

1 Tanya E. Moore. SBN 206683  
MISSION LAW FIRM, A.P.C.  
2 332 North Second Street  
San Jose, California 95112  
3 Telephone (408) 298-2000  
Facsimile (408) 298-6046  
4 E-mail: service@mission.legal

5 Attorney for Plaintiff  
Armando Rivera

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8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**  
10

11 ARMANDO RIVERA, ) No.  
12 Plaintiff, )  
13 vs. ) **COMPLAINT ASSERTING DENIAL OF**  
14 CREMA COFFEE COMPANY LLC dba ) **RIGHT OF ACCESS UNDER THE**  
CREMA COFFEE ROASTING COMPANY; ) **AMERICANS WITH DISABILITIES ACT**  
15 ALI FARHANG; ) **FOR INJUNCTIVE RELIEF, DAMAGES,**  
16 Defendants. ) **ATTORNEYS' FEES AND COSTS (ADA)**  
17 )  
18 )

19 **I. SUMMARY**

20 1. This is a civil rights action by plaintiff ARMANDO RIVERA (“Plaintiff”) for  
21 discrimination at the building, structure, facility, complex, property, land, development, and/or  
22 surrounding business complex known as:

23 Crema Coffee Roasting Company  
24 950 The Alameda  
San Jose, CA 95126  
25 (hereafter “the Facility”)

26 2. Plaintiff seeks damages, injunctive and declaratory relief, attorney fees and  
27 costs, against CREMA COFFEE COMPANY LLC dba CREMA COFFEE ROASTING  
28 COMPANY; and ALI FARHANG (hereinafter collectively referred to as “Defendants”),

1 pursuant to Title III of the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 et  
2 seq.) (“ADA”) and related California statutes.

3 **II. JURISDICTION**

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

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

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

9 **III. VENUE**

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

13 **IV. PARTIES**

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

16 8. Plaintiff is substantially limited in his ability to walk, and must use a wheelchair  
17 for mobility. Consequently, Plaintiff is “physically disabled,” as defined by all applicable  
18 California and United States laws, and a member of the public whose rights are protected by  
19 these laws.

20 **V. FACTS**

21 9. The Facility is open to the public, intended for non-residential use, and its  
22 operation affects commerce. The Facility is therefore a public accommodation as defined by  
23 applicable state and federal laws.

24 10. Plaintiff lives near the Facility and visited the Facility on or about January 9,  
25 2018 for the purpose of having coffee. During his visit to the Facility, Plaintiff encountered the  
26 following barriers (both physical and intangible) that interfered with, if not outright denied,  
27 Plaintiff’s ability to use and enjoy the goods, services, privileges and accommodations offered  
28 at the Facility. Specifically, Plaintiff could not enter the Facility because there was not an

1 accessible path of travel from the public sidewalk to the entry door of the Facility. The only  
2 route contained steps, which he could not wheel up. He had to wait outside of the Facility  
3 while his friend went inside and purchased coffee for him, which was frustrating.

4 11. The barriers identified in paragraph 10 herein are only those that Plaintiff  
5 personally encountered. Plaintiff is presently unaware of other barriers which may in fact exist  
6 at the Facility and relate to his disabilities. Plaintiff will seek to amend this Complaint once  
7 such additional barriers are identified as it is Plaintiff's intention to have all barriers which  
8 exist at the Facility and relate to his disabilities removed to afford him full and equal access.

9 12. Plaintiff was, and continues to be, deterred from visiting the Facility because  
10 Plaintiff knows that the Facility's goods, services, facilities, privileges, advantages, and  
11 accommodations were and are unavailable to Plaintiff due to Plaintiff's physical disabilities.  
12 Plaintiff enjoys the goods and services offered at the Facility, and will return to the Facility  
13 once the barriers are removed.

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

20 14. At all relevant times, Defendants have possessed and enjoyed sufficient control  
21 and authority to modify the Facility to remove impediments to wheelchair access and to  
22 comply with the 1991 ADA Accessibility Guidelines and/or the 2010 ADA Standards for  
23 Accessible Design. Defendants have not removed such impediments and have not modified the  
24 Facility to conform to accessibility standards. Defendants have intentionally maintained the  
25 Facility in its current condition and have intentionally refrained from altering the Facility so  
26 that it complies with the accessibility standards.

27 15. Plaintiff further alleges that the (continued) presence of barriers at the Facility is  
28 so obvious as to establish Defendants' discriminatory intent. On information and belief,

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

8 **VI. FIRST CLAIM**

9 **Americans with Disabilities Act of 1990**

10 Denial of “Full and Equal” Enjoyment and Use

11 16. Plaintiff re-pleads and incorporates by reference the allegations contained in  
12 each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

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

17 18. Defendants discriminated against Plaintiff by denying Plaintiff “full and equal  
18 enjoyment” and use of the goods, services, facilities, privileges and accommodations of the  
19 Facility during each visit and each incident of deterrence.

20 Failure to Remove Architectural Barriers in an Existing Facility

21 19. The ADA specifically prohibits failing to remove architectural barriers, which  
22 are structural in nature, in existing facilities where such removal is readily achievable. 42  
23 U.S.C. § 12182(b)(2)(A)(iv).

24 20. When an entity can demonstrate that removal of a barrier is not readily  
25 achievable, a failure to make goods, services, facilities, or accommodations available through  
26 alternative methods is also specifically prohibited if these methods are readily achievable. Id.  
27 § 12182(b)(2)(A)(v).

28 21. Here, Plaintiff alleges that Defendants can easily remove the architectural

1 barriers at the Facility without much difficulty or expense, and that Defendants violated the  
2 ADA by failing to remove those barriers, when it was readily achievable to do so.

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

6 Failure to Design and Construct an Accessible Facility

7 23. Plaintiff alleges on information and belief that the Facility was designed and  
8 constructed (or both) after January 26, 1993 – independently triggering access requirements  
9 under Title III of the ADA.

10 24. The ADA also prohibits designing and constructing facilities for first occupancy  
11 after January 26, 1993, that aren’t readily accessible to, and usable by, individuals with  
12 disabilities when it was structurally practicable to do so. 42 U.S.C. § 12183(a)(1).

13 25. Here, Defendants violated the ADA by designing and constructing (or both) the  
14 Facility in a manner that was not readily accessible to the physically disabled public –  
15 including Plaintiff – when it was structurally practical to do so.<sup>1</sup>

16 Failure to Make an Altered Facility Accessible

17 26. Plaintiff alleges on information and belief that the Facility was modified after  
18 January 26, 1993, independently triggering access requirements under the ADA.

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

24 28. Here, Defendants altered the Facility in a manner that violated the ADA and  
25 was not readily accessible to the physically disabled public – including Plaintiff – to the  
26 maximum extent feasible.

27 Failure to Modify Existing Policies and Procedures

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<sup>1</sup> Nothing within this Complaint should be construed as an allegation that Plaintiff is bringing this action as a private attorney general under either state or federal statutes.



1 individual's rights under the ADA into the Unruh Act.

2 38. Defendants' aforementioned acts and omissions denied the physically disabled  
3 public – including Plaintiff – full and equal accommodations, advantages, facilities, privileges  
4 and services in a business establishment (because of their physical disability).

5 39. These acts and omissions (including the ones that violate the ADA) denied,  
6 aided or incited a denial, or discriminated against Plaintiff by violating the Unruh Act.

7 40. Plaintiff was damaged by Defendants' wrongful conduct, and seeks statutory  
8 minimum damages of \$4,000 for each offense.

9 41. Plaintiff also seeks to enjoin Defendants from violating the Unruh Act (and  
10 ADA), and recover reasonable attorneys' fees and costs incurred under California Civil Code  
11 § 52(a).

## 12 **VIII. THIRD CLAIM**

### 13 **Denial of Full and Equal Access to Public Facilities**

14 42. Plaintiff re-pleads and incorporates by reference the allegations contained in  
15 each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

16 43. Health and Safety Code § 19955(a) states, in part, that: California public  
17 accommodations or facilities (built with private funds) shall adhere to the provisions of  
18 Government Code § 4450.

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

22 45. Plaintiff alleges the Facility is a public accommodation constructed, altered, or  
23 repaired in a manner that violates Part 5.5 of the Health and Safety Code or Government Code  
24 § 4450 (or both), and that the Facility was not exempt under Health and Safety Code § 19956.

25 46. Defendants' non-compliance with these requirements at the Facility aggrieved  
26 (or potentially aggrieved) Plaintiff and other persons with physical disabilities. Accordingly,  
27 Plaintiff seeks injunctive relief and attorney fees pursuant to Health and Safety Code § 19953.

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**IX. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays judgment against Defendants, and each of them, for:

1. Injunctive relief, preventive relief, or any other relief the Court deems proper.
2. Statutory minimum damages under section 52(a) of the California Civil Code according to proof.
3. Attorneys' fees, litigation expenses, and costs of suit.<sup>2</sup>
4. Interest at the legal rate from the date of the filing of this action.
5. For such other and further relief as the Court deems proper.

Dated: March 9, 2018

MISSION LAW FIRM, A.P.C.

/s/ Tanya E. Moore  
Tanya E. Moore  
Attorney for Plaintiff  
Armando Rivera

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<sup>2</sup> This includes attorneys' fees under California Code of Civil Procedure § 1021.5.



## VERIFICATION

I, ARMANDO RIVERA, am the plaintiff in the above-entitled action. I have read the foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe them to be true.

I verify under penalty of perjury that the foregoing is true and correct.

Dated: March 9, 2018

/s/ Armando Rivera

Armando Rivera

I attest that the original signature of the person whose electronic signature is shown above is maintained by me, and that his concurrence in the filing of this document and attribution of his signature was obtained.

/s/ Tanya E. Moore

Tanya E. Moore, Attorney for  
Plaintiff, Armando Rivera