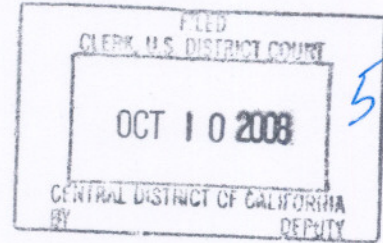


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8 IN THE UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 KAREL SPIKES,

11 Plaintiff,

12 vs.

13 POPEYE'S CHICKEN & BISCUITS; RUTH
14 REICH PARTNERS, LLC; ISH DON'T THINK
SO, LLC and DOES 1 THROUGH 10,
15 Inclusive,

16 Defendants.

CV08-06726 JFW
Case No.:

(JCx)

CIVIL COMPLAINT

DEMAND FOR JURY TRIAL
[F.R.C.P. §38(b);
Local Rule 38.1]

17 Plaintiff, KAREL SPIKES (hereinafter referred to as
18 "Plaintiff"), file this cause of action against Defendants
19 POPEYE'S CHICKEN & BISCUITS(hereinafter "POPEYE'S CHICKEN"),
20 RUTH REICH PARTNERS, LLC, ISH DON'T THINK SO, LLC and DOES 1
21 THROUGH 10, Inclusive, and would show unto the Court the
22 following:

23 I.

24 JURISDICTION AND VENUE

25 1. This Court has original jurisdiction of this civil
26 action pursuant to 28 USC §1331, 28 USC §§1343(a)(3) and
27 1343(a)(4) for claims arising under the Americans with
28

1 Disabilities Act of 1990, 42 USC §§12101, et seq., 12181, et
2 seq., 12182, et seq., and/or 12183, et seq., and the Court's
3 supplemental jurisdiction, 28 USC §1367.

4 2. Venue in this Court is proper pursuant to 28 USC
5 §§1391(b) and (c).

6 3. Pursuant to 28 USC §1367(a), Plaintiff shall assert
7 all causes of action based on state law, as plead in this
8 complaint, under the supplemental jurisdiction of the federal
9 court. All the causes of action based on federal law and those
10 based on state law, as herein stated, arose from a common nuclei
11 of operative fact. That is, Plaintiff was denied equal access
12 to Defendants' facilities, goods, and/or services in violation
13 of both federal and state laws and/or was injured due to
14 violations of federal and state access laws. The state actions
15 of Plaintiff are so related to the federal actions that they
16 form part of the same case or controversy. The actions would
17 ordinarily be expected to be tried in one judicial proceeding.

18 **II.**

19 **THE PARTIES**

20 4. Defendant POPEYE'S CHICKEN & BISCUITS is, and at all
21 times mentioned herein was, a business or corporation or
22 franchise organized and existing and/or doing business under the
23 laws of the State of California. POPEYE'S CHICKEN & BISCUITS is
24 located at 8530 Figueroa Street, Los Angeles, CA (hereinafter
25 "the subject property".) Plaintiff is informed and believes and
26 thereon alleges that Defendant POPEYE'S CHICKEN & BISCUITS is,
27 and at all times mentioned herein was, the owner, lessor or
28 lessee of the subject property and/or the owner and/or operator

1 of the public accommodation located at the subject property.

2 5. Defendant RUTH REICH PARTNERS, LLC is, and at all times
3 mentioned herein was, a business or corporation or franchise
4 organized and existing in and/or doing business under the laws of
5 the State of California. Plaintiff is informed and believes and
6 thereon alleges that Defendant RUTH REICH PARTNERS, LLC is, and
7 at all times mentioned herein was, the owner, lessor or lessee of
8 the subject property.

9 6. Defendant ISH DON'T THINK SO, LLC is, and at all times
10 mentioned herein was, a business or corporation or franchise
11 organized and existing in and/or doing business under the laws of
12 the State of California. Plaintiff is informed and believes and
13 thereon alleges that Defendant ISH DON'T THINK SO, LLC is, and at
14 all times mentioned herein was, the owner, lessor or lessee of
15 the subject property.

16 7. Plaintiff is informed and believes, and thereon
17 alleges, that Defendants and each of them herein were, at all
18 times relevant to the action, the owners, franchisees, lessees,
19 general partners, limited partners, agents, employees,
20 employers, representing partners, subsidiaries, parent
21 companies, joint venturers and/or divisions of the remaining
22 Defendants and were acting within the course and scope of that
23 relationship. Plaintiff is further informed and believes, and
24 thereon alleges, that each of the Defendants herein gave
25 consent to, ratified, and/or authorized the acts alleged herein
26 of each of the remaining Defendants.

27 8. Plaintiff is an otherwise qualified disabled
28 individual as provided in the Americans with Disabilities Act

1 of 1990, 42 USC §12102, Part 5.5 of the California Health &
2 Safety Code and the California Unruh Civil Rights Act, §§51, et
3 seq., 52, et seq., the California Disabled Persons Act, §§54,
4 et seq., and other statutory measures which refer to the
5 protection of the rights of "physically disabled persons."
6 Plaintiff visited the public accommodation owned and/or
7 operated by Defendants and/or located at the subject property
8 for the purpose of availing himself of the goods, services,
9 facilities, privileges, advantages, or accommodations operated
10 and/or owned by Defendants and/or located on the subject
11 property.

12 9. Plaintiff is informed and believes and thereon alleges
13 that the subject facility has been newly constructed and/or
14 underwent remodeling, repairs, or alterations since 1971, and
15 that Defendants have failed to comply with California access
16 standards which applied at the time of each such new
17 construction and/or alteration.

18 **III.**

19 **FACTS**

20 10. Plaintiff has a mobility impairment and uses a
21 wheelchair. Moreover, he has had a history of or has been
22 classified as having a physical impairment, as required by 42
23 USC §12102(2)(A).

24 11. On or about March 4, 2008 and continuing through the
25 present date, Plaintiff was denied full and equal access to the
26 facilities owned and/or operated by the Defendants because the
27 facility and/or subject property were inaccessible to members
28 of the disabled community who use wheelchairs for mobility.

1 Plaintiff was denied full and equal access to portions of the
2 property because of barriers which included, but are not
3 limited to, inaccessible path of travel, inaccessible cashier
4 counter, inaccessible restroom facilities and lack of
5 accessible parking space, as well as, lack of signage for said
6 space. Plaintiff was also denied full and equal access
7 because of discriminatory policies and practices regarding
8 accommodating people with disabilities. Plaintiff filed this
9 lawsuit to compel compliance with access laws and regulations.

10 12. As a result of Defendants' failure to remove
11 architectural barriers, Plaintiff suffered injuries. People
12 with disabilities, because of the existing barriers, are denied
13 full and equal access to the Defendants' facilities. The ADA
14 has been in effect for more than 17 years. Given the vast
15 availability of information about ADA obligations, including
16 FREE documents which are available from the U.S. Department of
17 Justice by calling (800) 514-0301 or at the following web
18 sites: www.sba.gov/ada/smbusgd.pdf, www.ada.gov/taxpack.pdf and
19 www.usdoj.gov/crt/ada, the failure of Defendants to comply with
20 their barrier removal obligations is contemptible.

21 13. Plaintiff is an otherwise qualified individual as
22 provided in the Americans with Disabilities Act of 1990, 42 USC
23 §12102, the Rehabilitation Act of 1973, Section 504 (as amended
24 29 USC §794) and the California Unruh Civil Rights Act, Civil
25 Code §§51, 52, 54, 54.1, and 54.3, and other statutory measures
26 which refer to the protection of the rights of "physically
27 disabled persons." Plaintiff visited the public facilities
28 owned and operated by Defendants for the purpose of availing

1 himself of the goods and services offered and provided by
2 Defendants and/or for the purpose of obtaining removal of
3 architectural barriers and/or modification of policies,
4 practices and procedures to provide accessibility to people
5 with disabilities. Plaintiff was injured in fact, as set forth
6 more specifically herein.

7 14. Plaintiff alleges that Defendants will continue to
8 operate public accommodations which are inaccessible to him and
9 to other individuals with disabilities. Pursuant to 42 USC
10 §12188(a), Defendants are required to remove architectural
11 barriers to their existing facilities.

12 15. Plaintiff has no adequate remedy at law for the
13 injuries currently being suffered in that money damages will
14 not adequately compensate Plaintiff for the amount of harm
15 suffered as a result of exclusion from participation in the
16 economic and social life of this state.

17 16. Plaintiff believes that architectural barriers
18 precluding Plaintiff full and equal access of the public
19 accommodation will continue to exist at Plaintiff's future
20 visits, which will result in future discrimination of
21 Plaintiff, in violation of the Americans with Disabilities Act.
22 Plaintiff is currently being subjected to discrimination
23 because Plaintiff is deterred from visiting the subject
24 facilities and/or cannot make use of and obtain full and equal
25 access to the facilities, goods and/or services offered by
26 Defendants to the general public. Plaintiff seeks damages for
27 each offense relating to each of Plaintiff's visits to the
28 subject property when Plaintiff was denied full and equal

1 access to the subject property or was deterred from visiting
2 and/or attempting to avail himself of the benefits, goods,
3 services, privileges and advantages of the place of public
4 accommodation at the subject property because of continuing
5 barriers to full and equal access.

6 IV.

7 FIRST CLAIM FOR
8 VIOLATION OF AMERICAN WITH DISABILITIES ACT
9 42 USC §12101, et seq.

10 17. Plaintiff re-alleges and incorporates by reference
11 each and every allegation contained in paragraphs 1 through 16,
12 inclusive, as though set forth fully herein.

13 18. Plaintiff was denied full and equal access to
14 Defendants' goods, services, facilities, privileges,
15 advantages, or accommodations within a public accommodation
16 owned, leased and/or operated by Defendants, in violation of 42
17 USC §§12181, et seq., 12182, et seq., and/or 12183, et seq.
18 Plaintiff was, therefore, subjected to discrimination and is
19 entitled to injunctive relief pursuant to 42 USC §12188 as a
20 result of the actions or inaction of Defendants.

21 19. Among other remedies, Plaintiff seeks an injunctive
22 order requiring compliance with state and federal access laws
23 for all access violations which exist at the property,
24 requiring removal of architectural barriers and other relief as
25 the court may deem proper. Plaintiff also seeks any other
26 order that will redress the discrimination to which he has been
27 subjected, is being subjected and/or will be subjected.

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