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IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MAURIZIO ANTONINETTI

Plaintiff,

vs.

CHIPOTLE MEXICAN GRILL, INC. and DOES
1 THROUGH 10, Inclusive,

Defendants.

Case No.: 05 CV 1660 J (WMc)

PLAINTIFF’S TRIAL BRIEF

Trial Date: November 27, 2007

Time: 8:00 a.m.

Courtroom: 12

Judge: The Honorable Napoleon
A. Jones, Jr.

Plaintiff MAURIZIO ANTONINETTI hereby submits his Trial Brief, setting forth his theories of the case and what he expects the evidence to show, pursuant to the Court’s Order Re: Trial, Document No. 156, 2:26-27.

I.

BACKGROUND

Defendant Chipotle Mexican Grill, Inc. (“Chipotle”) operates a national chain of fast-food Mexican restaurants, including the two restaurants at issue in this case. The restaurants are designed so that standing customers can see into the food preparation area and can see not only the ingredients available for selection, but the actual construction of their entrees and the entrees of other customers. This enables standing customers to customize their burritos because they can see the amount of ingredients being placed on their entrees. This also enables standing customers to see simultaneously all of the 16 ingredients from which to choose, which are displayed in

1 bountiful, appetizing quantities.

2 Chipotle has specific standards for appearance of its ingredients. Chipotle values
3 and emphasizes the appearance of its food and the freshness of its ingredients. Chipotle
4 also values and emphasizes that its food is served “fast”.

5 The food preparation area consists of manufactured equipment, the top of which
6 is at a height of approximately 34 inches from the finished floor. In front to the food
7 preparation area, Chipotle constructed an independent wall which obstructs the view of
8 the preparation area to a height of 46 inches from the finished floor. The average eye
9 level of a person in a wheelchair is 43 to 51 inches from the finished floor. People in
10 wheelchairs, with eye levels within this range, cannot see the food items on display, nor
11 can they see the preparation of their entrees made in the food preparation area.

12 Chipotle intends for its standing customers to see the bins of ingredients and to
13 watch the making of their entrees. Chipotle specifically included a transparent sneeze
14 guard into the design of the wall in front of the food preparation area.

15 Plaintiff has never been provided the opportunity to see the assembly of his
16 entree at any Chipotle restaurant. Prior to October 6, 2006, on at least four occasions,
17 Plaintiff was not shown any ingredients available for selection, nor was he provided the
18 opportunity to see the assembly of his entree.

19 At the formal site inspections of October 6, 2006, Plaintiff, again, was never
20 provided the opportunity to see the display of large bins of food. Again, he was never
21 provided the opportunity to see the amount of ingredients placed on his entree. Again,
22 he was never provided the opportunity to see the making of his entree. Instead, he was
23 simply shown small samples of food by Chipotle employees. The samples were shown
24 to Plaintiff in thin, plastic cups, by lifting spoonfuls, tongfuls or handfuls of food. He
25 was only shown food items when he asked to see them.

26 Chipotle contends that it is not required to lower the offending wall. Chipotle
27 contends that, despite the fact that the wall obstructs the view of the food preparation
28 area for people in wheelchairs, Chipotle has had, and continues to have, a policy of

1 accommodating people with disabilities (“the Policy”). Pursuant to the Policy, Chipotle
2 employees are allowed to show people in wheelchairs small samples of food by various
3 methods. Chipotle further contends that the Policy allows employees to assemble
4 entrees in front of customers in wheelchairs by taking trays of ingredients to the cashier
5 counter or to a dining table.

6 Plaintiff contends the Policy is simply “improvised access” which is inadequate
7 because it does not provide people in wheelchairs with the same benefits, advantages,
8 privileges, goods or services as are provided to non-disabled customers. Plaintiff
9 contends that the offensive wall must be lowered to a height which will allow people in
10 wheelchairs the same opportunities, goods and services, as are provided by Chipotle to
11 its non-disabled customers.

12 II.

13 PLAINTIFF’S THEORIES OF THE CASE

14 i. **Plaintiff Does not Abandon Legal Arguments Previously** 15 **Addressed by the Court.**

16 By limiting his Trial Brief to the issues, theories and evidence contained herein,
17 Plaintiff does not intend to, nor does he, abandon his legal arguments relative to
18 Chipotle’s Policy, the applicability of various sections of the ADAAG, or any other
19 issues that were previously ruled upon by the Court in this case. While Plaintiff will
20 not address those arguments and issues herein, he specifically reserves those issues for
21 appeal.

22 ii. **The Plaintiff is Entitled to Receive the Same Benefits,** 23 **Privileges, Accommodations, Goods and Services as** 24 **Other Standing Customers.**

25 Assuming arguendo that Chipotle is entitled to rely on the “equivalent
26 facilitation” option under ADAAG Sec. 7.2(2)(iii), Chipotle must establish that its
27 Policy of accommodation satisfies the definition of “equivalent facilitation.” ADAAG
28 Section 2.2 defines “equivalent facilitation” as follows:

“Departures from particular technical and scoping requirements of

1 this guideline by the use of other designs and technologies are
2 permitted where the alternative designs and technologies used will
3 provide substantially equivalent or greater access to and usability
4 of the facility.”

5 The “equivalency” of the facilitation must be considered in light of the goods,
6 services, facilities, benefits, privileges and accommodations that are being provided by
7 the public accommodation to the general public. That is, one must first determine the
8 standard to which the facilitation is to be compared in order to determine if that
9 facilitation is equivalent. Plaintiff is entitled to ALL of the benefits, services, goods,
10 privileges, accommodations, advantages and facilities which are made available to the
11 general public.

12 Properly read, the "Equivalent Facilitation" provision does not allow facilities to
13 deny access under certain circumstances, but instead allows facilities to bypass the
14 technical requirements laid out in the Standards when alternative designs will provide
15 "equivalent or greater access to and usability of the facility." *Caruso v. Blockbuster-Sony*
16 *Music Entertainment Centre*, 193 F.3d 730, 739 (3rd Cir. 1999)

17 The language of Title III itself precludes a reading of the "Equivalent
18 Facilitation" provision that would allow public accommodations to provide separate
19 benefits or unintegrated benefits. *Caruso v. Blockbuster-Sony Music Entertainment*
20 *Centre*, 193 F.3d 730, 739 (3rd Cir. 1999), citing 42 U.S.C. § 12182(b)(1)(A)(iii)
21 (discriminatory to provide a separate benefit unless necessary to provide equal benefit);
22 id. at (b)(1)(B) (benefits of a public accommodation must be provided in the most
23 integrated setting appropriate to the needs of the individual).

24 The plain language of Title III also precludes a reading of “Equivalent
25 Facilitation” that would allow public accommodations to provide a different benefit to
26 people with disabilities. (See, *Caruso v. Blockbuster-Sony Music Entertainment Centre*,
27 193 F.3d 730, 740 (3rd Cir. 1999), citing See 42 U.S.C. § 12182(b)(1)(c)
28 ("Notwithstanding the existence of separate or *different* programs or activities . . . an
individual with a disability shall not be denied the opportunity to participate in such

1 programs or activities that are not separate or *different.*".))

2 **iii. Plaintiff is Denied Access to and Usability of the**
3 **Food Viewing Area.**

4 Chipotle's Policy fails to meet the standard of "equivalent facilitation" because it
5 denies people in wheelchairs, including Plaintiff, with substantially equal access to and
6 usability of the food preparation area of the facility. Plaintiff's entitlement to access is
7 not limited to just the interior of the restaurant. Rather, he is entitled to access to all
8 elements of the facility if they are made available to the general public, including the
9 restrooms, the dining area *and* the food preparation area. If Chipotle wishes to design
10 the wall so that it blocks the view of wheelchair users, it must show that it has provided
11 some other means for people to access the food viewing area, in a substantially
12 equivalent way.

13 Standing customers have access to the food preparation area. They can
14 simultaneously see all of the bountiful bins of ingredients available for selection. They
15 can see the making of their entrees in a quick manner. Standing customers do not go to
16 the cashier counter or to the dining area to see the making of their burrito.

17 Rather than provide an alternative manner of accessing the food preparation
18 area, the Policy simply provides people in wheelchairs with access to completely
19 different benefits, goods and services. It provides access only to small samples of food,
20 shown one at a time, or displayed at the cashier counter or in the dining area.

21 People in wheelchairs are completely denied access to the food preparation area
22 and, instead, have access only as far as the wall in front of the food preparation area.
23 They must go to the cashier counter or the dining area to see their entrees assembled
24 from small cups of food samples. Thus, the Policy fails to provide equal access to the
25 food preparation area of the facility.

26 The Policy also fails to meet the standard of "equivalent facilitation" because it
27 does not provide equivalent usability of the facility for wheelchair users. Standing
28 customers are able to utilize the food preparation area to enhance their gastronomic

1 enjoyment by viewing large quantities of food. They also utilize the food preparation
2 area to judge the freshness of the food and to determine the quantities of ingredients
3 placed on their entree, which enables them to “customize” their entrees. Standing
4 customers are provided these opportunities and benefits without having to ask for them.

5 Customers in wheelchairs cannot utilize the facility in the same way. Pursuant to
6 the Policy, they are shown only small amounts of ingredients, one at a time, which fails
7 to enhance the enjoyment of the food. Customers in wheelchairs cannot utilize the
8 facility to determine the quantities of food placed on their entrees and, therefore, cannot
9 customize their entrees. The small samples of food do not afford Plaintiff the ability to
10 judge the freshness of the food. Showing him small samples, one at a time, does not
11 allow him the opportunity to simultaneously compare ingredients to each other.

12 **iv. The Benefits, Privileges, Accommodations, Goods and Services**
13 **Provided to Plaintiff are Different Than Those Provided to Standing**
14 **Customers and are Presented in Non-Integrated, Separate Settings.**

15 Chipotle provides standing customers the opportunity to see the available
16 ingredients and the making of their burrito as they traverse the food service line.
17 Standing customers follow one another down the line as they see, select and direct the
18 making of their entrees. The ordering process is quick.

19 Plaintiff, and people in wheelchairs, are provided with different benefits, services
20 and goods. Small samples of food, shown in cups, by tongfuls, spoonfuls or by
21 handfuls is clearly different than large, steaming bins of food. These benefits, services,
22 etc. are provided at the cashier counter or in the dining area. This is separate from and
23 non-integrated with the food service line utilized by standing customers, which is
24 available to the general public.

25 **v. It is not “Full and Equal Access” if a Person with a Disability Simply**
26 **Receives an Entree, Without the Opportunity to Participate**
27 **In and Receive the Advantages, Privileges and Accommodations**
28 **Which are Part of the “Chipotle Experience”.**

“Title III of the ADA protects individuals against discrimination” on the basis of
disability in the full and equal enjoyment of the goods, services, facilities, privileges,

1 advantages, or accommodations of any place of public accommodation." 42 U.S.C. §
2 12182(a). Title III requires that newly constructed facilities be "readily accessible to
3 and usable by individuals with disabilities, except where an entity can demonstrate that
4 it is structurally impracticable." 42 U.S.C. § 12183. In order to carry out these
5 provisions, Congress has directed the Department of Justice (DOJ) to "issue regulations
6 . . . that include standards applicable to facilities" covered by Title III. 42 U.S.C.
7 12186(b)." *Caruso v. Blockbuster-Sony Music Entertainment Centre*, 193 F.3d 730,
8 731 (3rd Cir. 1999)

9 The regulations of the ADAAG, then, including the definition of "Equivalent
10 Facilitation", must be interpreted in such a way that they provide full and equal
11 enjoyment of the goods and services, *as well as* the facilities, privileges, advantages, or
12 accommodations of any place of public accommodation.

13 The "Chipotle experience" is specifically intended to include the advantage of
14 being able to see all of the available food items, simultaneously, to have the privilege of
15 enjoying the appetizing appearance of the bountiful food, to have the advantage of
16 judging the freshness of the items, to have the privilege of "seeing, selecting and
17 directing" the making of a perfect burrito, to customize one's burrito or entree, to have
18 the advantage of being able to actually see the preparation of one's entree so that one
19 can order more or less of an ingredient and to have the privilege of getting one's food
20 "fast".

21 42 U.S.C. Sec. 12182(a), does not limit Chipotle's obligation to provide full and
22 equal access to simply its goods and services. It also requires full and equal
23 "**enjoyment**" of the "**facilities, privileges, advantages, or accommodations**" provided
24 by Chipotle. The opportunity to see tantalizing bins of food is a privilege, not a good or
25 service. The opportunity to "see, select and direct" the making of the perfect burrito is
26 an advantage, not a good or service. The opportunity to order and receive one's food
27 "fast", is also an advantage, not a benefit or service.

28 To satisfy the "equivalent facilitation" provision of ADAAG Sec. 2.2, Chipotle

1 must show that its Policy provides full and equal enjoyment of all that is embraced by
2 the ADA, including the privileges, advantages, accommodations provided by the
3 Chipotle experience.

4 Further, Chipotle's Policy does not even provide full and equal access to the
5 goods and services available to the general public. Plaintiff did not receive a
6 customized entree because he could not see the portions of ingredients placed into his
7 burrito. He recieved different services because he was shown small smaples of food
8 rather than the bountiful displays available to standing customers.

9 **vi. Plaintiff is Entitled to Damages Because He Was**
10 **Not Provided "Full and Equal Access" to Defendant's**
11 **Goods, Services, Accommodations, Benefits, Privileges.**

12 Proof of actual damages is not required to recover statutory damages under Civil
13 Code Section 54.3 (See, e.g. *Botosan v. McNally Realty*, 216 F.3d 827 (9th Cir. 2000).)
14 Plaintiff need only show that he was denied full and equal access to the Chipotle
15 experience. Even if the Policy does constitute "equivalent facilitation", Plaintiff is still
16 entitled to damages because the Policy was not fully implemented with respect to his
17 visits. That is, Plaintiff was denied any opportunity to see food items on at least four
18 separate visits, which took place prior to the site inspections. Moreover, on all visits to
19 Chipotle, including the site inspections, he was denied the opportunity to see the making
20 of his entree. He, therefore, was denied the opportunity to customize his burrito and/or
21 to see food ingredients despite the existence of the Policy.

22 **vii. Plaintiff is Entitled to Injunctive Relief Requiring**
23 **Chipotle to Lower The Walls, Which is The Only Way to Provide**
24 **"Full and Equal Access to Defendant's Facilities.**

25 Chipotle's ongoing Policy coupled with Plaintiff's past injury establishes a "real
26 and immediate threat" of his injury occurring again. See *Pickern v. Holiday Quality*
27 *Foods, Inc.*, 293 F.3d 1133, 1138 (9th Cir. 2002).

28 The Policy is defective, insufficient and discriminatory because it provides
access for people in wheelchairs only to benefits, accommodations, privileges,
advantages, goods and services which are different, from those provided to standing

1 customers, and which are separate and non-integrated with those provided to standing
2 customers.

3 The Policy is also defective, insufficient and discriminatory because it allows
4 employees to make subjective decisions about when, if and how the Policy will actually
5 be implemented. Verbal or written descriptions of food and pictures of food do not
6 allow customers to judge the freshness of the ingredients or to determine whether the
7 ingredients are appetizing. The only way that Plaintiff will be provided full and equal
8 access, uniformly and consistently, is to require Chipotle to lower the wall.

9 **III.**

10 **THE EVIDENCE**

11 In addition to the admitted facts which require no proof, Plaintiff expects that the
12 evidence will show:

13 1. On his visits, Plaintiff told Chipotle crew members that he could not see
14 over the wall.

15 2. Chipotle crew members never offered accommodations to Plaintiff during
16 any of his visits. Instead, no accommodations of any kind were provided to Plaintiff
17 until he asked for them.

18 3. Plaintiff could not see over the wall and, therefore, had no idea that any
19 accommodations were available, let alone possible.

20 4. Chipotle employees are trained that it is important for customers to be
21 able to see the making of their entrees.

22 5. Chipotle designed the wall in front of the food preparation counter to
23 include a transparent sneeze guard, which allows standing customers to see the
24 ingredients available and the making of their entrees.

25 6. The wall obstructs the view of the average wheelchair users, including
26 Plaintiff.

27 7. Chipotle provides its standing customers with the opportunity to see their
28 entrees built right before their eyes.

1 8. Plaintiff was never provided the opportunity to watch the making of his
2 entree, or to see his entree built right before his eyes. He never saw his burrito
3 assembled.

4 9. It is typical that standing customers will watch the amount of ingredients
5 being put into their entrees.

6 10. Plaintiff was never provided the opportunity to see the amount of the
7 ingredients placed in his entrees so he never had an effective opportunity to ask for
8 more or less of an ingredient. He was never provided the opportunity to fully customize
9 his entrees.

10 11. It is not uncommon that standing customers will ask for a little bit more or
11 less of an ingredient. Standing customers can see the size of the portion already
12 provided.

13 12. Employees are taught that appearance of the food is very important and
14 seeing the food is also an important part of the "Chipotle experience." (This is not to
15 be contested per PTC, no. 54, but also appears as contested issue at no.72.)

16 13. In fact, regular inspections are made of the food to ensure the appearance
17 is up to Chipotle standards.

18 14. Chipotle teaches its employees that the appearance of food greatly
19 influences the perception of the food. It wants its customers to see "visually fresh"
20 food.

21 15. Plaintiff has never been provided an opportunity to determine if the
22 ingredients appear visually fresh.

23 16. As customers place their orders, Chipotle employees are supposed to
24 repeat the order back to the customer and to point to the items the customers has
25 ordered. This correlates the description on the menu board with the food on the line.
26 This is important because some people are visual eaters and "if it looks good then
27 they'll want it."

28 17. On numerous occasions, Plaintiff was not been provided an opportunity to

1 see any portion of the ingredients and, therefore, had no opportunity to correlate the
2 description on the menu board with the food in the line.

3 18. The beans are inspected to determine if they have a hardened crust and are
4 too old to still be on the line. A crust could effect the customer's evaluation of the food.
5 Standing customers can instantaneously make a decision to decline the crusty beans.

6 19. Showing Plaintiff samples of food in spoons does not allow him the
7 opportunity to judge the freshness of the food - he cannot see if beans are crusty or the
8 barbacoa is dry, for example.

9 20. Mr. Antoninetti was only shown food items one at a time, by spoonfuls,
10 handfuls or in small plastic cups during the site inspections of October 6, 2006. This
11 method is unappetizing and does not allow him to determine the freshness of the food,
12 the elements of a particular ingredient (i.e. whether there are chunks of bacon in the
13 pinto beans) or whether one item is more appetizing in comparison to another item..

14 21. Showing Antoninetti food items in cups, by spoonfuls, by tongfuls and
15 handfuls significantly extended the amount of time to serve Mr. Antoninetti. The delay
16 is embarrassing to Plaintiff.

17 22. Antoninetti visited local Chipotle 2 times before his lawsuit and has
18 returned to Chipotle at least 4 times, including the site inspection.

19 23. Chipotle intends to serve all of its customers fast.

20 24. It may take five minutes for a Chipotle employee to bring ingredients to a
21 separate table so that a customer in a wheelchair could have the experience of having
22 their burrito built right before their eyes.

23 25. Chipotle employees are taught that burritos are made right in front of the
24 customers and the customers get to see and select exactly what goes into their burritos.
25 This is part of the "Chipotle experience" and this is what makes Chipotle different from
26 other fast food Mexican restaurants.

27 26. The menu board fails to accurately or adequately describe all of the items
28 available for selection.

1 27. Standing customers have the opportunity to customize their burrito
2 pursuant to their individual preferences.

3 28. Plaintiff was never able to choose exactly what he wanted in his burrito.

4 29. Customers may make select their type of entree by looking at the large
5 menu hung above the counter. Standing customers then typically look at the bins of
6 ingredients when selecting the actual ingredients and the amounts of ingredients to be
7 placed in their entree. They can see the freshness and quality of the ingredients. They
8 see large bins of appetizing ingredients. They can see all of the ingredients
9 simultaneously and can compare one ingredient to another. Standing customers can
10 customize their entrees.

11 30. Plaintiff selected his types of entrees by looking at the menu board at the
12 restaurants. However, Plaintiff was unable to see the ingredients and had no
13 opportunity to judge their freshness or to see the amount of the ingredients placed on his
14 entree. He, therefore, was not able to customize his entrees.

15 31. All standing customers are able to direct the making of their entree.

16 32. Plaintiff was not able to direct the making of his entree.

17 33. The “Chipotle Experience” involves customers following their burritos as
18 they’re being made and directing what they want in their burritos. One of the “great
19 things about Chipotle” is that customers follow their food items as they’re being
20 prepared and they direct what goes into their burrito.

21 34. Chipotle recognizes that customers want their food fast and Chipotle tries
22 to provide high quality food fast so that the customers have “instant gratification”.

23 35. Chipotle tracks the number of transactions during a given time frame.

24 36. The La Jolla Chipotle typically has 120 to 150 transactions per hour.

25 37. The Encinitas Chipotle has about 84 customers going through the line
26 from noon to 1:00 p.m. Customers are served in less than one minute.

27 38. Employees are taught that customers love to interact and watch closely as
28 their meal is put together.

1 39. The Pacific Beach Chipotle typically has 150 transactions during the
2 three-hour lunch period from 11:00 a.m. to 2:00 p.m. From 12:00 p.m. to 1:00 p.m.,
3 Pacific Beach has approximately 60 to 65 transactions, with an average of 70 to 80
4 customers being served in that hour.

5 40. Plaintiff's eye level is 45 inches. He could not see over the wall.

6 41. The Know contains everything you need to know to be a manager at
7 Chipotle. Managers are expected to convey to the crew members all of the information
8 in The Know that relates to customer service.

9 Respectfully submitted.

10 DATED: November 20, 2007

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