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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
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11 RONALD MOORE,

12 Plaintiff,

13 vs.

14 FATEMAH SANIEFAR dba ZLFRED’S;
15 GHOLAMREZA SANIEFAR dba
ZLFRED’S; ZLFRED’S, INC., a California
16 corporation; ALIREZA SANIEFAR, Trustee
of the BOST TRUST;

17 Defendants.
18
19

) No.
) **COMPLAINT ASSERTING DENIAL OF**
) **RIGHT OF ACCESS UNDER**
) **AMERICANS WITH DISABILITIES ACT**
) **FOR INJUNCTIVE RELIEF,**
) **DECLARATORY RELIEF, DAMAGES,**
) **ATTORNEYS’ FEES AND COSTS (ADA)**

20 **I. SUMMARY**

21 1. This is a civil rights action by plaintiff RONALD MOORE (“Plaintiff”) for
22 discrimination at the building, structure, facility, complex, property, land, development, and/or
23 surrounding business complex known as:

24 Zlfred’s
4030 N. Blackstone Avenue
25 Fresno, CA 93726
26 (hereafter “the Facility”)

27 2. Plaintiff seeks damages, injunctive and declaratory relief, attorney fees and
28 costs, against FATEMAH SANIEFAR dba ZLFRED’S; GHOLAMREZA SANIEFAR dba

1 ZLFRED’S; ZLFRED’S, INC., a California corporation; ALIREZA SANIEFAR, Trustee of
2 the BOST TRUST (hereinafter collectively referred to as “Defendants”), pursuant to the
3 Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 et seq.) (“ADA”) and related
4 California statutes.

5 **II. JURISDICTION**

6 3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343 for ADA
7 claims.

8 4. Supplemental jurisdiction for claims brought under parallel California law –
9 arising from the same nucleus of operative facts – is predicated on 28 U.S.C. § 1367.

10 5. Plaintiff’s claims are authorized by 28 U.S.C. §§ 2201 and 2202.

11 **III. VENUE**

12 6. All actions complained of herein take place within the jurisdiction of the United
13 States District Court, Eastern District of California, and venue is invoked pursuant to 28 U.S.C.
14 § 1391(b), (c).

15 **IV. PARTIES**

16 7. Defendants own, operate, and/or lease the Facility, and consist of a person (or
17 persons), firm, and/or corporation.

18 8. Plaintiff requires the use of a wheelchair when traveling about in public.
19 Consequently, Plaintiff is “physically disabled,” as defined by all applicable California and
20 United States laws, and a member of the public whose rights are protected by these laws.

21 **V. FACTS**

22 9. The Facility is a public accommodation facility, open to the public, which is
23 intended for nonresidential use and whose operation affects commerce.

24 10. Plaintiff visited the Facility and encountered barriers (both physical and
25 intangible) that interfered with, if not outright denied, Plaintiff’s ability to use and enjoy the
26 goods, services, privileges and accommodations offered at the Facility. Plaintiff personally
27 encountered the following barriers at the Facility during Plaintiff’s visit to the Facility on or
28 about April 14, 2014:

- 1 a) Plaintiff parked in a designated accessible parking space at the Facility,
2 but found that his parked vehicle itself obstructed the ramp that led to
3 the sidewalk. It was difficult for Plaintiff to maneuver around his vehicle
4 to go up and down the ramp.
- 5 b) The entrance to the restaurant was heavy and had a raised threshold.
6 This made it difficult for Plaintiff to open the door, and to keep it open
7 while he attempted to overcome the threshold.
- 8 c) Plaintiff needed to use the restroom while visiting the Facility, but
9 the stall within the men's restroom lacked necessary wheelchair
10 clearances, and Plaintiff could not get his wheelchair into it. Plaintiff
11 required his grandson's assistance to make his way into the stall and
12 onto the toilet.
- 13 d) The toilet inside of the stall lacked grab bars, further making it difficult
14 for Plaintiff to use the toilet.
- 15 e) The plumbing below the lavatory in the restroom was exposed, causing
16 Plaintiff to fear that he would burn his legs on the pipes.
- 17 f) The counter in the men's restroom lacked proper knee clearances,
18 making it difficult for Plaintiff to reach the soap dispenser.
- 19 g) The hand dryer in the men's restroom was out of reach for Plaintiff due
20 to its height.
- 21 h) The men's restroom doorway lacked proper maneuvering clearances on
22 the inside of the restroom and Plaintiff became trapped when trying to
23 leave the restroom. Plaintiff had to call out his grandson to help him.
- 24 i) Plaintiff could not locate an accessible table and was forced to sit at a
25 table that was improperly configured, such that he could not pull his
26 wheelchair all the way up to the table. He was forced to sit at an
27 uncomfortable distance from the table for the duration of his meal.

28 11. The barriers identified in paragraph 10 herein are only those that Plaintiff

1 personally encountered. Plaintiff is presently unaware of other barriers which may in fact exist
2 at the Facility and relate to his disabilities. Plaintiff will seek to amend this Complaint once
3 such additional barriers are identified as it is Plaintiff's intention to have all barriers which
4 exist at the Facility and relate to his disabilities removed to afford him full and equal access.

5 12. Plaintiff was, and continues to be, deterred from visiting the Facility because
6 Plaintiff knows that the Facility's goods, services, facilities, privileges, advantages, and
7 accommodations were and are unavailable to Plaintiff due to Plaintiff's physical disabilities.
8 Plaintiff enjoys the goods and services offered at the Facility, and will return to the Facility
9 once the barriers are removed.

10 13. Defendants knew, or should have known, that these elements and areas of the
11 Facility were inaccessible, violate state and federal law, and interfere with (or deny) access to
12 the physically disabled. Moreover, Defendants have the financial resources to remove these
13 barriers from the Facility (without much difficulty or expense), and make the Facility
14 accessible to the physically disabled. To date, however, Defendants refuse to either remove
15 those barriers or seek an unreasonable hardship exemption to excuse non-compliance.

16 14. At all relevant times, Defendants have possessed and enjoyed sufficient control
17 and authority to modify the Facility to remove impediments to wheelchair access and to
18 comply with the 2010 Standards for Accessible Design and the California Code of Regulations
19 Title 24. Defendants have not removed such impediments and have not modified the Facility to
20 conform to accessibility standards. Defendants have intentionally maintained the Facility in its
21 current condition and have intentionally refrained from altering the Facility so that it complies
22 with the accessibility standards.

23 15. Plaintiff further alleges that the (continued) presence of barriers at the Facility is
24 so obvious as to establish Defendants' discriminatory intent. On information and belief,
25 Plaintiff avers that evidence of this discriminatory intent includes Defendants' refusal to adhere
26 to relevant building standards; disregard for the building plans and permits issued for the
27 Facility; conscientious decision to maintain the architectural layout (as it currently exists) at
28 the Facility; decision not to remove barriers from the Facility; and allowance that Defendants'

1 property continues to exist in its non-compliant state. Plaintiff further alleges, on information
2 and belief, that the Facility is not in the midst of a remodel, and that the barriers present at the
3 Facility are not isolated (or temporary) interruptions in access due to maintenance or repairs.

4 **VI. FIRST CLAIM**

5 **Americans with Disabilities Act of 1990**

6 Denial of “Full and Equal” Enjoyment and Use

7 16. Plaintiff incorporates the allegations contained in paragraphs 1 through 15 for
8 this claim.

9 17. Title III of the ADA holds as a “general rule” that no individual shall be
10 discriminated against on the basis of disability in the full and equal enjoyment (or use) of
11 goods, services, facilities, privileges, and accommodations offered by any person who owns,
12 operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).

13 18. Defendants discriminated against Plaintiff by denying Plaintiff “full and equal
14 enjoyment” and use of the goods, services, facilities, privileges and accommodations of the
15 Facility during each visit and each incident of deterrence.

16 Failure to Remove Architectural Barriers in an Existing Facility

17 19. The ADA specifically prohibits failing to remove architectural barriers, which
18 are structural in nature, in existing facilities where such removal is readily achievable. 42
19 U.S.C. § 12182(b)(2)(A)(iv).

20 20. When an entity can demonstrate that removal of a barrier is not readily
21 achievable, a failure to make goods, services, facilities, or accommodations available through
22 alternative methods is also specifically prohibited if these methods are readily achievable. *Id.*
23 § 12182(b)(2)(A)(v).

24 21. Here, Plaintiff alleges that Defendants can easily remove the architectural
25 barriers at the Facility without much difficulty or expense, and that Defendants violated the
26 ADA by failing to remove those barriers, when it was readily achievable to do so.

27 22. In the alternative, if it was not “readily achievable” for Defendants to remove
28 the Facility’s barriers, then Defendants violated the ADA by failing to make the required

1 services available through alternative methods, which are readily achievable.

2 Failure to Design and Construct an Accessible Facility

3 23. Plaintiff alleges on information and belief that the Facility was designed and
4 constructed (or both) after January 26, 1992 – independently triggering access requirements
5 under Title III of the ADA.

6 24. The ADA also prohibits designing and constructing facilities for first occupancy
7 after January 16, 1993, that aren't readily accessible to, and usable by, individuals with
8 disabilities when it was structurally practicable to do so. 42 U.S.C. § 12183(a)(1).

9 25. Here, Defendants violated the ADA by designing and constructing (or both) the
10 Facility in a manner that was not readily accessible to the physically disabled public –
11 including Plaintiff – when it was structurally practical to do so.¹

12 Failure to Make an Altered Facility Accessible

13 26. Plaintiff alleges on information and belief that the Facility was modified after
14 January 26, 1992, independently triggering access requirements under the ADA.

15 27. The ADA also requires that facilities altered in a manner that affects (or could
16 affect) its usability must be made readily accessible to individuals with disabilities to the
17 maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering an area that contains a facility's
18 primary function also requires making the paths of travel, bathrooms, telephones, and drinking
19 fountains serving that area accessible to the maximum extent feasible. Id.

20 28. Here, Defendants altered the Facility in a manner that violated the ADA and
21 was not readily accessible to the physically disabled public – including Plaintiff – to the
22 maximum extent feasible.

23 Failure to Modify Existing Policies and Procedures

24 29. The ADA also requires reasonable modifications in policies, practices, or
25 procedures, when necessary to afford such goods, services, facilities, or accommodations to
26 individuals with disabilities, unless the entity can demonstrate that making such modifications
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¹ Nothing within this Complaint should be construed as an allegation that Plaintiff is bringing this action as a private attorney general under either state or federal statutes.

1 would fundamentally alter their nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

2 30. Here, Defendants violated the ADA by failing to make reasonable modifications
3 in policies, practices, or procedures at the Facility, when these modifications were necessary to
4 afford (and would not fundamentally alter the nature of) these goods, services, facilities, or
5 accommodations.

6 31. Plaintiff seeks all relief available under the ADA (i.e., injunctive relief, attorney
7 fees, costs, legal expense) for these aforementioned violations. 42 U.S.C. § 12205.

8 32. Plaintiff seeks a finding from this Court (i.e., declaratory relief) that Defendants
9 violated the ADA in order to pursue damages under California's Unruh Civil Rights Act.

10 **VII. SECOND CLAIM**

11 **Unruh Act**

12 33. Plaintiff incorporates the allegations contained in paragraphs 1 through 32 for
13 this claim.

14 34. California Civil Code § 51 states, in part, that: All persons within the
15 jurisdiction of this state are entitled to the full and equal accommodations, advantages,
16 facilities, privileges, or services in all business establishments of every kind whatsoever.

17 35. California Civil Code § 51.5 also states, in part that: No business establishment
18 of any kind whatsoever shall discriminate against any person in this state because of the
19 disability of the person.

20 36. California Civil Code § 51(f) specifically incorporates (by reference) an
21 individual's rights under the ADA into the Unruh Act.

22 37. Defendants' aforementioned acts and omissions denied the physically disabled
23 public – including Plaintiff – full and equal accommodations, advantages, facilities, privileges
24 and services in a business establishment (because of their physical disability).

25 38. These acts and omissions (including the ones that violate the ADA) denied,
26 aided or incited a denial, or discriminated against Plaintiff by violating the Unruh Act.

27 39. Plaintiff was damaged by Defendants' wrongful conduct, and seeks statutory
28 minimum damages of four thousand dollars (\$4,000) for each offense.

1 40. Plaintiff also seeks to enjoin Defendants from violating the Unruh Act (and
2 ADA), and recover reasonable attorneys' fees and costs incurred under California Civil Code
3 § 52(a).

4 **VIII. THIRD CLAIM**

5 **Denial of Full and Equal Access to Public Facilities**

6 41. Plaintiff incorporates the allegations contained in paragraphs 1 through 40 for
7 this claim.

8 42. Health and Safety Code § 19955(a) states, in part, that: California public
9 accommodations or facilities (built with private funds) shall adhere to the provisions of
10 Government Code § 4450.

11 43. Health and Safety Code § 19959 states, in part, that: Every existing (non-
12 exempt) public accommodation constructed prior to July 1, 1970, which is altered or
13 structurally repaired, is required to comply with this chapter.

14 44. Plaintiff alleges the Facility is a public accommodation constructed, altered, or
15 repaired in a manner that violates Part 5.5 of the Health and Safety Code or Government Code
16 § 4450 (or both), and that the Facility was not exempt under Health and Safety Code § 19956.

17 45. Defendants' non-compliance with these requirements at the Facility aggrieved
18 (or potentially aggrieved) Plaintiff and other persons with physical disabilities. Accordingly,
19 Plaintiff seeks injunctive relief and attorney fees pursuant to Health and Safety Code § 19953.

20 **IX. PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff prays judgment against Defendants, and each of them, for:

- 22 1. Injunctive relief, preventive relief, or any other relief the Court deems proper.
- 23 2. Declaratory relief that Defendants violated the ADA for the purposes of Unruh
24 Act damages.
- 25 3. Statutory minimum damages under section 52(a) of the California Civil Code
26 according to proof.
- 27 4. Attorneys' fees, litigation expense, and costs of suit.²

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² This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

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- 5. Interest at the legal rate from the date of the filing of this action.
- 6. For such other and further relief as the Court deems proper.

Dated: July 8, 2014

MOORE LAW FIRM, P.C.

/s/ Tanya E. Moore
Tanya E. Moore
Attorneys for Plaintiff
Ronald Moore

VERIFICATION

I, RONALD MOORE, am the plaintiff in the above-entitled action. I have read the foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe them to be true.

I verify under penalty of perjury that the foregoing is true and correct.

Dated: July 8, 2014

/s/ Ronald Moore
Ronald Moore

I attest that the original signature of the person whose electronic signature is shown above is maintained by me, and that his concurrence in the filing of this document and attribution of his signature was obtained.

/s/ Tanya E. Moore
Tanya E. Moore, Attorney for
Plaintiff, Ronald Moore