

1 Tanya Moore, Esq. SBN 206683  
2 MOORE LAW FIRM, P.C.  
3 332 N. Second Street  
4 San Jose, CA 95112  
5 Telephone (408) 271-6600  
6 Facsimile (408) 298-6046

7  
8 Attorneys for Plaintiff  
9 Ronald Moore

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13 **UNITED STATES DISTRICT COURT**  
14 **EASTERN DISTRICT OF CALIFORNIA**

15 RONALD MOORE, ) No.  
16 Plaintiff, ) **Plaintiff's Complaint**  
17 vs. )  
18 KIM C. KY dba DOUGHNUTS TO )  
19 GO, JACK TOZLIAN AND )  
20 HERMINE J. TOZLIAN, CO- )  
21 TRUSTEES OF THE TOZLIAN )  
22 FAMILY TRUST, )  
23 Defendants. )

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1 I. SUMMARY  
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3 1. This is a civil rights action by plaintiff Ronald Moore (“Moore”)  
4 for discrimination at the building, structure, facility, complex, property, land,  
5 development, and/or surrounding business complex known as:

6 Doughnuts to Go  
7 1145 11<sup>th</sup> Street  
8 Reedley, CA 93654  
9 (hereinafter “Facility”)

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Moore v. Kim C. Ky, et al.  
Plaintiff's Complaint

1 2. Moore seeks damages, injunctive and declaratory relief, attorney fees and  
2 costs, against KIM C. KY dba DOUGHNUTS TO GO, JACK TOZLIAN AND  
3 HERMINE J. TOZLIAN, CO-TRUSTEES OF THE TOZLIAN FAMILY  
4 TRUST, (hereinafter referred to collectively as Defendants), owners and  
5 operators of Doughnuts To Go (“Facility”), pursuant to the Americans with  
6 Disabilities Act of 1990, (42 U.S.C. §§ 12101 et seq.) and related California  
7 statutes.  
8

## 9 II. JURISDICTION

10 3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and  
11 1343 for ADA claims.

12 4. Supplemental jurisdiction for claims brought under parallel  
13 California law – arising from the same nucleus of operative facts – is predicated  
14 on 28 U.S.C. § 1367.

15 5. Moore’s claims are authorized by 28 U.S.C. §§ 2201 and 2202.

## 16 III. VENUE

17 6. All actions complained of herein take place within the jurisdiction  
18 of the United States District Court, Eastern District of California, and venue is  
19 invoked pursuant to 28 U.S.C. § 1391(b),(c).

## 20 IV. PARTIES

21 7. Defendants own, operate, and/or lease the Facility, and consist of a  
22 person (or persons), firm, and/or corporation.

23 8. Moore was diagnosed with hydrocephalus, degenerative disc  
24 disease of the lower back, cervical radiculopathy, B knee arthritis and chronic  
25 pain syndrome since 2002 and requires the use of a wheelchair when traveling  
26 about in public. Consequently, Moore is physically disabled, as defined by all  
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28 *Moore v. Kim C. Ky, et al.*

Plaintiff’s Complaint

1 applicable California and United States law and the member of the public who's  
2 rights are protected by these laws.

3 V. FACTS

4 9. The Facility is a public accommodation facility/retail Facility,  
5 open to the public, which is intended for nonresidential use and whose  
6 operation affects commerce.

7 10. Moore visited the Facility and encountered barriers (both physical  
8 and intangible) that interfered with – if not outright denied – his ability to use  
9 and enjoy the goods, services, privileges, and accommodations offered at the  
10 facility. To the extent known by Moore, the barriers at the Facility included,  
11 but are not limited to, the following:

- 12 1) A warning sign regarding the penalty for unauthorized use of  
13 designated disabled parking spaces is not posted conspicuously at  
14 EACH entrance to the off-street parking facilities;
- 15 2) Each warning sign does not state: “UNAUTHORIZED VEHICLES  
16 PARKED IN DESIGNATED ACCESSIBLE SPACES NOT  
17 DISPLAYING DISTINGUISHING PLACARDS OR SPECIAL  
18 LICENSE PLATES ISSUED FOR PERSONS WITH DISABILITIES  
19 WILL BE TOWED AWAY AT OWNER’S EXPENSE. TOWED  
20 VEHICLES MAY BE RECLAIMED AT (Address) OR BY  
21 TELEPHONING (Phone Number); Sign must be black on white;
- 22 3) The phone number or address where towed vehicles can be reclaimed is  
23 not posted in the appropriate section on the sign and is not a permanent  
24 part of the sign;
- 25 4) Each parking space reserved for persons with disabilities is not  
26 identified by the correct reflectorized sign permanently posted  
27 immediately adjacent to and visible from each stall or space, consisting

28 *Moore v. Kim C. Ky, et al.*

Plaintiff's Complaint

- 1 of a profile view of the International Symbol of Accessibility in white  
2 on a dark blue background with “Parking” written underneath;
- 3 5) An additional sign below the symbol of accessibility does not state  
4 “Minimum Fine \$250.00”;
- 5 6) The words “NO PARKING” are not painted in white on the ground  
6 within each access aisle;
- 7 7) Doormats are not adequately anchored to prevent interference with  
8 wheelchair traffic;
- 9 8) Handles, pulls latches, locks and other operating devices on accessible  
10 doors do not have a shape that is easy to grasp with one hand and does  
11 not require tight grasping, tight pinching or twisting of the wrist to  
12 operate;
- 13 9) The minimum 28” wide clear floor space is not provided from the side  
14 of the water closet to the adjacent fixture;
- 15 10) The rear grab bar does not extend from the centerline of the water  
16 closet 12” minimum on one side and 24” minimum on the other side;
- 17 11) Drain and hot water piping is not insulated correctly;
- 18 12) Sanitary facilities are not displaying signs in a minimum of two  
19 locations; one type located on the doorway to the facility, and another  
20 type mounted on the wall adjacent to the latch side of the door.
- 21 13) The International Symbol of Accessibility is not posted at accessible  
22 sanitary facilities;
- 23 14) The restroom identification signage is not located on the wall  
24 adjacent to the latch side of the door;
- 25 15) No detectable warning is provided;
- 26 16) Seating area is not configured for wheelchair accessibility.

27 These barriers prevented Moore from enjoying full and equal access.  
28

*Moore v. Kim C. Ky, et al.*

Plaintiff's Complaint

1 11. Moore was also deterred from visiting the Facility because he  
2 knew that the Facility goods, services, facilities, privileges, advantages, and  
3 accommodations were unavailable to physically disabled patrons (such as  
4 himself). He continues to be deterred from visiting the Facility because of the  
5 future threats of injury created by these barriers.

6 12. Moore also encountered barriers at the Facility, which violate state  
7 and federal law, but were unrelated to his disability. Nothing within this  
8 complaint, however, should be construed as an allegation that Moore is seeking  
9 to remove barriers unrelated to his disability.

10 13. Defendants knew that these elements and areas of the Facility were  
11 inaccessible, violate state and federal law, and interfere with (or deny) access to  
12 the physically disabled. Moreover, Defendants have the financial resources to  
13 remove these barriers from the Facility (without much difficulty or expense),  
14 and make the Facility accessible to the physically disabled. To date, however,  
15 Defendants refuse to either remove those barriers or seek an unreasonable  
16 hardship exemption to excuse non-compliance.

17 14. At all relevant times, Defendants have possessed and enjoyed  
18 sufficient control and authority to modify the Facility to remove impediments to  
19 wheelchair access and to comply with the Americans with Disabilities Act  
20 Accessibility Guidelines and Title 24 regulations. Defendants have not  
21 removed such impediments and have not modified the Facility to conform to  
22 accessibility standards. Defendants have intentionally maintained the Facility  
23 and in its current condition and have intentionally refrained from altering the  
24 Facility so that it complies with the accessibility standards.

25 15. Moore further alleges that the (continued) presence of barriers at  
26 the Facility is so obvious as to establish Defendants discriminatory intent.<sup>1</sup> On

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<sup>1</sup> E.g., Gunther v. Lin, 144 Cal.App.4<sup>th</sup> 223, fn.6

28 *Moore v. Kim C. Ky, et al.*

1 information and belief, Moore avers that evidence of this discriminatory intent  
2 includes Defendants' refusal to adhere to relevant building standards; disregard  
3 for the building plans and permits issued for the Facility; conscientious decision  
4 to the architectural layout (as it currently exists) at the Facility; decision not to  
5 remove barriers from the Facility; and allowance that Defendants' property  
6 continues to exist in its non-compliance state. Moore further alleges, on  
7 information and belief, that the Facility is not in the midst of a remodel, and  
8 that the barriers present at the Facility are not isolated (or temporary)  
9 interruptions in access due to maintenance or repairs.<sup>2</sup>

10 VI. FIRST CLAIM

11 **Americans with Disabilities Act of 1990**

12 Denial of "Full and Equal" Enjoyment and Use

13 16. Moore incorporates the allegations contained in paragraphs 1  
14 through 15 for this claim.

15 17. Title III of the ADA holds as a "general rule" that no individual  
16 shall be discriminated against on the basis of disability in the full and equal  
17 enjoyment (or use) of goods, services, facilities, privileges, and  
18 accommodations offered by any person who owns, operates, or leases a place of  
19 public accommodation. 42 U.S.C. § 12182(a).

20 18. Defendants discriminated against Moore by denying "full and  
21 equal enjoyment" and use of the goods, services, facilities, privileges and  
22 accommodations of the Facility during each visit and each incident of  
23 deterrence.

24 Failure to Remove Architectural Barriers in an Existing Facility

25 19. The ADA specifically prohibits failing to remove architectural  
26 barriers, which are structural in nature, in existing facilities where such removal

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<sup>2</sup> Id.; 28 C.F.R. § 36.211(b)

28 *Moore v. Kim C. Ky, et al.*

1 is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term “readily  
2 achievable” is defined as “easily accomplishable and able to be carried out  
3 without much difficulty or expense.” *Id.* § 12181(9).

4 20. When an entity can demonstrate that removal of a barrier is not  
5 readily achievable, a failure to make goods, services, facilities, or  
6 accommodations available through alternative methods is also specifically  
7 prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

8 21. Here, Moore alleges that Defendants can easily remove the  
9 architectural barriers at Facility without much difficulty or expense, and that  
10 Defendants violated the ADA by failing to remove those barriers, when it was  
11 readily achievable to do so.

12 22. In the alternative, if it was not “readily achievable” for Defendants  
13 to remove the Facility’s barriers, then Defendants violated the ADA by failing  
14 to make the required services available through alternative methods, which are  
15 readily achievable.

16 Failure to Design and Construct and Accessible Facility

17 23. On information and belief, the Facility was designed and  
18 constructed (or both) after January 26, 1992 – independently triggering access  
19 requirements under Title III or the ADA.

20 24. The ADA also prohibits designing and constructing facilities or  
21 first occupancy after January 16, 1993, that aren’t readily accessible to, and  
22 usable by, individuals with disabilities when it was structurally practicable to do  
23 so. 42 U.S.C. § 12183(a)(1).

24 25. Here, Defendants violated the ADA by designing and constructing  
25 (or both) the Facility in a manner that was not readily accessible to the  
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28 *Moore v. Kim C. Ky, et al.*

Plaintiff’s Complaint

1 physically disabled public – including Moore – when it was structurally  
2 practical to do so.<sup>3</sup>

3 Failure to Make an Altered Facility Accessible

4 26. On information and belief, the Facility was modified after January  
5 26, 1992, independently triggering access requirements under the ADA.

6 27. The ADA also requires that facilities altered in a manner that  
7 affects (or could affect) its usability must be made readily accessible to  
8 individuals with disabilities to the maximum extent feasible. 42 U.S.C. §  
9 12183(a)(2). Altering an area that contains a facility’s primary function also  
10 requires adding making the paths of travel, bathrooms, telephones, and drinking  
11 fountains serving that area accessible to the maximum extent feasible. Id.

12 28. Here, Defendants altered the Facility in a manner that violated the  
13 ADA and was not readily accessible to the physically disabled public –  
14 including Moore – to the maximum extent feasible.

15 Failure to Modify Existing Policies and Procedures

16 29. The ADA also requires reasonable modifications in policies,  
17 practices, or procedures, when necessary to afford such goods, services,  
18 facilities, or accommodations to individuals with disabilities, unless the entity  
19 can demonstrate that making such modifications would fundamentally alter  
20 their nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

21 30. Here, Defendants violated the ADA by failing to make reasonable  
22 modifications in policies, practices, or procedures at the Facility, when these  
23 modifications were necessary to afford (and would not fundamentally alter the  
24 nature of) these goods, services, facilities, or accommodations.

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<sup>3</sup> Nothing within this Complaint should be construed as an allegation that plaintiff is bringing  
28 this action as a private attorney general under either state or federal statutes.  
*Moore v. Kim C. Ky, et al.*

1 31. Moore seeks all relief available under the ADA (i.e., injunctive  
2 relief, attorney fees, costs, legal expense) for these aforementioned violations.  
3 42 U.S.C. § 12205.

4 32. Moore also seeks a finding from this Court (i.e., declaratory relief)  
5 that Defendants violated the ADA in order to pursue damages under  
6 California's Unruh Civil Rights Act or Disabled Persons Act.

7 **VII. SECOND CLAIM**

8 **Disabled Persons Act**

9 33. Moore incorporates the allegations contained in paragraphs 1  
10 through 30 for this claim.

11 34. California Civil Code § 54 states, in part, that: Individuals with  
12 disabilities have the same right as the general public to the full and free use of  
13 the streets, sidewalks, walkways, public buildings and facilities, and other  
14 public places.

15 35. California Civil Code § 54.1 also states, in part, that: Individuals  
16 with disabilities shall be entitled to full and equal access to accommodations,  
17 facilities, telephone facilities, places of public accommodation, and other places  
18 to which the general public is invited.

19 36. Both sections specifically incorporate (by reference) and  
20 individual's rights under the ADA. See Civil Code §§ 54(c) and 54.1(d).

21 37. Here, Defendants discriminated against the physically disabled  
22 public – including Moore – by denying them full and equal access to the  
23 Facility. Defendants also violated Moore's rights under the ADA, and  
24 therefore, infringed upon or violated (or both) Moore's rights under the  
25 Disabled Persons Act.

26 38. For each offense of the Disabled Persons Act, Moore seeks actual  
27 damages (both general and special damages), statutory minimum damages of

28 *Moore v. Kim C. Ky, et al.*

Plaintiff's Complaint

1 one thousand dollars (\$1,000), declaratory relief, and any other remedy  
2 available under California Civil Code § 54.3.

3 39. He also seeks to enjoin Defendants from violating the Disabled  
4 Persons Act (and ADA) under California Civil Code § 55, and to recover  
5 reasonable attorneys' fees and incurred under California Civil Code §§ 54.3 and  
6 55.

### 7 VIII. THIRD CLAIM

#### 8 **Unruh Civil Rights Act**

9 40. Moore incorporates the allegations contained in paragraphs 1  
10 through 30 for this claim.

11 41. California Civil Code § 51 states, in part, that; All persons within  
12 the jurisdiction of this state are entitled to the full and equal accommodations,  
13 advantages, facilities, privileges, or services in all business establishments of  
14 every kind whatsoever.

15 42. California Civil Code § 51.5 also states, in part that: No business  
16 establishment of any kind whatsoever shall discriminate against any person in  
17 this state because of the disability of the person.

18 43. California Civil Code § 51(f) specifically incorporates (by  
19 reference) an individual's rights under the ADA into the Unruh Act.

20 44. Defendants aforementioned acts and omissions denied the  
21 physically disabled public – including Moore – full and equal accommodations,  
22 advantages, facilities, privileges and services in a business establishment  
23 (because of their physical disability).

24 45. These acts and omissions (including the ones that violate the  
25 ADA) denied, aided or incited a denial, or discriminated against Moore by  
26 violating the Unruh Act.

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28 *Moore v. Kim C. Ky, et al.*

Plaintiff's Complaint

1 46. Moore was damaged by Defendants wrongful conduct, and seeks  
2 statutory minimum damages of four thousand dollars (\$4,000) for each offense.

3 47. Moore also seeks to enjoin Defendants from violating the Unruh  
4 Act (and ADA), and recover reasonable attorneys' fees and costs incurred under  
5 California Civil Code § 52(a).

6 IX. FOURTH CLAIM

7 **Denial of Full and Equal Access to Public Facilities**

8 48. Moore incorporates the allegations contained in paragraphs 1 through  
9 13 of this claim.

10 49. Health and Safety Code § 19955(a) states, in part, that: California  
11 public accommodations or facilities (build with private funds) shall adhere to the  
12 provisions of Government Code §4450.

13 50. Health and Safety Code § 19959 states, in part, that: Every existing  
14 (non-exempt) public accommodation constructed prior to July 1, 1970, which is  
15 altered or structurally repaired, is required to comply with this chapter.

16 51. Moore alleges the Facility and Gas Station is a public accommodation  
17 constructed, altered, or repaired in a manner that violates Part 5.5 of the Health  
18 and Safety Code or Government Code § 4450 (or both), and that the Facility was  
19 not exempt under Health and Safety Code § 19956.

20 52. Defendants' non-compliance with these requirements at the Facility  
21 aggrieved (or potentially aggrieved) Moore and other persons with physical  
22 disabilities. Accordingly, he seeks injunctive relief and attorney fees pursuant to  
23 Health and Safety Code § 19953.

24 X. PRAYER FOR RELIEF

25 WHEREFORE, Moore prays judgment against Defendants for:

- 26 1. Injunctive relief, preventive relief, or any other relief the Court deems  
27 proper.

28 *Moore v. Kim C. Ky, et al.*

Plaintiff's Complaint

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2. Declaratory relief that Defendants violated the ADA for the purposes of Unruh Act or Disabled Persons Act damages.
3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the California Civil Code (but not both) according to proof.
4. Attorneys' fees, litigation expense, and costs of suit.<sup>4</sup>
5. Interest at the legal rate from the date of the filing of this action.

Dated: September 11, 2010

/s/Tanya Moore  
Tanya Moore  
Attorney for Plaintiff

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<sup>4</sup> This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

*Moore v. Kim C. Ky, et al.*

Plaintiff's Complaint