

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

KAREN TUMEH,)	Civil Action # _____
)	
)	
Plaintiff,)	
)	
vs.)	COMPLAINT AND REQUEST
)	FOR JURY TRIAL
)	
McDONALD’S CORPORATION,)	
)	
)	
Defendant.)	
)	
)	

NATURE OF THE CLAIM

1. This is an action under Title III of the American with Disabilities Act of 1990, (hereinafter “ADA”) 42 U.S.C. § 12101 *et seq.*, as amended, and its implementing regulations specifically, 28 C.F.R. § 36.303 (c). Karen TumeH, (hereinafter “Plaintiff”) alleges that the McDonald’s Corporation, (hereinafter “Defendant”), by and through their employees and agents, discriminated against the Plaintiff, an individual with a “disability” as defined by the ADA, 42 U.S.C. § 12102 (2) and 28 C.F.R. § 36.303 (c) by denying the Plaintiff access to a public accommodation.

JURISDICTION AND VENUE

2. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331 and 1343. This action is authorized and instituted pursuant to the ADA, 42 U.S.C §12182 (a), which prohibits discrimination against an individual on the basis of their disability “in the full and equal enjoyment of goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of

public accommodation.” This action is also authorized and instituted pursuant to 28 C.F.R. § 36.303 (c), which prohibits denial of access to people with disabilities.

3. The Defendant’s unlawful discrimination practices alleged below were committed within the jurisdiction of the District of Nebraska.

PARTIES

4. Plaintiff, Karen Tumeh, is a resident of the State of Nebraska and is a citizen of the United States at all relevant times.

5. At all relevant times, Defendant is a foreign corporation incorporated in the State of Delaware operating in the State of Nebraska under foreign authority.

FACTS

6. At all material times, Plaintiff had and has a disability as defined by the ADA, 42 U.S.C. §12102 (2), in that Plaintiff had and has a physical impairment that substantially limits one or more of her major life activities, *i.e.*, her ability to hear. Plaintiff has a hearing impairment and uses a hearing aid to assist her in hearing, however even with her hearing device, she still cannot hear while using the drive-thru ordering box at fast-food restaurants.

7. Since September 1, 2007 and continuing through June 9, 2008, the Plaintiff has been a customer/patron at Defendant’s restaurant located at 2700 Pine Lake Road, Lincoln, Nebraska. As a direct result of Plaintiff’s disability, she requires that her fast-food order be taken at the drive-thru window and not at the order box.

8. On or about September 1, 2007, the Plaintiff went to the Defendant’s restaurant. Plaintiff was denied the ability to order food at the drive-thru window by the Defendant. A Defendant’s employee, Brian, (last name unknown) stated, “They were too busy”. Brian told

Plaintiff to drive around again or come inside to order because there were too many cars in line behind her.

9. On September 1, 2007, immediately after the above-mentioned incident of the denial of services by the Defendant, Plaintiff did notify Defendant's management, Chelsea, of her displeasure of being denied the ability to order her food at the restaurant's drive-thru window. Plaintiff's husband also spoke with Defendant's management and he also filed a complaint on behalf of the Plaintiff through the Defendant's toll-free complaint line.

10. On or about January 18, 2008, the Plaintiff went to the Defendant's restaurant. Plaintiff was once again denied the ability to order her food at the drive-thru window by the Defendant. The Defendant's employee, Brian, (the same individual as named in the September incident as described in paragraph 8) stated, "You have to go around, I have orders behind you....don't you get it, go inside and order." Brian told Plaintiff to drive around again or come inside to order because there were food orders behind her. This incident was witnessed and recorded by Plaintiff's 16 year old son, Amar Tumeh.

11. On or about May 2, 2008, the Plaintiff went to the Defendant's restaurant, wherein the Plaintiff was harassed and initially denied the ability to order food at the drive-thru window by the Defendant until she refused to leave without her food order. Defendant's employee, Tammy, (last name unknown) stated, "I told you before you need to order at the box". In response, Plaintiff asked, "How are people with hearing impairments supposed to order through the box?" Tammy said, "Whatever!" and finally Tammy took Plaintiff's food order. At the time of this incident, Tammy was training another employee. After much argument and humiliation, Plaintiff finally did receive her food order, the Plaintiff said, "Have a nice day" and

Tammy slammed the window closed on the Plaintiff. This incident was witnessed by Plaintiff's 20 year old son, Abd Tumeh.

12. On or about June 9, 2008, the Plaintiff went to the Defendant's restaurant. Once again, the Plaintiff was denied the ability to order food at the drive-thru window by the Defendant. A Defendant's employee, unknown male, once again denied the Plaintiff the opportunity to place her order at the drive-thru window. Plaintiff only wanted to order two ice cream cones but was denied that opportunity because of her disability.

**Count I – ADA Title III
DENIAL OF ACCESS TO A PUBLIC ACCOMMODATION
AND SERVICES OFFERED BY PUBLIC ENTITIES**

13. Plaintiff incorporates herein, as if fully set forth, the allegations contained in paragraphs 1 through 12.

14. At all material times, Defendant is and has been a private entity, a restaurant, which is considered a public accommodation by the ADA, 42 U.S.C. § 12181 (7) (B).

15. By prohibiting or not allowing the Plaintiff to order at the drive-thru window on January 18, 2008, Defendant has subjected the Plaintiff directly through contractual, licensing, or other arrangements to a denial of the opportunity to participate in or benefit from the goods, services, facilities, privileges, advantages, or public accommodations of a private entity in violation of 42 U.S.C. § 12182 (b) (1) (A) (i).

16. The use of the drive-thru window for taking a food order is a necessary and reasonable accommodation for Plaintiff, in order for her to enjoy the Defendant's goods and services, as effective as Defendant's services that are provided to non-disabled patrons, at the Defendant's restaurant. The Defendant's failure to provide this access to its services to the Plaintiff is in direct violation of 42 U.S.C. § 12182 (b) (1) (A) (iii).

17. By denying the Plaintiff the opportunity to place her food order at the drive-thru window, the Defendant has directly or through contractual or other arrangements, utilized standards or criteria or methods of administration of services that had the effect of discriminating on the basis of Plaintiff's disability in direct violation of 42 U.S.C. § 12182 (b) (1) (D) (i).

18. By prohibiting or not providing the Plaintiff the use of an alternate means to order at the drive-thru window, Defendant has imposed or applied eligibility criteria that screens out or tends to screen out an individual with a disability from fully and equally enjoying goods, services, facilities, privileges, advantages, or accommodations in violation of 42 U.S.C. § 12182 (b) (2) (A) (i).

19. Repeatedly, Plaintiff has requested that Defendant modify its policies or procedures to permit Plaintiff's use of the drive-thru window to place her food orders which are necessary to afford the Plaintiff the benefit of Defendant's goods, services, facilities, privileges, advantages, or accommodations. Defendant has failed to make reasonable accommodations in its policies, practices, or procedures in violation of 42 U.S.C. §12182 (b) (2) (A) (ii).

20. Defendant has failed to take such steps as may be necessary to ensure that Plaintiff is not excluded from the use of the drive-thru window because of the lack of training or discriminatory actions of its employees, *i.e.*, refusing to take the Plaintiff's food order at the Defendant's drive-thru window, which is in direct violation of 42 U.S.C. §12182 (b) (2) (A) (iii).

Count II – ADA Title III
DENIAL OF ACCESS TO A PUBLIC ACCOMMODATION
AND SERVICES OFFERED BY PUBLIC ENTITIES

21. Plaintiff incorporates herein, as if fully set for the allegations contained in paragraphs 1 through 20.

22. By prohibiting or not immediately allowing the Plaintiff, without verbal harassment and argument, to order at the drive-thru window on or about May 2, 2008, Defendant has once again subjected the Plaintiff directly through contractual, licensing, or other arrangements to a denial of the opportunity to participate in or benefit from the goods, services, facilities, privileges, advantages, or public accommodations of a private entity in direct violation of 42 U.S.C. § 12182 (b) (1) (A) (i).

**Count III – ADA Title III
DENIAL OF ACCESS TO A PUBLIC ACCOMMODATION
AND SERVICES OFFERED BY PUBLIC ENTITIES**

23. Plaintiff incorporates herein, as if fully set forth, the allegations contained in paragraphs 1 through 22.

24. By prohibiting or not allowing the Plaintiff to place her food order at the drive-thru window on or about June 9, 2008, Defendant once again denied the Plaintiff the opportunity to order two ice cream cones in direct violation of 42 U.S.C. § 12182 (b) (1) (A) (i).

25. Once again, based on the Defendant's employees' discriminatory actions against the Plaintiff, *i.e.*, refusing to take her food order at the drive-thru window, the Defendant has repeatedly failed to take such steps as may be necessary to ensure that Plaintiff is not excluded from the use of the drive-thru window to place her food orders as a reasonable public accommodation, which is in direct violation of 42 U.S.C. §12182 (b) (2) (A) (iii).

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff, based on the foregoing allegations of fact and law, demands judgment against the Defendant as follows:

- A. For preliminary and permanent injunctive relief requiring Defendant to provide reasonable accommodations for Plaintiff and to provide necessary auxiliary aids to Plaintiff;
- B. Issue an Order directing the Defendant to develop and fully implement a company policy and procedures to train all employees in their duties pursuant to the ADA and its implementing regulations, specifically allowing deaf and/or hearing-impaired persons to order at drive-thru window without harassment, embarrassment or humiliation;
- C. For Plaintiff's reasonable costs, including expert's fees and attorney's fees incurred in this action;
- D. For such other and further relief as this Court may deem just and equitable.

REQUEST FOR JURY TRIAL

The Plaintiff hereby requests a Jury Trial of this matter to be held in Lincoln, Nebraska.

Dated: July 14, 2008

Respectfully submitted,

KAREN TUMEH, Plaintiff,

s/Shirley Ann Mora James
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