

1 Bill Lann Lee – CA State Bar No. 108452
Julia Campins – CA State Bar No. 238023
2 LEWIS, FEINBERG, LEE, RENAKER & JACKSON, P.C.
1330 Broadway, Suite 1800
3 Oakland, CA 94612
Telephone: (510) 839-6824
4 Facsimile: (510) 839-7839
Email: blee@lewisfeinberg.com
5 Email: jcampins@lewisfeinberg.com

6 Timothy P. Fox – CA State Bar No. 157750
Fox & Robertson, P.C.
7 3801 East Florida Ave., Suite 400
Denver, CO 80210
8 Telephone: (303) 595-9700
Facsimile & TTY: (877) 595-9706
9 Email: tfox@foxrob.com

10 [Additional Counsel Listed Below]

11 *Attorneys for Plaintiff*

12
13 IN THE UNITED STATES DISTRICT COURT
14 FOR THE NORTHERN DISTRICT OF CALIFORNIA

15 MIGUEL CASTANEDA on behalf of himself) Case No. _____
16 and others similarly situated,)
17 Plaintiff,) **COMPLAINT**
18 vs.) [CLASS ACTION]
19 BURGER KING CORPORATION and)
20 BURGER KING HOLDINGS, INC.,)
21 Defendants.)
22 _____)

23 **INTRODUCTION**

24 1. Burger King is a national corporation with approximately 90 restaurants in the
25 State of California that it leases and/or subleases to franchises. Although Burger King
26 COMPLAINT [CASE NO. _____]

1 (“the Unruh Act”), and the California Disabled Persons Act, Cal. Civ. Code, § 54, et seq. (the
2 “CDPA”).

3 6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.
4 §§ 1331, 1332 and 1343, and pursuant to its supplemental jurisdiction over Plaintiff’s claims
5 brought under the laws of the State of California. In addition, the matter in controversy here
6 exceeds \$5,000,000 and there are members of the proposed class who are citizens of states
7 different from Defendants. Therefore, this Court has diversity jurisdiction over the claims of
8 the class pursuant to 28 U.S.C. § 1332(d)(2).

9 7. The Court may grant declaratory and other relief pursuant to 28 U.S.C. §§ 2201
10 and 2202. Money damages alone are inadequate, and Plaintiff and class members suffer and
11 will continue to suffer irreparable injury.

12 8. Venue is proper within this District pursuant to 28 U.S.C. § 1391(b).

13 **INTRADISTRICT ASSIGNMENT**

14 9. This action arises in Contra Costa County and thus should be assigned to the
15 San Francisco or Oakland Division.

16 **PARTIES**

17 10. Plaintiff Miguel Castaneda is and has been at all times material hereto a resident
18 of the State of California. Plaintiff Castaneda is a person with incomplete quadriplegia who
19 uses a wheelchair for mobility. He has a disability within the meaning of the ADA, 42 U.S.C.
20 § 12102(2)(A), and a physical disability as that term is defined in applicable California law,
21 including California Government Code section 12926. Plaintiff Castaneda has patronized
22 Burger King restaurants in California in the past and intends to continue to patronize those
23 restaurants in the future.

24 11. Defendant Burger King Holdings, Inc. (BKH) is a corporation incorporated
25 under the laws of Delaware. BKH is registered with the Florida Secretary of State as having its

26 COMPLAINT [CASE NO. _____]

1 principal place of business at 5505 Blue Lagoon Drive, Miami, Florida 33126. BKH is the
2 parent corporation of Burger King Corporation (BKC), a corporation incorporated under the
3 laws of Florida, with its principal place of business at 5505 Blue Lagoon Drive, Miami, Florida
4 33126. BKC franchises, leases (or leases to), and operates fast food hamburger restaurants,
5 principally under the Burger King brand, in California.

6 12. BKH and BKC both operate out of the same office in Miami, Florida. They also
7 share many directors and officers. BKH and BKC (collectively “Burger King”) together
8 operate or control Burger King restaurants throughout the country. This action concerns the
9 approximately 90 Burger King restaurants in California that Burger King leases to or from
10 other entities (“California Restaurants”).

11 **CLASS ACTION ALLEGATIONS**

12 13. Plaintiff Castaneda seeks to maintain this action as a class action under Rule
13 23(b)(2) and/or Rule 23(b)(3) of the Federal Rules of Civil Procedure. The class consists of all
14 individuals with manual and/or mobility disabilities who use wheelchairs or electric scooters
15 and who were denied during the liability period, or are currently being denied, on the basis of
16 disability, full and equal enjoyment of the goods, services, facilities, privileges, advantages, or
17 accommodations in any California Restaurant.

18 14. The class identified in paragraph 13 is believed to consist of at least several
19 thousand members who are dispersed across the State of California. Joinder of all of such class
20 members in this lawsuit is impracticable.

21 15. There are numerous questions of law and fact common to the class, including
22 without limitation, the following:

- 23 a. Whether Burger King’s California Restaurants are “public
24 accommodations” under the ADA;
- 25 b. Whether Burger King’s California Restaurants are “business

26 COMPLAINT [CASE NO. _____]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

- establishments” under the Unruh Act;
- c. Whether Burger King’s California Restaurants are “places of public accommodation” or “places to which the general public is invited” under the CDPA;
- d. Whether Defendants in their California Restaurants deny the full and equal enjoyment of their goods, services, facilities, privileges, advantages, or accommodations to people who use wheelchairs in violation of the ADA;
- e. Whether Defendants in their California Restaurants deny full and equal accommodations, advantages, facilities, privileges, or services to people who use wheelchairs, in violation of the Unruh Act;
- f. Whether Defendants in their California Restaurants deny full and equal access to accommodations, advantages and facilities to people who use wheelchairs, in violation of the CDPA;
- g. Whether alleged violations of the ADA create independent violations of the Unruh Act and the CDPA;
- h. What measures are legally required to bring Burger King’s California Restaurants into compliance with the ADA, the Unruh Act and the CDPA; and
- i. Whether the design features at issue in this case -- which exist at many Burger King restaurants -- violate state or federal law.

16. The Plaintiff’s claims are typical of the claims of the members of the class. He -- like all other members of the class -- uses a wheelchair or scooter for mobility and claims that Burger King has violated the ADA, the Unruh Act, and/or the CDPA by failing to make the California Restaurants accessible to the class of people who use wheelchairs or scooters.

1 whole or in part.

2 24. These 90 restaurants influence how the approximately 500 other Burger King
3 restaurants in California are operated.

4 25. Some or all of the California Restaurants, on information and belief, were built
5 according to one of a limited number of architectural design prototypes developed by Burger
6 King. As such, the discriminatory design features encountered by Plaintiffs, as described and
7 alleged below, recur in the California Restaurants.

8 26. In addition, on information and belief, Burger King exercises substantial control
9 over some or all of the California Restaurants, including control over the development, design,
10 alteration, remodel, maintenance, and operation of such restaurants.

11 27. For example, on information and belief, Burger King has entered into
12 development agreements requiring construction of some or all of the California Restaurants in
13 accordance with Burger King's latest designs.

14 28. On information and belief, Burger King has provided building plans and
15 specifications used to construct some or all of the California Restaurants.

16 29. On information and belief, Burger King's construction teams have aided in
17 designing and building some or all of the California Restaurants.

18 30. On information and belief, some or all of the California Restaurants were
19 contractually required to be, and were, remodeled in conformance with Burger King's
20 construction and design plans and specifications.

21 31. On information and belief, some or all of the California Restaurants engaged in
22 "re-imaging" programs, performed in accordance with Burger King's designs and
23 specifications.

24 32. On information and belief, some or all California Restaurants are required to
25 comply with Burger King's Manual of Operating Data ("MOD"), which contains official

26 COMPLAINT [CASE NO. _____]

1 mandatory restaurant operating standards, specifications and procedures.

2 33. On information and belief, the MOD contains highly detailed requirements for
3 the operation, design, signage, interior decor, equipment systems, and various other items in
4 Burger King restaurants.

5 34. On information and belief, some or all Burger King's California Restaurants are
6 required to be repaired and maintained in accordance with standards established and controlled
7 by Burger King.

8 35. On information and belief, by contract, the employee training programs in some
9 or all of Burger King's California Restaurants must conform to training standards and
10 procedures prescribed by Burger King.

11 36. On information and belief, Burger King conducts scheduled and unscheduled
12 inspections of some or all of the California Restaurants to ensure that they are being operated
13 in compliance with the various operational and other requirements set forth herein.

14 37. Since January 26, 1992, the date when the ADA regulations governing
15 alterations went into effect, some or all of the California Restaurants have undergone
16 alterations, as that term is used in the ADA, that affected, or could have affected, the usability
17 of part or all of those restaurants.

18 38. Since July 1, 1970, the date when California state access regulations went into
19 effect, some or all of the California Restaurants have undergone alterations, structural repairs
20 and/or additions, as those terms are used in California law, including without limitation Cal.
21 Health & Safety Code § 19959.

22 39. In 1997, Burger King settled Day v. Republic Foods, Inc., No. 95-1317CV
23 (D.D.C.), a case in which the U.S. Department of Justice submitted an amicus brief in support
24 of the plaintiff. The Day case alleged violations of the ADA parallel to those alleged in this
25 complaint. The settlement required Burger King to survey and remedy ADA violations in its

26 COMPLAINT [CASE NO. _____]

1 corporate-owned restaurants throughout the country, to notify franchisees of their obligation to
2 comply with the ADA, to provide franchisees with a survey instrument to survey their
3 restaurants, and to give franchisees training materials and free technical assistance in bringing
4 their restaurants in compliance with the ADA. Burger King therefore knew or should have
5 known of the requirements of the ADA and its failure, to that date, to comply with those
6 requirements.

7 40. In addition, in the 1990s, the Department of Justice reached a highly publicized
8 settlement with the Wendy's restaurant chain, which made clear that the Department of Justice
9 believed that inaccessible queue lines -- such as those found in many of Burger King's
10 California Restaurants -- violate the ADA, and required Wendy's to make its queue lines
11 accessible.

12 41. Plaintiff Castaneda has patronized several Burger King restaurants in California,
13 including Burger King restaurants located at 677 Contra Costa Boulevard, in Pleasant Hill, and
14 2162 Railroad Avenue, in Pittsburg within the last twelve months. The Pleasant Hill and
15 Pittsburg restaurants, on information and belief, are leased to and/or from Burger King.

16 42. At Burger King's California Restaurants, Mr. Castaneda has encountered
17 numerous barriers to access, including for example entry and restroom doors that were very
18 difficult to open, parking lots with insufficient or inadequate accessible parking spots,
19 inaccessible restrooms, narrow or steep sidewalks/ramps, queue lines that were too narrow for
20 his wheelchair to navigate, and soda machines and condiments that were difficult for him to
21 reach.

22 43. These barriers to access have denied Mr. Castaneda full and equal access to, and
23 enjoyment of, the goods and services of Burger King, and have been frustrating and injurious to
24 Mr. Castaneda's dignity.

25 44. On information and belief, Burger King has engaged in intentional

26 COMPLAINT [CASE NO. _____]

1 discrimination, including but is not limited to:

- 2 a. designing, constructing, implementing and maintaining policies,
3 practices, procedures and barriers that discriminate against members of
4 the putative class with knowledge of such discrimination and/or
5 b. designing, constructing, implementing and maintaining policies,
6 practices, procedures and barriers that are sufficiently intuitive and/or
7 obvious as to constitute intentional conduct; and/or
8 c. failing to act in the face of the substantial likelihood of harm to class
9 members' rights protected under federal and state law.

10 **FIRST CLAIM FOR RELIEF**
11 **(Americans with Disabilities Act)**

12 45. Plaintiff realleges and incorporates by reference the allegations set forth in the
13 remainder of this Complaint as if fully set forth herein.

14 46. Title III of the ADA provides that "No individual shall be discriminated against
15 on the basis of disability in the full and equal enjoyment of the goods, services, facilities,
16 privileges, advantages, or accommodations of any place of public accommodation by any
17 person who owns, leases (or leases to), or operates a place of public accommodation." 42
18 U.S.C. § 12182(a).

19 47. Burger King's California Restaurants are leased to or from Burger King

20 48. Burger King's California Restaurants are places of public accommodation. 42
21 U.S.C. § 12181(7)(B).

22 49. Burger King has discriminated against Plaintiff and members of the proposed
23 class on the basis of disability. Burger King's discriminatory conduct includes but is not
24 limited to:

- 25 a. Discriminatory exclusion and/or denial of goods, services, facilities,

26 COMPLAINT [CASE NO. _____]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

- privileges, advantages, accommodations, and/or opportunities;
- b. Provision of goods, services, facilities, privileges, advantages, and/or accommodations that are not equal to those afforded non-disabled individuals;
- c. Failing to design and/or construct restaurants built for first occupancy after January 26, 1993 so that they are readily accessible to and usable by individuals with disabilities;
- d. Failing to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the restaurants altered after January 26, 1992, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs and scooters;
- e. Failing to make alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities;
- f. Failing to remove barriers to individuals with disabilities where it would be readily achievable to do so;
- g. Failing to make reasonable modifications in policies, practices, and/or procedures as necessary to afford the goods, services, facilities, privileges, advantages, and/or accommodations to individuals with disabilities; and/or
- h. Utilizing standards or criteria or methods of administration that have the effect of discriminating on the basis of disability, or that perpetuate the discrimination of franchisees who are subject to common administrative

1 control.

2 50. As such, Burger King discriminates and, in the absence of the injunction
3 requested herein, will continue in the future to discriminate against Plaintiff and members of
4 the proposed class on the basis of disability in the full and equal enjoyment of the goods,
5 services, facilities, privileges, advantages, accommodations and/or opportunities of Burger
6 King's California Restaurants in violation of Title III of the Americans with Disabilities Act,
7 42 U.S.C. § 12181 et seq. and/or its implementing regulations.

8 51. Burger King's violations of the ADA have harmed and will continue to harm
9 Plaintiff and members of the proposed class in the future.

10 52. Pursuant to the remedies, procedures, and rights set forth in 42 U.S.C. § 12188,
11 Plaintiff prays for judgment as set forth below.

12 **SECOND CLAIM FOR RELIEF**
13 **(Unruh Civil Rights Act and the Unruh Act's Incorporation of the ADA)**

14 53. Plaintiff realleges and incorporates by reference the allegations set forth in the
15 remainder of this Complaint as if fully set forth herein.

16 54. Burger King's California Restaurants are business establishments and, as such,
17 must comply with the provisions of the Unruh Act, Cal. Civ. Code, § 51, et seq. ("the Unruh
18 Act").

19 55. The Unruh Act guarantees, inter alia, that persons with disabilities are entitled to
20 full and equal accommodations, advantages, facilities, privileges, or services in all business
21 establishments of every kind whatsoever within the jurisdiction of the State of California. Cal.
22 Civ. Code, § 51(b).

23 56. The Unruh Act also provides that a violation of the ADA, or of California state
24 accessibility regulations, is a violation of the Unruh Act. Cal. Civ. Code, § 51(f).

25 57. Burger King has violated the Unruh Act by, inter alia, denying, or aiding or

1 inciting the denial of, Plaintiff's and class members' rights to the full and equal
2 accommodations, advantages, facilities, privileges, or services offered at Burger King's
3 California Restaurants.

4 58. Burger King has also violated the Unruh Act by denying, or aiding or inciting
5 the denial of, Plaintiff's and class members' rights to equal access arising from the provisions
6 of the California state accessibility regulations and the ADA.

7 59. Pursuant to the remedies, procedures, and rights set forth in Cal. Civ. Code § 52,
8 Plaintiff prays for judgment as set forth below.

9 **THIRD CLAIM FOR RELIEF**
10 **(California Disabled Persons Act and the CDPA's Incorporation of the ADA)**

11 60. Plaintiff realleges and incorporates by reference the allegations set forth in the
12 remainder of this Complaint as if fully set forth herein.

13 61. Burger King's California Restaurants are places of public accommodation
14 and/or places to which the general public is invited and, as such, are obligated to comply with
15 the provisions of the CDPA, Cal. Civ. Code, § 54, et seq.

16 62. The CDPA guarantees, inter alia, that persons with disabilities are entitled to
17 full and equal access, as other members of the general public, to accommodations, advantages,
18 facilities, and privileges of covered entities. Cal. Civ. Code § 54.1(a)(1).

19 63. The CDPA also provides that a violation of the ADA, or of California state
20 accessibility regulations, is a violation of the CDPA. Cal. Civ. Code § 54.1(d).

21 64. Burger King has violated the CDPA by, inter alia, denying and/or interfering
22 with Plaintiff's and class members' right to full and equal access as other members of the
23 general public to the accommodations, advantages, or facilities of Burger King's California
24 Restaurants.

25 65. Burger King has also violated the CDPA by denying and/or interfering with the

1 Plaintiff's and class members' rights to equal access arising from the provisions of the
2 California state accessibility regulations and the ADA.

3 66. Pursuant to the remedies, procedures, and rights set forth in California law,
4 including Cal. Civ. Code §§ 54.3 and 55, Plaintiff prays for judgment as set forth below.

5 **RELIEF**

6 WHEREFORE, Plaintiff respectfully requests:

- 7 1. That this Court assume jurisdiction.
- 8 2. That this Court certify the class identified in paragraph 13.
- 9 3. That this Court certify Plaintiff Castaneda as a representative of this class.
- 10 4. That this Court declare Defendant to be in violation of Title III of the Americans
11 with Disabilities Act, 42 U.S.C. § 12181, et seq. the Unruh Civil Rights Act, Cal. Civ. Code
12 § 51, et seq. and the California Disabled Persons Act, Cal. Civ. Code, § 54, et seq.
- 13 5. That this Court issue an injunction ordering Defendant to comply with the
14 statutes set forth herein.
- 15 6. That this Court award minimum statutory damages, defined as \$4,000 per
16 incident of discrimination under Unruh and \$1,000 per incident of discrimination under the
17 CDPA, to Plaintiff and members of the proposed class for violations of their civil rights under
18 state law.
- 19 7. That this Court award Plaintiff's reasonable attorneys' fees and costs pursuant to
20 federal and California law.
- 21 8. That this Court award such additional or alternative relief as may be just, proper
22 and equitable.

23 **DEMAND FOR JURY TRIAL**

24 Plaintiff demands a jury on all issues which can be heard by a jury.

25
26 COMPLAINT [CASE NO. _____]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Dated: September 10, 2008

Respectfully submitted,

By: /s/ Bill Lann Lee
Bill Lann Lee (State Bar No. 108452)
Julia Campins (State Bar No. 238023)
LEWIS, FEINBERG, LEE, RENAKER
& JACKSON, P.C.
1330 Broadway, Suite 1800
Oakland, CA 94612
Tel: (510) 839-6824
Fax: (510) 839-7839
blee@lewisfeinberg.com
jcampins@lewisfeinberg.com

Timothy P. Fox (State Bar No. 157750)
FOX & ROBERTSON, P.C.
910 - 16th Street
Suite 610
Denver, CO 80202
Tel: (303) 595-9700
Fax: (303) 595-9705
tfox@foxrob.com

Linda D. Kilb (State Bar No. 136101)
DISABILITY RIGHTS EDUCATION &
DEFENSE FUND
2212 Sixth Street
Berkeley, CA 94710
Tel: (510) 644-2555
Fax: (510) 841-8645
lkilb@dredf.org

Mari Mayeda (State Bar No. 110947)
P O Box 5138
Berkeley, CA 94705
Tel: (510) 848-3331
Fax: (510) 841-8115
marimayeda@earthlink.net

Antonio M. Lawson (State Bar No. 140823)
LAWSON LAW OFFICES
160 Franklin Street, Suite 204
Oakland, CA 94607
Tel: (510) 419-0940
Fax: (510) 419-0948
tony@lawsonlawoffices.com

Attorneys for Plaintiff

COMPLAINT [CASE NO. _____]