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7 IN THE UNITED STATES DISTRICT COURT  
 8 FOR THE DISTRICT OF ARIZONA

9	DAVID NORMANN;	)	Case No.: CV06-2934-PHX-SMM
	Plaintiff,	)	
10	vs.	)	<b><u>AMENDED COMPLAINT</u></b>
	RAEDON ENTERPRISES, INC., an Arizona	)	
11	corporation, DBA Burger King; ACF	)	(Temporary and Permanent Injunctive Relief
	PROPERTY MANAGEMENT INC, a	)	Demanded)
12	California corporation,	)	
	Defendants	)	
13		)	
14		)	
15		)	
16		)	
17		)	
18		)	

19 Plaintiff, David Normann (“Plaintiff”), sues the Defendant, Raedon Enterprises, Inc., an  
 20 Arizona corporation, DBA Burger King and ACF PROPERTY MANAGEMENT INC  
 21 (“Defendants”), for injunctive relief, compensatory damages, attorneys’ fees and costs pursuant to  
 22 the Americans with Disabilities Act, 42 U.S.C. § 12181, et seq. (“ADA”) and the Arizona Civil  
 23 Rights Act (ACRA), A.R. S. § 41- 1492, et seq.  
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25 **JURISDICTION AND VENUE**

26 1. This action arises from a violation of Title III of the Americans with Disabilities Act, 42

1 U.S.C. § 12181, et seq. and the Arizona Civil Rights Act (ACRA), A.R. S. § 41- 1492, et seq.  
2 This Court has original jurisdiction pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343 and  
3 supplemental jurisdiction under 28 U.S.C. § 1367.

4 2. Defendant Raedon Enterprises, Inc. is an Arizona Corporation doing business in Maricopa  
5 County, Arizona. Defendant ACF PROPERTY MANAGEMENT INC, is a California  
6 corporation doing business in Maricopa County, Arizona.

7 3. Defendants received notice of its obligation to comply with the ADA. Defendants have  
8 had actual and constructive notice of its obligations under the ADA since 1993: actual notice by  
9 virtue of notification provided by the Arizona Department of State, and constructive notice by  
10 virtue of the enactment of the ADA and the associated publicity.

11 4. Defendant Raedon Enterprises, Inc. either owns, operates, leases or leases to others a  
12 Burger King restaurant located at 13838 N. Scottsdale Road, Arizona, Maricopa County, Arizona.  
13 Defendant ACF PROPERTY MANAGEMENT INC either owns, operates, leases or leases to  
14 others the parking area and common areas at the East Thunderbird shopping mall on the corner of  
15 Thunderbird and Scottsdale Road, Arizona, Maricopa County, Arizona

16 5. Defendants' restaurant and/or shopping mall are places of public accommodation.

17 6. Venue is proper as the property which is the subject matter of this claim is located in  
18 Scottsdale, Arizona, Maricopa County, Arizona and the Defendants are doing business in  
19 Scottsdale, Arizona, Maricopa County, Arizona.  
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21

### 22 **THE PARTIES AND STANDING**

23 7. Plaintiff, David Normann, is an Arizona resident, sui juris, and disabled; suffering from  
24 multiple sclerosis requiring the use of a wheelchair for mobility.

25 8. Plaintiff visited the Defendants' property on or about October 30, 2006 to enjoy its  
26

1 services.

2 9. Plaintiff resides in Maricopa County, Arizona and travels to Defendants' property and  
3 plans to return to the Defendants' property to avail himself of the goods, services, privileges,  
4 advantages or accommodations offered to the public at the Defendants' shopping mall and  
5 restaurant.

6 **STATEMENT OF THE CLAIM**

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8 10. While at the Defendants' property, Plaintiff has been, among other things, unable to gain  
9 equal access to areas in the shopping mall and restaurant.

10 11. The barriers to access encountered by Plaintiff in the restaurant are, among other things,  
11 violations of ADA Accessibility Guidelines (ADAAGs) including:

- 12 a. The entrances to Burger King are without any accessible parking or an accessible  
13 route to the entrance. Regulations require at least 50 % of entrances to be  
14 accessible. Reference: ADAAG 4.1.2(5), 4.6.1
- 15 b. A curb ramp is not located at this entrance where the "accessible" route crosses the  
16 sidewalk curb. Reference: ADAAG 4.7.1
- 17 c. Several barriers exist within the Men's restroom at this facility. Clear maneuvering  
18 space at the restroom sink is not provided. The urinal in this restroom does not have  
19 a rim height below 17-inches A.F.F. as is required for the urinal to be accessible.  
20 The "accessible" toilet stall does not meet many of the minimum requirements of  
21 ADAAG for accessible toilet stalls. Reference: ADAAG 4.17.3, 4.18.2, 4.19.4

22 12. The barriers to access encountered by Plaintiff in the shopping mall are, among other  
23 things, violations of ADA Accessibility Guidelines (ADAAGs) including:

- 24 a. The area between the Subway and the Burger King has no accessible route.
- 25 b. The area designated for an accessible parking space near the Dazzle store has an  
26 excessive running slope of 5% where a 2% maximum slope is required.
- 27 c. The accessible route from the designated accessible parking space near the Dazzle  
28 store leads to a series of steps at the Taco del Mar.

29 13. As a result of the aforementioned barriers Plaintiff was denied access to the full and equal  
30 enjoyment of the goods, services, facilities, privileges, advantages or accommodations which are

1 available at Defendant's restaurant.

2 14. The Defendants are obligated to remove barriers which impair a disabled person's access  
3 to the use and enjoyment of the Defendants' shopping mall and restaurant.

4 15. The elimination by the Defendants of the aforementioned barriers to access is readily  
5 achievable.

6 16. Plaintiff will suffer continued discrimination if the barriers to access existing at  
7 Defendants' shopping mall and restaurant are not removed.

8 17. Plaintiff is without adequate remedy at law and is suffering irreparable harm.

9  
10 **WHEREFORE**, Plaintiff respectfully requests:

- 11 a. A temporary injunction and a permanent injunction prohibiting Defendants from  
12 conducting business at the restaurant until such time as the existing barriers to  
13 Plaintiff's access to the property are removed.
- 14 b. An order directing Defendants to remove existing barriers to access and to make  
15 the Defendants' shopping mall and restaurant accessible to and usable by  
16 individuals with disabilities as required by the ADA.
- 17 c. An award of attorney's fees, costs and litigation expenses pursuant to 42 U.S.C.  
18 12205.
- 19 d. Compensatory damages, pursuant to ACRA.
- 20 e. Such other relief as the Court deems just and proper.

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RESPECTFULLY SUBMITTED THIS 5<sup>th</sup> day of April, 2007.

By: /s/ David J. Don  
David J. Don  
*Attorney for Plaintiff David Normann*