

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

JERRY DORAN,

Plaintiff,

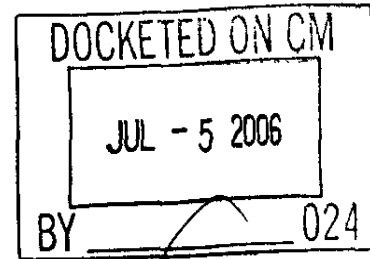
v.

DEL TACO, INC. dba DEL TACO
#415; PACIFIC CASTLE
INTERNATIONAL, LLC,

Defendants.

CASE NO. SACV 04-046 CJC (ANx)

MEMORANDUM OF DECISION



I. INTRODUCTION

This memorandum constitutes the Court's final decision with respect to the bench trial it conducted involving Plaintiff Jerry Doran, a wheelchair bound advocate for the disabled, and Defendant Del Taco, Inc., a successful fast food Mexican restaurant chain.¹ By his own admission, Mr. Doran is a litigious

¹Mr. Doran also named Pacific Castle International, LLC, as a Defendant in this case. Pacific Castle International, LLC, owns the property on which the Del Taco restaurant is located. The Court will refer to both Defendants collectively as "Del Taco."

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1 advocate. He has filed over two hundred disability access lawsuits in federal and
2 state courts throughout California. In this lawsuit, Mr. Doran alleges that he was
3 denied full access and enjoyment of a Del Taco restaurant in Mission Viejo,
4 California due to various architectural barriers. His allegations against Del Taco
5 are virtually identical to those he has asserted against other defendants in his
6 hundreds of other disability access lawsuits.

7
8 In order to prevail on his disability access claims against Del Taco, Mr.
9 Doran had to convince the Court that he actually visited the Del Taco restaurant in
10 Mission Viejo and encountered architectural barriers there prior to the date that he
11 filed his complaint. Mr. Doran has not been successful in this regard. There were
12 too many inconsistencies and inaccuracies regarding Mr. Doran's visits to the Del
13 Taco restaurant in Mission Viejo for the Court to conclude that he in fact visited
14 the restaurant and encountered the architectural barriers there. Accordingly, the
15 Court enters judgment in favor of Del Taco.²

16
17 **II. BACKGROUND**

18
19 Mr. Doran was involved in a tragic automobile accident in 1985 that left
20 him disabled. (Complaint, p. 3.) He is a diagnosed paraplegic and has been
21 unable to walk since the accident. (*Id.*) Currently, Mr. Doran resides in
22 Cottonwood, California and gets around with the aid of a wheelchair and a
23 mobility-equipped vehicle. (*Id.*)

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²This Memorandum of Decision constitutes the Court's findings of fact and
28 conclusions of law pursuant to Federal Rule of Civil Procedure 52.

1 Since his accident, Mr. Doran considers himself an advocate for the
2 disabled. (Rep. Tr., Doran Testimony, 164:4-5.) In that capacity, Mr. Doran has
3 filed over two-hundred disability access lawsuits in California in the last few
4 years. (Rep. Tr., Doran Testimony, 151:9-23.) Many of these lawsuits targeted
5 fast food restaurants, such as Del Taco. (Rep. Tr., Doran Testimony, 151:14-23.)
6 Mr. Doran filed this lawsuit against Del Taco after allegedly visiting Del Taco
7 restaurant #415, located at 26241 Avery Parkway in Mission Viejo, California,
8 sometime between 1988 and 2003. (Complaint, p. 2.) Del Taco restaurant #415 is
9 located more than five-hundred miles from Mr. Doran's residence in Cottonwood,
10 California.

11
12 **A. Mr. Doran's Time Line of His Visits to the Del Taco Restaurant**

13
14 Mr. Doran's complaint does not provide any dates with respect to any of his
15 alleged visits to the Del Taco restaurant. His complaint merely states that Mr.
16 Doran visited the Del Taco restaurant. (See Complaint, ¶ 18.) The first details
17 about Mr. Doran's alleged initial visits to the restaurant emerge from Mr. Doran's
18 interrogatory responses. Del Taco specifically asked Mr. Doran to identify, by
19 date, *every* visit he had ever made to the Del Taco restaurant. (Defendants'
20 Request for Judicial Notice, ¶ 7, Exh. 7, p. 187.) In his interrogatory responses,
21 dated December 17, 2004, Mr. Doran stated that he had visited the Del Taco
22 restaurant three times in total and that those visits occurred in the Spring of 2003,
23 June of 2003, and February of 2004. (*Id.*)

24
25 Three weeks after responding to Del Taco's interrogatories, on January 7,
26 2005, Mr. Doran testified at his deposition that he first visited the Del Taco
27 restaurant in the Spring of 2002. (Doran Depo., pp. 35-36.) When asked about his
28

1 second visit to the Del Taco restaurant, Mr. Doran stated that it did not occur until
2 July of 2004, after he had filed his complaint. (Doran Depo., p. 44.) Finally, Mr.
3 Doran stated in his deposition that these two visits, in the Spring of 2002 and in
4 July of 2004, were his only two visits to the Del Taco restaurant up until that time.
5 (Doran Depo., p. 62.)
6

7 At trial, Mr. Doran testified that his first visit to the Del Taco restaurant
8 occurred in 2002. (Rep. Tr., Doran Testimony, 121:11-12.) When asked about his
9 second visit to the Del Taco restaurant, Mr. Doran testified that he visited the
10 restaurant again in 2003. (Rep. Tr., Doran Testimony, 127:25-128:2.) Later,
11 while testifying, Mr. Doran was asked approximately how many times he had
12 visited the Del Taco restaurant. His response: "Probably close to ten times."
13 (Rep. Tr., Doran Testimony, 129:19-21.) And, when asked how many times he
14 had visited the Del Taco restaurant prior to the taking of his deposition, Mr. Doran
15 testified that he had visited the restaurant "five or six times." (Rep. Tr., Doran
16 Testimony, 129:22-25.)
17

18 Later, while still testifying on the stand during trial, Mr. Doran changed his
19 testimony regarding his alleged visits to the restaurant. Initially, as noted above,
20 Mr. Doran testified at trial that his first visit to the Del Taco restaurant was in
21 2002. (Rep. Tr., Doran Testimony, 121:11-12.) Later on, Mr. Doran testified that
22 he first visited the Del Taco restaurant in 1988. (Rep. Tr., Doran Testimony,
23 167:25-168:1.)
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1 **B. Mr. Doran's Details of His Visits to the Del Taco Restaurant**

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3 When asked at his deposition what he ordered during his alleged visit to the
4 Del Taco restaurant, Mr. Doran testified that he ordered an enchilada. (Doran
5 Depo., p. 53.) Del Taco does not serve enchiladas. (Rep. Tr., Honer Testimony,
6 105:20-25.) Taco Bell, a main competitor of Del Taco that operates a similar fast
7 food chain of restaurants, does sell enchiladas. (Rep. Tr., Honer Testimony,
8 106:1-5.)

9
10 Mr. Doran also testified at his deposition that he attempted to visit the Del
11 Taco restaurant at issue in this case in October of 2004, only to find that it was too
12 busy. (Doran Depo., p. 62.) Mr. Doran stated that he went to the restaurant "next
13 door" to the Del Taco restaurant instead, which was a "Denny's." (*Id.*) Del Taco
14 restaurant #415, the one at issue in this case, does not have a Denny's next door to
15 it, or within four miles of it. (Rep. Tr., Albright Testimony, 22:4-7.) There is,
16 however, a Denny's next door to Del Taco restaurant #915. (Tr. Exh. 128.) Del
17 Taco restaurant #915, like restaurant #415, is located in Mission Viejo near the
18 freeway. (Rep. Tr., Albright Testimony, 21:15-21.) Mr. Doran conceded at trial
19 that he may have confused Del Taco restaurants #415 and #915: "I might have had
20 some things confused, but I eat at Del Taco a lot. I eat lots of Del Tacos" [sic].
21 (Rep. Tr., Doran Testimony, 138:9-12.)

1 **C. The Architectural Barriers Identified by Mr. Doran**

2
3 By way of this suit, Mr. Doran seeks monetary damages, declaratory relief,
4 and injunctive relief based on the following claims: (1) violation of the ADA; (2)
5 violation of California's Disabled Persons Act; (3) violation of California's Unruh
6 Act; (4) violation of California Health and Safety Code sections 19955 *et seq.*; (5)
7 violation of California's Unfair Business Practices Act; and (6) negligence.
8 (Complaint, p. 2.)

9
10 Mr. Doran identified some of the architectural barriers he allegedly
11 encountered in his complaint. Of significance, Mr. Doran identified "display
12 racks" and "vending machines" as barriers to full access of the Del Taco restaurant
13 that he encountered during his visit. (Complaint, ¶¶ 20-21.) The Del Taco
14 restaurant does not have any display racks or vending machines. (Rep. Tr.,
15 Albright Testimony, 9:5-9.)

16
17 Mr. Doran testified at his deposition that he encountered the following
18 architectural barriers at the Del Taco restaurant: (1) overly steep ramp outside of
19 the restaurant; (2) partitions near the counter where customers place their order;
20 (3) lack of accessible seating; (4) the restroom toilet was too small and too low;
21 (5) the toilet paper dispenser protruded out into Mr. Doran's transfer area; and (6)
22 insufficient strike clearance on the restroom door. (Doran Depo., pp. 37-61.) Mr.
23 Doran also testified at his deposition that the hand dryers in the restroom were too
24 high. (Doran Depo., p. 61.) The restrooms in the Del Taco restaurant do not have
25 hand dryers, however. (Doran Depo., p. 88.) When told of this fact, Mr. Doran
26 was asked if his recollection about the hand dryers was related to a different
27 restaurant that he had visited. Mr. Doran then conceded that he had in fact
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1 confused Del Taco restaurant #415 with some other restaurant. (*Id.*) Finally, Mr.
2 Doran testified at his deposition that these seven barriers were the *only* barriers
3 that he encountered on his first two visits to the Del Taco restaurant. (Doran
4 Depo., pp. 44, 62.)

5
6 Later, at trial, Mr. Doran testified that he also encountered the following
7 architectural barriers that he failed to mention at his deposition: (1) overly steep
8 ramp leading from the dining room to the patio area; (2) lack of International
9 Symbol of Accessibility (“ISA”) signage in the parking lot; (3) lack of ISA
10 signage on the dining room tables; (4) condiments were placed too high and not
11 close enough to the front of the counter; (5) front counter was too high; (6) lack of
12 black and white tow away signage in the parking lot; (7) lack of sufficient turn
13 space in the restroom; and (8) lack of a path of travel from the public sidewalk.
14 (Rep. Tr., Doran Testimony, 155-156.)

15
16 **D. Del Taco’s Remediation Efforts**

17
18 After Mr. Doran’s complaint was filed, on October 11, 2004, Del Taco
19 made an offer of judgment to Mr. Doran pursuant to Fed. R. Civ. P. 68. (Tr. Exh.
20 127.) Specifically, Del Taco offered to pay Mr. Doran \$5,001, promptly remove
21 any architectural barriers that Mr. Doran encountered at the restaurant or knew
22 about, institute a training and compliance program for its employees, and take any
23 other ancillary actions identified by Mr. Doran that would be necessary to address
24 his grievances. (*Id.*) Mr. Doran did not respond to Del Taco’s offer.

1 Although Mr. Doran did not respond to Del Taco's offer of judgment and its
2 offer to promptly remove any architectural barriers, Del Taco still set out to
3 remove all of the barriers identified by Mr. Doran by way of his expert Reed
4 Settle. Stanley Albright, Del Taco's Director of Construction and Facilities,
5 testified that Del Taco removed every barrier listed in Mr. Settle's June and
6 September 2005 reports. Specifically, Del Taco added tow away contact
7 information in the parking lot; installed ISA signage; installed additional disability
8 van signage; reduced the angle of the slope on the accessible stall; relocated the
9 paper towel dispenser; installed motion control flush valves on the toilets;
10 wrapped the P-trap in the restroom; relocated the toilet paper dispenser; removed
11 and relocated the toilet seat cover dispenser; replaced the sidewalk ramp so the
12 cross slope does not exceed 2%; changed the surface slope of the sidewalk so the
13 slope does not exceed 5%; and installed ISA signage on the sides of the leading
14 edges of the tables in the dining room. (Rep. Tr., Albright Testimony, 28-50.) Mr.
15 Albright testified that all of the barriers listed in Mr. Settle's June and September
16 2005 reports were removed and that the restaurant was in full compliance with the
17 ADA. (Rep. Tr., Albright Testimony, 40:20-24; 50:5-15.) In addition, Del Taco
18 posted a sign at the restaurant encouraging persons with disabilities to ask for
19 assistance from a Del Taco employee if needed. (Tr. Exh. 106.)

1 **III. ANALYSIS**

2
3 **A. The Americans With Disabilities Act**

4
5 Historically, individuals with disabilities have been isolated from society
6 and subjected to discrimination. *See* 42 U.S.C. § 12101(a) (2006). Despite some
7 improvements, such isolation and discrimination continues to be a serious and
8 pervasive social problem. *Id.* Discrimination against individuals with disabilities
9 persists in such critical areas as employment, housing, and public
10 accommodations. *Id.* Individuals with disabilities, unlike individuals who have
11 experienced discrimination on the basis of race, gender, or religion, often have had
12 no legal recourse to redress such discrimination. *Id.* This discrimination against
13 individuals with disabilities occurs in various forms, including outright intentional
14 exclusion, the discriminatory effects of architectural barriers, and the failure to
15 make modifications to existing facilities. *Id.* Congress summed up the difficulties
16 that individuals with disabilities have faced and continue to face in society:

17
18 [I]ndividuals with disabilities are a discrete and insular
19 minority who have been faced with restrictions and limitations,
20 subjected to a history of purposeful unequal treatment, and
21 relegated to a position of political powerlessness in our society,
22 based on characteristics that are beyond the control of such
23 individuals and resulting from stereotypic assumptions not
24 truly indicative of the individual ability of such individuals to
25 participate in, and contribute to, society.

26 *Id.*

27
28 Title III of the ADA is intended to make it possible for individuals with
disabilities to become a part of our society. Significantly, Title III makes it
possible for these individuals to move freely within our society by removing
barriers in places of public accommodation, such as restaurants. *See id.*

1 Specifically, Title III establishes that “[n]o individual shall be discriminated
2 against on the basis of disability in the full and equal enjoyment of the goods,
3 services, facilities, privileges, advantages, or accommodations of any place of
4 public accommodation.” 42 U.S.C. § 12182(a) (2006).

5
6 The ADA provides remedies “to any person who is being subjected to
7 discrimination on the basis of disability . . . or who has reasonable grounds for
8 believing that such person is about to be subjected to discrimination.” 42 U.S.C.
9 § 12188(a) (2006). As such, the ADA “requires that a plaintiff actually be
10 ‘subjected to discrimination’ or be ‘about to be subjected’ to it.”³ *Moreno v. G&M*
11 *Oil Co.*, 88 F. Supp. 2d 1116, 1117 (C.D. Cal. 2000). A plaintiff “may not assert a
12 ‘generalized grievance’ or assert the rights of third parties at sites where he has
13 suffered no injury.” *Id.*

14
15 As stated above, the important aim of the ADA, and more specifically Title
16 III, is an America that is accessible to – and that can be enjoyed by – all
17 Americans. With that important purpose in mind, Congress prescribed two
18 different mechanisms for enforcing Title III. On the one hand, the Attorney
19 General may commence a civil action if it has reasonable cause to believe that a
20 person or group is engaging in a pattern-or-practice violation of the ADA or that
21 discriminatory acts by a person or group present issues of general public
22 importance. 42 U.S.C. § 12188(b). Congress also provided for a private cause of

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24 ³The Court notes that a person is not required “to engage in a futile gesture if such
25 person has actual notice that a person or organization . . . does not intend to comply with
26 its provisions.” 42 U.S.C. § 12188(a). This point of clarification made explicit in the
27 statute does not negate the fact that a plaintiff must suffer discrimination, or be about to
28 suffer discrimination, in order to bring an ADA claim. “It does not eliminate the
requirement of actual existing or threatened discrimination.” *Moreno v. G&M Oil Co.*, 88
F. Supp. 2d 1116, 1117 (C.D. Cal. 2000).

1 action for injunctive relief to enforce Title III of the ADA. 42 U.S.C. § 12188(a);
2 *see also* 42 U.S.C. § 2000a-3 (2006). That Congress provided for a private cause
3 of action to enforce Title III is consistent with Congress' stated purpose "to
4 provide clear, strong, consistent, enforceable standards addressing discrimination
5 against individuals with disabilities." *See* 42 U.S.C. § 12101(b). In short,
6 Congress has made clear its intent to allow private persons to sue for violation of
7 Title III of the ADA to provide for injunctive relief and to help in the enforcement
8 of Title III.

9 10 **B. Abuse of The Americans With Disabilities Act**

11
12 Despite the important mission of the ADA, there are those individuals who
13 would abuse its private cause of action provision by filing lawsuits solely with the
14 intent to profit financially. This potential for abuse of the ADA has been well
15 documented in the Central District of California and in other districts throughout
16 the country. *See, e.g. Rodriguez v. Investco, L.L.C.*, 305 F. Supp. 2d 1278 (M.D.
17 Fla. 2004); *Molski v. Mandarin Touch Rest.*, 347 F. Supp. 2d 860 (C.D. Cal.
18 2004); *Doran v. Del Taco, Inc.*, 373 F. Supp. 2d 1028 (C.D. Cal. 2005). Courts
19 have referred to this proliferation of ADA lawsuits as a "cottage industry" and
20 have labeled the plaintiffs who file these lawsuits "professional plaintiffs," "serial
21 plaintiffs," and "professional pawns." *See Rodriguez*, 305 F. Supp. 2d at 1280;
22 *see also Doran*, 373 F. Supp. 2d at 1030.

23
24 In *Molski*, the court detailed the plaintiff's history of filing hundreds of
25 nearly identical lawsuits in federal courts throughout California and noted that the
26 plaintiff had filed three lawsuits against three different defendants alleging
27 identical injuries on the exact same day. 347 F. Supp. 2d 860, 861-65. The court
28

1 also noted that the plaintiff had filed thirteen separate complaints for essentially
2 identical injuries sustained during a five day period. *Id.* at 865. In finding the
3 plaintiff to be a vexatious litigant, the *Molski* court noted that his “shotgun
4 litigation tactics” had undermined both the spirit and purpose of the ADA. *Id.* at
5 867.

6
7 In *Doran*, the court noted the way the ADA has been manipulated to
8 generate attorney’s fees. 373 F. Supp. 2d at 1030. Specifically, the court pointed
9 out that many plaintiffs and their attorneys “have found a way to circumvent the
10 will of Congress by seeking money damages while retaining federal jurisdiction.”
11 *Id.* This ability to profit from ADA litigation has led some law firms to send
12 disabled individuals to as many businesses as possible in order to have them
13 aggressively seek out all violations of the ADA. *Id.* Then, rather than informing
14 the businesses of the violations and attempting to remedy them, lawsuits are filed
15 and damage awards are requested. *Id.* “Faced with costly litigation and a
16 potentially drastic judgment against them, most businesses quickly settle.” *Id.*

17
18 The consequences of this abuse of the ADA are severe: businesses and
19 insurers are harmed, the integrity of the bar is called into question, and the
20 public’s confidence in the courts is impaired. *See Molski v. Mandarin Touch*
21 *Rest.*, 359 F. Supp. 2d 924, 937 (C.D. Cal. 2005) (hereinafter *Molski II*); *see also*
22 *Doran*, 373 F. Supp. 2d at 1031. Most significant, however, is the adverse effect
23 this type of abusive litigation has on disabled individuals themselves. These
24 lawsuits denigrate the important purpose behind the ADA and create a backlash
25 against those disabled persons who rely on the ADA as a means of achieving equal
26 access. *See Molski II*, 359 F. Supp. 2d at 937. Indeed, businesses may become
27 fearful of disabled patrons, thereby leading to more misunderstanding,

1 isolationism, and discrimination. Simply put, this litigation abuse of the ADA
2 results in the exact harmful consequences that Congress sought to eradicate by
3 passing the ADA. As more than one court has observed, the result of this abusive
4 litigation is that “the means for enforcing the ADA (attorney’s fees) have become
5 more important and desirable than the end (accessibility for disabled individuals).”
6 *Brother v. Tiger Partner, LLC.*, 331 F. Supp. 2d 1368, 1375 (M.D. Fla. 2004); *see*
7 *also Doran*, 373 F. Supp. 2d at 1030.

8 9 **C. Article III Standing Requirement**

10
11 Ensuring that standing requirements are met by each plaintiff in each
12 lawsuit brought under the ADA enables courts to ensure that the ADA is not being
13 abused, but rather is having its intended effect of allowing disabled persons to
14 become a part of society. To succeed on an ADA claim for injunctive relief, the
15 plaintiff must first satisfy Article III’s case or controversy requirement. U.S.
16 CONST. art. III, § 2. “The party invoking federal jurisdiction bears the burden of
17 establishing” standing. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992).
18 “Each element of standing is an indispensable part of the plaintiffs case and
19 accordingly must be supported in the same way as any other matter on which the
20 plaintiff bears the burden, *i.e.*, with the manner and degree of evidence required at
21 the successive stages of the litigation.” *Harris v. Del Taco*, 396 F. Supp. 2d 1107,
22 1111 (C.D. Cal. 2005) (internal quotations omitted), *citing Lujan*, 504 U.S. at 561.

23
24 Standing “is not measured by the intensity of the litigant’s interest or the
25 fervor of his advocacy.” *See Valley Forge Christian Coll. v. Ams. United for*
26 *Separation of Church & State, Inc.*, 454 U.S. 464, 486 (1982). Rather, to establish
27 standing a plaintiff must demonstrate (1) that he has suffered an injury in fact; (2)
28

1 that the injury is traceable to the challenged action of the defendant; and (3) that
2 the injury can be redressed by a favorable decision. *Lujan*, 504 U.S. at 560-61.
3 Significantly, the issue of whether an individual has standing to sue is determined
4 as of the time of the filing of the complaint. *See Friends of the Earth, Inc. v.*
5 *Laidlaw Env'tl. Servs. (TOC), Inc.*, 528 U.S. 167, 191 (2000); *see also Harris*, 396
6 F. Supp. 2d at 1113 n.5. The plaintiff must establish by a preponderance of the
7 evidence that he had standing when the complaint was filed. *See Harris*, 396 F.
8 Supp. 2d at 1111.

9
10 In *Resnick v. Magical Cruise Co.*, the district court held that the plaintiff's
11 review of the defendant cruise company's website was insufficient to confer
12 standing upon him. 148 F. Supp. 2d 1298 (M.D. Fla. 2001). The *Resnick* court
13 noted that because the plaintiff had not been on the defendant's cruise ship before
14 filing the complaint, any attempts to bolster his standing after the complaint was
15 filed were futile. *Id.* at 1301-02. The court also noted that although the plaintiff's
16 expert went aboard the defendant's cruise ship as a paying cruise passenger and
17 determined that the ship did not comply with the ADA, the expert did not board
18 the vessel until six months *after* the plaintiff's complaint was filed. *Id.* at 1302
19 n.2.

20
21 Similarly, the district court in *Moyer v. Walt Disney World Co.* granted the
22 defendant's motion for summary judgment simply because the plaintiff had not
23 met his burden of establishing that he visited the places of public accommodation
24 at issue before the filing of his complaint. 146 F. Supp. 2d 1249, 1253-54 (M.D.
25 Fla. 2000). "On the date the suit was filed, Plaintiff had never visited Animal
26 Kingdom, Pleasure Island, or Boardwalk Hotel." *Id.* at 1254; *see also Steger v.*
27 *Franco, Inc.*, 228 F.3d 889, 892-93 (8th Cir. 2000) (upholding the district court's
28

1 dismissal of an action for plaintiffs' lack of standing where plaintiffs had not
2 visited the place of public accommodation prior to filing their lawsuit).

3
4 Because standing is determined at the time of the filing of the plaintiff's
5 suit, it is irrelevant whether the plaintiff visited a place of public accommodation
6 numerous times *after* the filing of his or her complaint. Simply put, "any attempts
7 to achieve or bolster standing after the suit is filed will not be effective." *Brother*
8 *v. Rossmore Tampa Ltd. P'ship*, 2004 U.S. Dist. LEXIS 28524, *16 (M.D. Fla.
9 2004).

10
11 **D. Mr. Doran Has Not Met His Burden of Establishing Standing At**
12 **the Time His Complaint Was Filed**

13
14 As noted above, Mr. Doran bears the burden of establishing that he had
15 standing to sue Del Taco *at the time his complaint was filed*. Mr. Doran cannot
16 meet this burden of establishing standing at the time of the filing of his complaint
17 because there are far too many inconsistencies and inaccuracies in his own
18 statements for the Court to conclude that he actually visited the Del Taco
19 restaurant before he filed his complaint.⁴

20
21 Mr. Doran's testimony about his alleged visits to the restaurant first
22 changed during the short three week period between his interrogatory responses
23 and his deposition. In less than a month's time, Mr. Doran's version of when he
24 first visited the Del Taco restaurant, and how many visits he had made total, had

25 _____
26 ⁴Because Mr. Doran did not have standing at the time of the filing of his complaint
27 to sue for violation of the ADA, he also lacked standing to sue under his related
28 California state law claims because they all involve his alleged visits to the Del Taco
restaurant.

1 already changed. In his interrogatory responses, Mr. Doran stated that his first
2 visit was in the Spring of 2003. In his deposition, he stated that his first visit was
3 in the Spring of 2002. In his interrogatory responses, Mr. Doran stated that he had
4 visited the Del Taco restaurant a total of three times prior to 2005. In his
5 deposition, Mr. Doran stated that he had visited the restaurant only twice prior to
6 2005. In his interrogatory responses, Mr. Doran claimed that he visited the
7 restaurant twice – both within a three month window from April to June in 2003 –
8 prior to filing his complaint. In his deposition, Mr. Doran claimed that he visited
9 the restaurant only once, as far back as the Spring of 2002, prior to filing his
10 complaint.

11
12 The inconsistencies and inaccuracies did not end there. Mr. Doran's version
13 of events changed dramatically yet again between the time of his deposition in
14 January of 2005 and the trial of this matter in March of 2006. Now, according to
15 Mr. Doran, he had made five or six visits to the Del Taco restaurant prior to the
16 taking of his deposition on January 7, 2005. This is in contrast to his statement in
17 his interrogatory responses (that he had made three visits prior to January of 2005)
18 and his deposition testimony (that he had made only two visits prior to January of
19 2005). Mr. Doran's testimony at trial that he first visited the Del Taco restaurant
20 in 2002 also is inconsistent with his interrogatory response in which he claimed to
21 have first visited the restaurant in the Spring of 2003. Likewise, Mr. Doran's
22 testimony at trial that his second visit to the Del Taco restaurant occurred in 2003
23 is inconsistent with his deposition testimony that his second visit occurred in July
24 of 2004.

1 Surprisingly, the inconsistencies and inaccuracies continued. Indeed, Mr.
2 Doran's testimony about the time line of his visits also changed dramatically
3 during the short time he was on the stand *during* trial. Mr. Doran testified that his
4 first visit to the Del Taco restaurant was in 2002 when asked by Del Taco's
5 counsel. (Rep. Tr., Doran Testimony, 121:11-12.) Later on, Mr. Doran's counsel,
6 surely detecting Mr. Doran's confusion and inconsistencies, attempted to
7 rehabilitate his testimony:

8
9 And by the way, [defense counsel] asked you if you were
10 confused about some of your other lawsuits and whether or not
11 what you were testifying about in this case was accurate. Are
12 you sure you have been to this Del Taco?

(Rep. Tr., Doran Testimony, 167:21-24.)

13 When asked this question by his own counsel, Mr. Doran quickly changed
14 his testimony. Now, he testified that he first went to the restaurant as far back as
15 1988. (Rep. Tr., Doran Testimony, 167:25-168:1.) What's more, Mr. Doran made
16 his sudden about-face with conviction: "*Way* before 2002," he replied when asked
17 by his counsel when he first visited the restaurant. (Rep. Tr., Doran Testimony,
18 168:1) (emphasis added). Somehow, Mr. Doran's own version of events changed
19 again, this time during the short amount of time he was on the stand during trial.
20 When asked by defense counsel, Mr. Doran testified that he first visited the Del
21 Taco restaurant in 2002. A few minutes later, when asked by his own attorney in
22 an attempt to rehabilitate his many prior inconsistencies and inaccuracies, Mr.
23 Doran testified that he first visited the restaurant fourteen years prior, in 1988.

24
25 The inconsistencies and inaccuracies are not limited to the number and
26 timing of Mr. Doran's alleged visits to the Del Taco restaurant. Indeed, many
27 other inconsistencies and inaccuracies cast doubt as to whether Mr. Doran actually
28

1 visited the Del Taco restaurant before filing his complaint. First, Mr. Doran's
2 complaint refers to objects – display racks and vending machines – which do not
3 even exist in Del Taco restaurant #415. (*See* Complaint, ¶¶ 20-21.) Second, Mr.
4 Doran admitted that he confused Del Taco restaurants with Taco Bell restaurants.
5 When Mr. Doran stated that he ordered an enchilada to eat during his alleged visit,
6 he must have been testifying about a trip to a Taco Bell restaurant since Taco Bell
7 – and not Del Taco – serves enchiladas. (*See* Doran Depo., p. 53; Rep. Tr., Honer
8 Testimony, 105:20-106:5.) Third, when Mr. Doran testified that he went next
9 door to Denny's because the Del Taco restaurant was too busy, he clearly was not
10 testifying about the restaurant at issue in this case, since it does not have a
11 Denny's next door to it. It is likely that Mr. Doran was testifying about Del Taco
12 restaurant #915, which, like restaurant #415, is located near the freeway in
13 Mission Viejo. (Rep. Tr., Doran Testimony, 138:9-12.) Restaurant #915, unlike
14 restaurant #415, has a Denny's next to it. Thus, Mr. Doran not only confused his
15 visits to Del Taco with his visits to Taco Bell, but he also mixed up various Del
16 Taco restaurants with one another and showed that he was uncertain about
17 whether he had encountered architectural barriers at restaurant #415 – the one at
18 issue in this case – or #915, the Del Taco restaurant also located in Mission Viejo
19 near the freeway that has a Denny's next to it. Finally, Mr. Doran's own testimony
20 reveals that he is not sure which restaurant, among all the restaurants he has
21 visited or sued, is the restaurant at issue in this case. When describing the barriers
22 he encountered at Del Taco restaurant #415, Mr. Doran stated that the hand dryers
23 in the restroom were located too high. (Doran Depo., pp. 61, 88.) Because Del
24 Taco restaurant #415 does not have hand dryers in its restrooms, it is clear that Mr.
25 Doran was testifying about a visit to another restaurant, or place of public
26 accommodation, when asked to identify the barriers he encountered.

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1 The simple fact is that Mr. Doran, regardless of whether his intentions are
2 noble, cannot keep straight all of the restaurants and other places of public
3 accommodation that he has sued. Mr. Doran conceded as much during trial.
4 When asked if it was difficult to keep straight the 224 lawsuits that Mr. Doran had
5 filed in the past few years, he replied candidly: "Sometimes." (Rep. Tr., Doran
6 Testimony, 151:9-13.) When asked if there were any fast food chains that Mr.
7 Doran frequented that he had not sued, he replied that he had not sued Kentucky
8 Fried Chicken. (Rep. Tr., Doran Testimony, 151:24-152:3.) In fact, Mr. Doran
9 has sued Kentucky Fried Chicken. (Rep. Tr., Doran Testimony, 152:4-5.) When
10 asked to try again, Mr. Doran replied that he had not sued Jack in the Box. (Rep.
11 Tr., Doran Testimony, 152:8-10.) Although apparently unbeknownst to him, Mr.
12 Doran has sued Jack in the Box also. (Rep. Tr., Doran Testimony, 152:11-12.)
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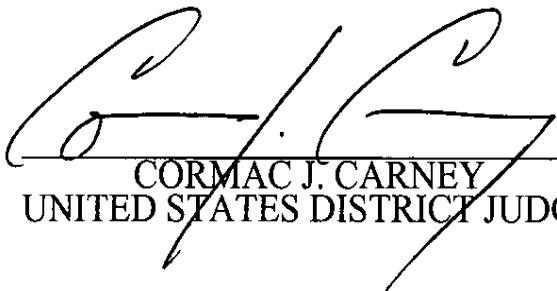
14 The record before the Court is clear: Mr. Doran was, and is, confused about
15 what restaurants he has visited and when those alleged visits occurred. His
16 testimony in this case has changed dramatically over time. He has conceded on
17 more than one occasion that he confused Del Taco restaurant #415 with another
18 Del Taco restaurant, or with a Taco Bell restaurant, or with some other fast food
19 restaurant. There simply are too many inconsistencies and inaccuracies for the
20 Court to conclude that Mr. Doran visited Del Taco restaurant #415, which is
21 located over 500 miles from his residence, *before* he filed his complaint.⁵
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26 ⁵Notably, Mr. Doran has not provided a single shred of credible evidence, such as
27 a simple receipt, from any of his alleged pre-complaint visits. Nor, did Mr. Doran call a
28 single witness at trial that had gone with him to the Del Taco restaurant or at least seen
him there.

1 **IV. CONCLUSION**

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3 After considering all of the evidence presented at trial, the testimony of the
4 witnesses, and, most importantly, Mr. Doran's own testimony, the Court cannot
5 conclude with any degree of confidence that Mr. Doran actually visited the Del
6 Taco restaurant before filing this lawsuit. Accordingly, judgment is entered for
7 Del Taco.

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12 DATED: July 5, 2006

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15 CORMAC J. CARNEY
16 UNITED STATES DISTRICT JUDGE
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