.     Wendy's company policy is to refuse service to any pedestrian who walks up to  
4 the drive-thru attempting to order food.  
5

6           35.     Wendy's restaurants that are open late-night via the drive-thru window do not offer  
7 any means for pedestrians to order food.

8           36.     The blind are unable to drive at night, and so they are unable to navigate a car into  
9 the drive-thru.  
10

11          37.     Because the blind are unable to drive or walk up to the drive-thru window, and  
12 because Wendy's interiors are closed during late-night operating times, the blind are totally barred  
13 from independently using or enjoying the goods and services provided by Wendy's late-night  
14 drive-thru restaurants.

15          38.     There are a variety of modest accommodations Defendant could make that would  
16 allow blind people to access to Wendy's late-night restaurant services. However Wendy's does  
17 not employ any such policy or practice.  
18

19   **Plaintiff Zamora's Experience**

20          39.     Plaintiff Zamora remains awake into the late evening on a regular basis and he  
21 periodically desires to obtain food from Wendy's restaurants during these late evening hours.  
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23          40.     In approximately March of 2019, Plaintiff Zamora wanted to obtain food from the  
24 Wendy's restaurant located at 800 Bellevue Road, Atwater, California. This particular restaurant  
25 is a twenty-five minute walk from the Plaintiff's home.

26          41.     Plaintiff Zamora approached the restaurant and realized the lobby doors were  
27 locked.  
28

1           42. Based on his personal experience living in the area, and also his contemporaneous  
2 observations at the restaurant, Plaintiff Zamora was aware that the restaurant continued to serve  
3 customers through the drive-thru while the counter service in the lobby remained closed.

4           43. Because Plaintiff Zamora is blind and unable to lawfully operate a motor vehicle  
5 he was unable to independently access the Bellevue Road Wendy's in his March 2019 encounter.  
6

7           44. Plaintiff Zamora visits this particular Wendy's approximately once a week during  
8 its late-night operating times and each time he cannot access it independently and requires a third-  
9 party to assist him.

10           45. Not only is the Wendy's restaurant in close vicinity to his home, it is also  
11 surrounded by other commercial establishments that Plaintiff Zamora enjoys frequenting.  
12

13           46. Plaintiff Zamora has felt and continues to feel disappointed and frustrated in  
14 connection with his inability to access Wendy's services.

15           47. Defendant thus provides accommodations, advantages, facilities, privileges, and  
16 services to customers that contain access barriers. These barriers deny full and equal access to  
17 Plaintiff Zamora, who would otherwise be able to fully and equally enjoy the benefits and services  
18 of Wendy's restaurants.  
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20   **Plaintiff Smith's Experience**

21           48. Plaintiff Smith remains awake into the late evening on a regular basis and she  
22 periodically desires to obtain food from Wendy's restaurants during these late evening hours.  
23

24           49. In June 2019, Plaintiff Smith wanted to obtain food from the Wendy's restaurant  
25 located at 1001 Redwood Street, Vallejo, California. This particular restaurant is approximately  
26 a 17-minute walk from the Plaintiff's mother's house.

27           50. Plaintiff Smith approached the restaurant and realized the lobby doors were locked.  
28



1           51.     Based on her personal experience living in the area, and also her contemporaneous  
2 observations at the restaurant, Plaintiff Smith was aware that the restaurant continued to serve  
3 customers through the drive-thru while the counter service in the lobby remained closed.

4           52.     Because Plaintiff Smith is blind and unable to lawfully operate a motor vehicle,  
5 she was unable to independently access the Redwood Street Wendy's restaurant in her June 2019  
6 encounter.

7           53.     Plaintiff Smith visits this particular Wendy's regularly throughout the year and she  
8 reasonably expects to visit there again in the future.

9           54.     Not only is the Wendy's restaurant in close vicinity to her mother's house, it is  
10 also surrounded by other commercial establishments that Plaintiff Smith enjoys frequenting.

11           55.     Plaintiff Smith has walked the distance between her mother's house and the  
12 Wendy's before and reasonably anticipates doing so again.

13           56.     Plaintiff Smith has felt and continues to feel disappointed and frustrated in  
14 connection with her inability to access Wendy's services.

15           57.     Because of her familiarity with Wendy's late-night policy, Plaintiff Smith  
16 sometimes avoids going to Wendy's during its late-night hours.

17           58.     Plaintiff Smith would visit again the Wendy's restaurant on Redwood Street  
18 during its late-night operating times if it were accessible to her.

19           59.     Defendant thus provides accommodations, advantages, facilities, privileges, and  
20 services to customers that contain access barriers. These barriers deny full and equal access to  
21 Plaintiff Smith, who would otherwise be able to fully and equally enjoy the benefits and services  
22 of Wendy's restaurants.

**Plaintiff Rios' Experience**

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60. Plaintiff Rios remains awake into the late evening on a regular basis and he periodically desires to obtain food from Wendy's restaurants during these late evening hours.

61. In May 2019, Plaintiff Rios wanted to obtain food from the Wendy's restaurant located at 7570 Orangethorpe Avenue, Buena Park, California. This particular restaurant is approximately a 19-minute walk from the Plaintiff's home.

62. Plaintiff Rios approached the restaurant and realized the lobby doors were locked.

63. Based on his personal experience living in the area, and also his contemporaneous observations at the restaurant, Plaintiff Rios was aware that the restaurant continued to serve customers through the drive-thru while the counter service in the lobby remained closed.

64. Because Plaintiff Rios is blind and unable to lawfully operate a motor vehicle, he was unable to independently access the Orangethorpe Avenue Wendy's restaurant in his May 2019 encounter.

65. Plaintiff Rios visits this particular Wendy's regularly throughout the year and he reasonably expects to visit there again in the future.

66. Not only is the Wendy's restaurant in close vicinity to his home, it is also surrounded by other commercial establishments that Plaintiff Rios enjoys frequenting.

67. Plaintiff Rios has walked the distance between his home and the Wendy's before and reasonably anticipates doing so again.

68. The Wendy's restaurant is also in extremely close proximity to the public bus, of which Plaintiff Rios is a regular rider.

69. Plaintiff Rios has felt and continues to feel disappointed and frustrated in connection with his inability to access Wendy's services.

1 70. Because of his familiarity with Wendy's late-night policy, Plaintiff Rios  
2 sometimes avoids going to Wendy's during its late-night hours.

3 71. Plaintiff Rios would visit again the Wendy's restaurant on Orangethorpe Avenue  
4 during its late-night operating times if it were accessible to him.

5 72. Defendant thus provides accommodations, advantages, facilities, privileges, and  
6 services to customers that contain access barriers. These barriers deny full and equal access to  
7 Plaintiff Rios, who would otherwise be able to fully and equally enjoy the benefits and services  
8 of Wendy's restaurants.  
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#### 10 **Plaintiff Onn's Experience**

11 73. Plaintiff Onn lives in Saratoga, California but travels approximately twice per  
12 month to San Jose to visit friends. During his visits to San Jose, Plaintiff Onn frequently visits  
13 the Santana Row shopping center.  
14

15 74. In mid-2019, Plaintiff Onn wanted to obtain food from the Wendy's restaurant  
16 located at 782 S Bascom Avenue, San Jose, California. This particular restaurant is in close  
17 proximity to the Santana Row shopping center.  
18

19 75. At or around 11:00 pm, Plaintiff Onn approached the restaurant and realized the  
20 lobby doors were locked.

21 76. Based on his contemporaneous observations at the restaurant, Plaintiff Onn was  
22 aware that the restaurant continued to serve customers through the drive-thru while the counter  
23 service in the lobby remained closed.  
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25 77. This particular Wendy's restaurant closes its lobby at 10:00 pm and remains open  
26 through the drive-thru until midnight.  
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1 78. Because Plaintiff Onn is blind and unable to lawfully operate a motor vehicle, he  
2 was unable to independently access the aforesaid Wendy's restaurant in his mid-2019 encounter.

3 79. Plaintiff Onn is often at the Santana Row shopping center after 10:00 pm because  
4 he watches movies at the cinema there.

5 80. Plaintiff Onn has felt and continues to feel disappointed and frustrated in  
6 connection with his inability to access Wendy's services.

7 81. Because of his familiarity with Wendy's late-night policy, Plaintiff Onn  
8 sometimes avoids going to Wendy's during its late-night hours.

9 82. Plaintiff Onn would visit again the Wendy's restaurant on S. Bascom during its  
10 late-night operating times if it were accessible to him.

11 83. Defendant thus provides accommodations, advantages, facilities, privileges, and  
12 services to customers that contain access barriers. These barriers deny full and equal access to  
13 Plaintiff Onn, who would otherwise be able to fully and equally enjoy the benefits and services  
14 of Wendy's restaurants.

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18 **CLASS ACTION ALLEGATIONS**

19 84. Plaintiffs seek certification of the following Nationwide Class and California Class  
20 pursuant to Fed. R. Civ. P. 23(a), 23(b)(2) and 23(b)(3):

21 **Nationwide Class: "all individuals who are unable to drive by reason of visual  
22 disability and who have been and/or are being denied access to Wendy's  
23 restaurants in the United States where Wendy's restaurants' products and  
24 services are only offered via drive-thru."**

25 **California Class: "all individuals who are unable to drive by reason of visual  
26 disability and who have been and/or are being denied access or deterred from  
27  
28**

1           **accessing Wendy's restaurants in California where Wendy's restaurants'**  
2           **products and services are only offered via drive-thru."**

3           85.     The persons in the Nationwide Class and California Class are so numerous that  
4           joinder of all such persons is impractical and the disposition of their claims in a class action is a  
5           benefit to the parties and to the Court.

6           86.     This case arises out of Defendant's common policy and practice of denying blind  
7           persons access to the goods and services of its restaurants. Due to Defendant's policy and practice  
8           of failing to remove access barriers, blind persons have been and are being denied full and equal  
9           access to Wendy's restaurants and the goods and services they offer.

10          87.     There are common questions of law and fact involved affecting the parties. The  
11          Plaintiffs and the putative class are all legally blind and have been and/or are being denied their  
12          civil rights to full and equal access to, and use and enjoyment of, the accommodations, advantages,  
13          facilities, privileges, and services provided at Defendant's restaurants due to the lack of accessible  
14          features at such facilities, as required by law.

15          88.     The claims of the named Plaintiffs are typical of those of the Nationwide Class  
16          and the California Class. Plaintiffs will fairly and adequately represent and protect the interests  
17          of the members of the Nationwide Class and the California Class. Plaintiffs have retained and are  
18          represented by counsel competent and experienced in complex and class action litigation.

19          89.     Class certification of the Nationwide Class is appropriate pursuant to Fed. R. Civ.  
20          P. 23(b)(2) because Defendant has acted or refused to act on grounds generally applicable to the  
21          Nationwide Class, making appropriate both declaratory and injunctive relief with respect to  
22          Plaintiffs and the Nationwide Class as a whole.

1           90.     Class certification of the California Class is appropriate pursuant to Fed. R. Civ.  
2 P. 23(b)(3) because questions of law or fact common to class members predominate over any  
3 questions affecting only individual members, and a class action is superior to other available  
4 methods for fairly and efficiently adjudicating this controversy. The common issues of law  
5 include: (1) whether the putative class members are individuals with disabilities within the  
6 meaning of the ADA and California law; (2) whether Wendy’s denies and/or deters legally blind  
7 individuals in California from accessing its services during its “late-night” hours; (3) whether  
8 Wendy’s violates Title III of the ADA; and (4) whether Wendy’s has violated Cal. Civ. Code, §  
9 51, *et seq.* (“the Unruh Act”).  
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11  
12           91.     A class action is superior to other available methods for the fair and efficient  
13 adjudication of this controversy. Judicial economy will be served by maintaining this lawsuit as  
14 a class action because it avoids the burden which would otherwise be placed upon the judicial  
15 system by the filing of numerous similar suits. A class action is also superior because the damages  
16 suffered by individual class members are relatively small and because the burden upon such  
17 individual litigants may make it difficult and impractical for them to pursue their claims against  
18 Defendant.  
19

20           92.     There are no obstacles to effective and efficient management of this lawsuit as a  
21 class action by this Court.  
22

23           93.     References to Plaintiffs shall be deemed to include the named Plaintiffs and each  
24 member of the class, unless otherwise indicated.  
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**FIRST CAUSE OF ACTION**

**(Violation of 42 U.S.C. §§ 12181, *et seq.* - Title III of the Americans with Disabilities Act)  
(on behalf of Plaintiffs and the Nationwide Class)**

94. Plaintiffs incorporate by reference the foregoing allegations as if set forth fully herein.

95. Section 12182(a) of Title III of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101, *et seq.*, (hereinafter “ADA”) provides:

No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.

96. Wendy’s restaurants are restaurants, and, therefore places of public accommodation with the definition of Title III of the ADA. 42 U.S.C. §12181(7)(B)

97. Wendy’s restaurants are sales establishments, and, therefore places of public accommodation with the definition of Title III of the ADA. 42 U.S.C. §12181(7)(E)

98. Defendant’s restaurants are places of “public accommodation” that are subject to compliance under the ADA.

99. Under Section 12182(a) and (b)(1) of Title III of the ADA, it is unlawful discrimination to deny individuals with disabilities or a class of individuals with disabilities the opportunity to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation.

100. Under Section 12182(a) and (b)(1) of Title III of the ADA, it is unlawful discrimination to deny individuals with disabilities or a class of individuals with disabilities an opportunity to participate in or benefit from the goods, services, facilities, privileges, advantages,

1 or accommodations of a place of public accommodation, which is equal to the opportunities  
2 afforded to other individuals.

3           101. Under Section 12182(b)(2) of Title III of the ADA, unlawful discrimination also  
4 includes, among other things: (1) a failure to make reasonable modifications in policies, practices,  
5 or procedures, when such modifications are necessary to afford such goods, services, facilities,  
6 privileges, advantages, or accommodations to individuals with disabilities, unless the entity can  
7 demonstrate that making such modifications would fundamentally alter the nature of such goods,  
8 services, facilities, privileges, advantages, or accommodations; and (2) a failure to take such steps  
9 as may be necessary to ensure that no individual with a disability is excluded, denied services,  
10 segregated, or otherwise treated differently than other individuals because of the absence of  
11 auxiliary aids and services, unless the entity can demonstrate that taking such steps would  
12 fundamentally alter the nature of the good, service, facility, privilege, advantage, or  
13 accommodation being offered or would result in an undue burden;  
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16           102. Patrons of Defendant’s restaurants who are blind (including Plaintiffs and the  
17 Plaintiff Class) have been denied full and equal access to those public accommodations; and they  
18 have not been provided services that are provided to other patrons who are not disabled and/or  
19 they have been provided services that are inferior to the services provided to non-disabled patrons.  
20 Defendant has failed to take any steps to remedy their discriminatory conduct. These violations  
21 are ongoing. Unless the Court enjoins Defendant from continuing to engage in these unlawful  
22 practices, Plaintiffs and members of the Class will continue to suffer irreparable harm.  
23  
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25           103. As discussed in *Factual Allegations* above, Wendy’s is a large corporation that is  
26 more than capable of adapting its policies and practices to accommodate the blind and the  
27 complaints made herein. However, Wendy’s chooses not to allow their late-night drive-thru  
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1 restaurants to be made independently usable by customers who are blind or have low vision.  
2 Consequently, Wendy's must furnish auxiliary aids or services or modify their policies and  
3 procedures to enable blind individuals to equally and independently benefit from Wendy's  
4 services unless doing so would result in a fundamental alteration or undue burden.  
5

6 104. The acts alleged herein constitute violations of Title III of the Americans with  
7 Disabilities Act of 1990, 42 U.S.C. §§ 12101 *et seq.*, and the regulations promulgated thereunder.

8 105. The actions of Defendant were and are in violation of the Americans with  
9 Disabilities Act 42 U.S.C. §§ 12181, *et seq.*, and therefore Plaintiffs are entitled to injunctive  
10 relief to remedy the discrimination as well as attorney's fees.  
11

12 **SECOND CAUSE OF ACTION**  
13 **(Unruh Civil Rights Act)**  
14 **(on behalf of Plaintiffs and California Class)**

15 106. Plaintiffs incorporate by reference the foregoing allegations as if set forth fully  
16 herein.

17 107. Defendant operates business establishments within the jurisdiction of the State of  
18 California and, as such, is obligated to comply with the provisions of the Unruh Act, Cal. Civ.  
19 Code, §§ 51, *et seq.* ("the Unruh Act").

20 108. The conduct alleged herein violates the Unruh Act, including Cal. Civ. Code, §§  
21 51, *et seq.*

22 109. The Unruh Act guarantees, *inter alia*, that persons with disabilities are entitled to  
23 full and equal accommodations, advantages, facilities, privileges, or services in all business  
24 establishments of every kind whatsoever within the jurisdiction of the State of California. The  
25 Unruh Act also provides that a violation of the ADA is a violation of the Unruh Act.  
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1 110. Defendant has and continues to violate the Unruh Act by, *inter alia*, denying  
2 Plaintiffs and members of the proposed California Class, as persons with disabilities, full and  
3 equal accommodations, advantages, facilities, privileges, or services offered by Defendant.  
4 Defendant has also violated the Unruh Act by violating the ADA, as set forth above.  
5

6 111. Defendant has and continues to violate the Unruh Act by, *inter alia*, failing to  
7 operate its services on a nondiscriminatory basis and failing to ensure that persons with disabilities  
8 have nondiscriminatory access to its restaurants.

9 112. Pursuant to the remedies, procedures, and rights set forth in Cal. Civ. Code § 52,  
10 Plaintiffs pray for judgment as set forth below.  
11

12 **THIRD CAUSE OF ACTION**  
13 **(Declaratory Relief)**  
14 **(on behalf of Plaintiffs and the Nationwide Class)**

15 113. Plaintiffs incorporate by reference the foregoing allegations as if set forth fully  
16 herein.

17 114. An actual controversy has arisen and now exists between the parties in that  
18 Plaintiffs contends, and that Defendant denies, that Defendant, by providing inaccessible  
19 restaurants throughout the United States, fails to comply with applicable laws including, but not  
20 limited to, Title III of the Americans with Disabilities Act, 42 U.S.C. §§ 12181, *et seq.*

21 115. A judicial declaration is necessary and appropriate at this time in order that each  
22 of the parties may know their respective rights and duties and act accordingly.  
23

24 **RELIEF REQUESTED**

25 **WHEREFORE**, Plaintiffs respectfully request:

- 26 1. A permanent injunction to prohibit Defendant from violating the Americans with  
27 Disabilities Act, 42 U.S.C. §§ 12181, *et seq.*;  
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- 2. A permanent injunction requiring Defendant to take the necessary steps to make Wendy’s late-night drive-thru restaurants in the United States readily accessible and usable by blind and visually impaired individuals;
- 3. A declaration that Defendant is owning, leasing and/or operating its restaurants in a manner which discriminates against the blind and visually impaired and which fails to provide access for persons with disabilities as required by the Americans with Disabilities Act, 42 U.S.C. §§ 12181, *et seq.*
- 4. That this Court certify the Nationwide Class as identified herein and appoint Plaintiffs as class representatives and their attorneys as class counsel;
- 5. That this Court certify the California Class as identified herein and appoint Plaintiffs as class representatives and their attorneys as class counsel;
- 6. That this Court award actual, compensatory, and/or statutory damages to Plaintiffs and the putative class for violations of their respective civil rights under California and federal law.
- 7. That this Court award Plaintiffs their reasonable attorney’s fees and costs pursuant to federal and California law.
- 8. Such other and further relief as the Court deems just and proper.

**JURY DEMAND**

Plaintiffs demand trial by jury on all issues for which a jury trial is allowed.

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*Respectfully submitted,*

Dated: September 24, 2019

/s/ Glenn M. Goffin  
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*Attorneys for Plaintiffs*

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
Jesse Zamora, Lonja Smith, Roy Rios, and Daniel Onn
(b) County of Residence of First Listed Plaintiff Merced County, California
(c) Attorneys (Firm Name, Address, and Telephone Number)
Glenn M. Goffin, 920 Beach Park Blvd #39, Foster City, California 94404, p. (415) 845-8556

DEFENDANTS
Wendy's International, LLC
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1
2 2
3 3
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation
PTF DEF
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5 5
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IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories and codes.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation-Transfer
8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C § 12101, et seq.
Brief description of cause:
Americans with Disabilities Act

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ JURY DEMAND: X Yes No

VIII. RELATED CASE(S), IF ANY (See instructions): JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)
SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 09/24/2019 SIGNATURE OF ATTORNEY OF RECORD /s/ Glenn M. Goffin

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Wendy's 'Late-Night' Drive-Thru Hours Exclude Visually Impaired Customers, Lawsuit Alleges](#)

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