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 10 **UNITED STATES DISTRICT COURT**
 11 **NORTHERN DISTRICT OF CALIFORNIA**

12 IRMA RAMIREZ,
 13 Plaintiff,

14 v.

15 APENA CORP, a California Corporation
 16 dba PLAZA TEQUILA TAQUERIA;
 17 DEMETRIOS GIANNIS, Trustee and ROSE
 18 GIANNIS, Trustee of the Giannis Family Trust,
 19 Defendants.

) CASE NO. 15-cv-03808-EMC
)
) **JOINT CASE MANAGEMENT**
) **STATEMENT**
)
) **Date: February 18, 2016**
) **Time: 9:30 a.m.**
) **Judge: Hon. Edward Chen**
) **Crtm: 5, 17th Floor**
) **Complaint Filed: August 20, 2015**

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 21
 22 Pursuant to Civil Local Rule 16-9 and the Court's Order, the parties to the above -
 23 captioned action jointly submit this Case Management Statement.

24 **NOTE: Plaintiff's Position:**

25 Please take notice that the case has been referred to mediation but has not been
 26 appointed a mediator yet. The Case Management Conference is currently set for February 18,
 27 2016. Plaintiff believes it would be in the interests of efficiency and economy to continue the
 28 Case Management Conference to sometime in June of 2016 in order for the parties to

1 participate in a mediation and reduce fees and costs. As such, plaintiff respectfully requests
2 that the Case Management Conference be continued to sometime after the mediation has
3 been completed and/date that is convenient to the Court.

4 **Defendant APENA CORP's Position:**

5 Defendant APENA CORP. agrees that the current date for the CMC does not allow the
6 parties time to participate in ADR and joins in plaintiff's request that the CMC be continued
7 until at least June 2016.

8 **Defendant GIANNIS's Position:**

9 Agrees with Plaintiff.

10 **1. JURISDICTION, VENUE & SERVICE**

11 **Jurisdiction:** This Court has jurisdiction of this action pursuant to 28 U.S.C. §1331 for
12 violations of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.* Pursuant to
13 pendant jurisdiction, attendant and related causes of action, arising from the same nucleus of
14 operative facts and arising out of the same transactions, are also brought under parallel California
15 law, whose goals are closely tied with the ADA, including but not limited to violations of
16 California Civil Code §51, *et seq.* and §54, *et seq.*, California Health & Safety Code §19955 *et*
17 *seq.*, including §19959; and California Building Code.

18 **Venue:** Venue is proper in this court pursuant to 28 U.S.C. §1391(b) and is founded on
19 the facts that the real property which is the subject of this action is located at/near 19315
20 Highway 12, in the City of Sonoma, County of Sonoma, State of California, and that plaintiff's
21 causes of action arose in this county.

22 **Status of Service of Process:**

23 All parties to the action have been served.

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1 **2. BRIEF DESCRIPTION OF CASE/FACTS**

2 **Plaintiff's Position:**

3 This is an action brought by Plaintiff IRMA RAMIREZ and claimant Daren Heatherly
4 for discrimination based upon the defendants alleged failure to comply with the Americans with
5 Disabilities Act of 1990 (ADA), 42 U.S.C. §12101, *et seq.*, the Unruh Civil Rights Act, Cal. Civ.
6 Code §§51 and 51.5, California Health & Safety Code §19955, *et seq.*, and the California
7 Disabled Persons Act, Cal. Civ. Code §§54, 54.1 and 54.3, all of which relate to the denial of
8 access to a place of public accommodation. Plaintiff IRMA RAMIREZ and claimant Daren
9 Heatherly each is a person with physical disabilities who, on or about August 14, 2014 and April
10 29, 2015 and (“**deterred thereafter**”), was an invitee, guest, patron, customer at defendants’
11 PLAZA TEQUILA TAQUERIA, in the City of Sonoma, California. At said times and place,
12 defendants failed to provide proper legal access to the plaza, which is a “public accommodation”
13 and/or a “public facility” including, but not limited to entrance, dining areas, signage, men’s
14 restroom, women’s restroom. The denial of access was in violation of both federal and
15 California legal requirements, and plaintiff IRMA RAMIREZ and claimant Daren Heatherly
16 each suffered violation of their civil rights to full and equal access, and was embarrassed and
17 humiliated.

18 **Defendant APENA CORP’S Position:**

19 Luis Acosta and Alejandro Cruz took over operation of an existing restaurant in Sonoma,
20 Sonoma County, California by way of an assignment of lease on September 11, 2012. Defendant
21 APENA CORP is not connected with this lease. In April 2008 the plaintiff appears to have
22 written to both the tenant at an earlier business known as Amigos Grill and the owner of the
23 restaurant building, presumably Mr. and Mrs. GIANNIS, and the recipients of this letter did not
24 bring the building up to ADA standards. When Acosta and Cruz took possession of the building
25 it was a very attractive restaurant. They had no idea that the building had ADA deficiencies or
26 that their new landlord had gone for 4 ½ years without responding to plaintiff’s demand for
27 compliance. The landlord crafted an assignment of lease document purporting to transfer
28 responsibility for ADA compliance to the tenant, but did not share with the new tenant the

1 landlord's knowledge that the building was not compliant and that a disabled person had sent a
2 written notification to the landlord that she could not use their public facilities and that she
3 wanted the owners and operators of the building bring it into compliance; *i.e.*, that if the building
4 were not brought into compliance, a lawsuit was looming on the horizon.

5 When Acosta learned of the lawsuit and of his obligation to comply with the Americans
6 with Disabilities Act, he engaged a knowledgeable architect to assess the building and
7 recommend improvements. As of the preparation of this Case Management Statement,
8 construction of compliant restrooms, implementation of proper signage, and modification of
9 tables and interior accommodations is nearly complete.

10 **Defendant GIANNIS's Position**

11 Defendants have corrected an violation of Applicable ADA laws and/or regulations.
12 What's left is the alleged personal injury claim of Plaintiffs. Plaintiffs have made similar claims
13 for personal injury against other businesses.

14 **3. PRINCIPAL LEGAL ISSUES IN DISPUTE**

15 **Plaintiff's Position:**

- 16 a. whether architectural barriers existed and/or continue to exist at Plaza
17 Tequila Taqueria which denied access to each plaintiff
- 18 b. whether the removal of architectural barriers was/is readily achievable;
- 19 c. whether each plaintiff encountered architectural barriers; and
- 20 d. whether as a legal result of encountering architectural barriers each
21 plaintiff was discriminated against and suffered injury.

22 **Defendant APENA CORP's Position:**

- 23 a. Inasmuch as Acosta commenced repairs before he was ever served (APENA is
24 not a proper party defendant) , whether a cause of action against the tenant of
25 the restaurant lies;
- 26 b. Whether any language of the lease purporting to separate the landlord from its
27 obligations under the ADA is effective against the tenant since the cause of
28 action accrued over four years before the tenant took possession under the
lease; and

1 c. Whether the failure of the landlord to notify the tenant that the landlord was on
2 written notice of the building and business's non-compliance operates as an
3 estoppel against the landlord for making any indemnity claim against the
4 tenant, though this issue is not set out in the pleadings at this point.

5 **Defendant GIANNIS's Position:**

6 a-c. Contractor has effect changes correcting any such issues.

7 d. Agree. This is the extent of any such injury at issue.

8 **4. MOTIONS**

9 **Plaintiff's Position:**

10 Plaintiff does not anticipate filing any motions at this time.

11 **Defendant(s) Position:**

12 Defendants do not anticipate filing any motion at this time.

13 **5. AMENDMENT OF PLEADINGS**

14 **Plaintiff's Position:**

15 Plaintiff does not anticipate any further amendments to the pleadings at this time.

16 **Defendant(s) Position**

17 Defendants do not anticipate any further amendments to the pleadings at this time.

18 **6. EVIDENCE PRESERVATION**

19 **Plaintiff's Position:**

20 No issues anticipated.

21 **Defendant(s) Position:**

22 **No issues anticipated anticipated for defendants**

23 **7. DISCLOSURES**

24 **Plaintiff's Position:**

25 The parties have exchanged their Rule 26 Initial Disclosures.

26 //

1 **Defendant(s) Position:**

2 Agreed.

3 **8. DISCOVERY**

4 **Plaintiff's Position:**

5 The parties conducted the General Order 56 Joint Site Inspection on December 10, 2015.

6 **Defendant APENA CORP's Position:**

7 Not known until after mediation.

8 **Defendant GIANNIS's Position:**

9 Depositions of Plaintiffs if current efforts to resolve fail. In addition, subpoena
10 medical records and possible IME for each Plaintiff. Possible treating MD depositions.
11

12 **9. CLASS ACTION**

13 Not Applicable.

14 **10. RELATED CASES**

15 **Plaintiff's Position:**

16 Not Applicable.

17 **Defendant(s) Position:**

18 Not Applicable.

19 **11. RELIEF**

20 **Plaintiffs' Position:**

21 Plaintiff seeks injunctive relief to compel defendant to make their public
22 accommodation accessible pursuant to ADAAG or the California Building Code, whichever is
23 more restrictive, and to further maintain access in the future. Plaintiff also seeks actual damages
24 and attorney's fees, costs, and litigation expenses.
25

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1 **Defendant APENA CORP's Position:**

2 At the site inspection Luis Acosta understands that an agreement has been made with
3 regard to bringing the building and business into ADA compliance. As to the monetary relief
4 demanded, it is this answering defendant's position that because of the violations that predated the
5 Acosta occupancy this is a matter between plaintiff and defendants GIANNIS.
6

7 **Defendant GIANNIS's Position:**

8 This defendant has a contractual claim for defense indemnity against Apnea Corp.
9 dba Plaza Tequila Taqueria.
10

11 **12. SETTLEMENT/ADR**

12 **Plaintiff's Position:**

13 A formal demand was made on January 29, 2016. Case has been referred to mediation.
14

15 **Defendant APENA CORP's Position:**

16 Defendants will participate in mediation.

17 **Defendant GIANNIS's Position:**

18 This defendant has been informed that corrections have been made. This defendant
19 believes Plaintiff's settlement demand is excessive.

20 **13. MAGISTRATE JUDGE TRIALS**

21 **Plaintiff's Position:**

22 Plaintiff consents to proceed before a Magistrate Judge for trial purposes except for
23 Judge Ryu.

24 **Defendant(s) Position:**

25 Defendant does not consent to a Magistrate Judge.

26 **14. OTHER REFERENCES**

27 **Plaintiff's Position:**

28 Not applicable.

1 **Defendant(s) Position:**

2 Not applicable.

3 **15. NARROWING OF ISSUES**

4 **Plaintiff's Position:**

5 None at this time.

6 **Defendant APENA CORP's Position:**

7 None at this time.

8 **Defendant GIANNIS's Position:**

9 Plaintiff to formally stipulate that premises in question are now in compliance. **16.**

10 **EXPEDITED SCHEDULE**

11 **Plaintiffs' Position:**

12 Not applicable.

13 **Defendant(s) Position:**

14 Not applicable.

15 **17. SCHEDULING:**

16 **Plaintiff's Proposed Schedule:**

17 Disclosure of Expert Witness: September 11, 2016

18 Discovery Cut-off: October 2, 2016

19 Last Day to Hear Motions: November 6, 2016

20 Final Pretrial Conference: January 23, 2017

21 Trial Date: February 7, 2017

22 **Defendant(s) Proposed Schedule:**

23 Defendants are acceptable.

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25 //

26 //

1 **18. TRIAL**

2 **Plaintiff's anticipated length of trial:** 1-2 days

3 **Type of trial:** X jury ___ - court

4 Defendants' anticipated length of trial: 3-4 days

5 **Type of trial:** X jury ___ - court

6 **19. NON-PARTY INTERESTED PERSONS**

7 **Plaintiff's Position:**

8 Plaintiff is unaware of any non-party interested persons or entities at this time.

9 **Defendant APENA CORP's Position:**

10 Same as plaintiff .

11 **Defendant GIANNIS's Position:**

12 Not applicable.

13 **20. OTHER MATTERS**

14 **Plaintiffs' Position:**

15 The parties are unaware of any additional matters that will facilitate the just, speedy and
16 inexpensive disposition of this matter at this time.

17 Dated: February 11, 2016

18 THOMAS E. FRANKOVICH, ESQ.
19 A PROFESSIONAL LAW CORPORATION

20 By: /s/ Thomas E. Frankovich
21 Thomas E. Frankovich
22 Attorney for Plaintiff

23 Dated: February 11, 2016

24 ATTORNEY AT LAW

25 By: /s/ Marvin Pederson
26 Marvin Pederson
27 Attorney for Defendant Apena Corp.

28 //

1 Dated: February 11, 2016

DICKENSON, PEATMAN & FOGARTY, P.C.

2
3 By: /s/ John F. Van De Poel
4 John F. Van De Poel
5 Attorney for Defendants Demetrios Giannis and
6 Rose Giannis

7 IT IS SO ORDERED. The CMC is reset from 2/18/16 to 6/16/16
8 at 9:30 a.m. An updated joint CMC statement shall be filed
9 by 6/9/16.

10 _____
11 Edward M. Chen
12 U.S. District Judge

