

1 Christopher H. Knauf, State Bar No. 185180
2 KNAUF ASSOCIATES
3 2001 Wilshire Blvd, Suite 510
4 Santa Monica, California 90403
5 Tel: (310) 829-4250 Fax: (310) 622-7263
6 Email: ck@goodlaw.biz

7 Michael Waterstone, State Bar No. 205867
8 919 South Albany Street
9 Los Angeles, California 90015
10 Tel: (213) 736-2243 Fax: (213) 487-6736
11 Email: michael.waterstone@lls.edu

12 Attorneys for Plaintiffs

13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA

15 CYRENA THOMAS, an individual;
16 LARRY GIVENS, an individual,

17 Plaintiffs,

18 v.

19 McDONALD'S RESTAURANTS OF
20 CALIFORNIA, INC., a California
21 corporation,;
22 McDONALD'S CORPORATION, a
23 Delaware corporation,;
24 DOES 1 - 10, inclusive,

25 Defendants.

Case No.:

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF
[CLASS ACTION]**

1. Americans with Disabilities Act
2. Unruh Civil Rights Act
3. Blind and Disabled Persons Act
4. Unfair Competition Act
5. Negligence
6. Intentional Infliction of Emotional Distress

1 **INTRODUCTION**

2 Plaintiffs Cyrena Thomas and Larry Givens, on their own behalf and on
3 behalf of all similarly situated persons, hereby allege the following facts and
4 submit the following claims for relief against Defendants McDonald’s Restaurants
5 of California, Inc. and its corporate parent, McDonald’s Corporation:

6 1. Plaintiffs bring this class action complaint for declaratory and
7 injunctive relief on behalf of all persons with disabilities who use service animals
8 and who have been denied full and equal access to McDonald’s fast food
9 restaurants, or have otherwise experienced unlawful discrimination by the
10 Defendants, due to the plaintiff class’ use of service animals.

11 2. Plaintiffs bring their claims against Defendants for their violations of
12 Title III of the Americans with Disabilities Act (42 U.S.C. § 12181 *et seq.*), the
13 Unruh Civil Rights Act (Cal. Civil Code § 51 *et seq.*), the Blind and Disabled
14 Persons Act (Cal. Civil Code § 54 *et seq.*), the Unfair Competition Act (Cal. Bus.
15 & Prof. Code § 17200 *et seq.*), and common law negligence, negligence per se,
16 and intentional infliction of emotional distress.

17 3. Plaintiffs seek statutory damages for the named plaintiffs only, and
18 seek preliminary and permanent declaratory and injunctive relief prohibiting
19 Defendants from unlawfully discriminating against people with disabilities using
20 service animals in Defendants’ restaurants, and requiring Defendants to review
21 and modify their written policies, procedures, and employee training regarding
22 their employees’ treatment of customers using service animals.

23 **JURISDICTION AND VENUE**

24 4. As this action arises in part under the Americans with Disabilities Act,
25 this Court has jurisdiction over Plaintiffs’ claims pursuant to 28 U.S.C. §§ 1331
26 and 1343. This Court has supplemental jurisdiction over Plaintiffs’ state law
27 claims pursuant to 28 U.S.C. § 1367(a), and has jurisdiction over the claims for
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1 declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202.

2 5. Venue is proper in the Central District of California under 28 U.S.C.
3 § 1391(b), as the events involving Plaintiffs occurred in this judicial district.

4 **PARTIES**

5 6. Plaintiff Cyrena Thomas has the disability of blindness and uses a
6 trained and licensed service animal (guide dog) named Suzie Q. At all relevant
7 times, Ms. Thomas has been a person with a disability within the meaning of the
8 Americans with Disabilities Act and California Government Code section 12926.
9 Ms. Thomas brings this action on her own behalf and on behalf of all persons with
10 disabilities in California and the United States who use service animals.

11 7. Plaintiff Larry Givens is the fiancée of Ms. Thomas. By virtue of his
12 association with Ms. Thomas, he was subjected to unlawful discrimination during
13 the incident at issue. During the incident, Mr. Givens had a “known association”
14 with Ms. Thomas within the meaning of the Americans with Disabilities Act. Mr.
15 Givens brings this action in his individual capacity only.

16 8. Defendant McDonald’s Restaurants of California Inc. (hereinafter
17 “McDonald’s California”) at all relevant times has been a California corporation
18 and owns the McDonald’s restaurant where the events involving the named
19 plaintiffs arose. McDonald’s California also owns and operates a multitude of
20 other McDonald’s locations in California. McDonald’s California implements
21 corporate policies and procedures governing the operation of its restaurants, and
22 implements corporate training protocols for all employees.

23 9. Defendant McDonald’s Corp. (hereinafter “McDonald’s National”), a
24 Delaware corporation, is the parent corporation of McDonald’s California and an
25 owner of the restaurant where the events involving the named plaintiffs arose.
26 McDonald’s National owns thousands of McDonald’s restaurants throughout the
27 United States. McDonald’s National implements written policies and procedures
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1 governing the operation of all of its restaurants and implements training protocols
2 for all employees.

3 10. The identities of Defendants Does 1 through 10 are unknown at this
4 time. Plaintiffs will amend this Complaint when their identities become known.

5 11. At all relevant times, all Defendants and each of them, were acting in
6 concert with each other and were the agent, principal, subsidiary, representative,
7 alter ego, officer, employer, employee, manager, director, shareholder, partner,
8 co-conspirator, aider and abettor, and fiduciary in proximately causing the injuries
9 and damages alleged herein.

10 12. At all relevant times, all Defendants and each of them were legally
11 responsible to Plaintiffs for each of their co-defendants' wrongs, acts, and
12 omissions alleged herein as though they had each committed each act themselves,
13 and at all times authorized, directed, and ratified the acts and omissions of each
14 remaining defendant.

15 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

16 13. On March 1, 2010, Ms. Thomas and Mr. Givens attempted to enjoy a
17 meal together at the McDonald's restaurant located at 3501 La Cienega Boulevard
18 in Los Angeles, California. At all relevant times, the restaurant has been owned
19 and operated by Defendants.

20 14. At all relevant times, Ms. Thomas and Mr. Givens were accompanied
21 by their infant son and Ms. Thomas' service dog, Suzie Q. Ms. Thomas relies on
22 Suzie Q to be able to live independently and, therefore, keeps Suzie Q with her,
23 and is assisted by her, at all times when in public.

24 15. Upon entering the McDonald's restaurant on the date in question, one
25 or more employees requested that Plaintiffs remove their dog from the premises.
26 Plaintiffs informed Defendants' employees that Suzie Q was a service animal.
27 Defendants' employees nevertheless instructed Plaintiffs to remove the dog and
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1 threatened to not serve them unless they did so. Ms. Thomas became upset and
2 ultimately exited the restaurant with Suzie Q.

3 16. Mr. Givens remained in the restaurant and attempted to educate
4 Defendants' employees regarding the rights of people with service animals. He
5 explained that their actions violated the law and that he and Ms. Thomas had the
6 right to dine with the service animal present. Defendants nevertheless continued
7 to refuse to serve Plaintiffs unless Suzie Q remained outside the restaurant.

8 17. As a result of Defendants' employees' actions, Plaintiffs left
9 Defendants' restaurant and ate their meal at another restaurant nearby, with Suzie
10 Q, and without any difficulty.

11 18. The incident at Defendants' restaurant was upsetting, frustrating,
12 shocking, and humiliating to Plaintiffs. Defendants' employees' actions caused
13 Ms. Thomas and Mr. Givens to feel like second-class citizens.

14 19. As McDonald's restaurants are popular and ubiquitous, Plaintiffs
15 desire to return if they can be assured that employees are properly trained
16 regarding the treatment of customers with service animals. Plaintiffs are fearful
17 and deterred when considering McDonald's as a dining option.

18 20. Over the past several years, similar incidents in which Defendants'
19 employees refuse service to customers with disabilities using service animals have
20 been reported in the media throughout the United States.

21 21. Plaintiffs are informed, believe, and based thereon allege that their
22 individual experiences of disability discrimination by Defendants, along with
23 other reported similar accounts, are representative of Defendants' overall failure
24 to maintain adequate written policies and procedures and adequate training of
25 employees as to the rights of customers with disabilities using service animals.
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1 **CLASS ACTION ALLEGATIONS**

2 22. Plaintiffs re-allege and incorporate by reference all previous
3 paragraphs.

4 23. Plaintiffs bring this class action under Rule 23(b)(2) of the Federal
5 Rules of Civil Procedure, as Defendants have acted and refused to act on grounds
6 that apply generally to the class, so that final injunctive relief and corresponding
7 declaratory relief are appropriate respecting the class as a whole.

8 24. Plaintiffs bring this action individually and on behalf of all persons
9 with disabilities residing in California and the United States who use service
10 animals.

11 25. Plaintiffs are informed, believe, and based thereon allege that
12 Defendants do not have adequate policies or procedures in place concerning the
13 rights of people with disabilities who bring service animals into Defendants’
14 restaurants.

15 26. Defendants have acted or refused to act on grounds that apply
16 generally to the class, so that final injunctive relief or corresponding declaratory
17 relief is appropriate respecting the class as a whole.

18 27. Based on state and national data, Plaintiffs are informed, believe, and
19 based thereon allege that the putative class consists of thousands of individuals
20 with disabilities.

21 28. Each member of the putative class has at all relevant times been a
22 “qualified individual with a disability” within the meaning of the ADA and
23 California law.

24 29. Given the popularity and ubiquity of Defendants’ restaurants, it is
25 reasonably foreseeable that many, if not most, members of the class will attempt
26 to bring their service animal to one or more of Defendants’ restaurants.

27 30. The violations of the ADA and California law set forth herein, if not
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1 enjoined by this Court, will continue to affect members of the class and cause
2 them to experience unnecessary exclusion, segregation, and emotional harm.

3 31. The legal requirements are met with regard to the proposed class in
4 that:

- 5 a. The class is so numerous that it would be impractical to bring
6 all class members before the Court;
- 7 b. There are questions of law and fact that are common to the
8 class;
- 9 c. The named plaintiffs' claims are typical of the claims of the
10 class;
- 11 d. The named plaintiffs will fairly and adequately represent all
12 members of the class. Their attorneys specialize in the field of
13 disability rights and are experienced in bringing Rule 23(b)(2)
14 class actions; and
- 15 e. Defendants have acted or refused to act on grounds generally
16 applicable to the class.

17 32. The common questions of law and fact, shared by the named plaintiffs
18 and all class members, include:

- 19 a. Whether the putative class members are all individuals with
20 disabilities using service animals within the meaning of the
21 ADA and California law;
- 22 b. Whether Defendants have excluded and continue to exclude
23 certain members of the putative class from their restaurants due
24 to the use of a service animal;
- 25 c. Whether Defendants have and continue to violate Title III of the
26 ADA, the Unruh Act, Blind and Disabled Persons Act, and
27 Unfair Competition Act; and
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1 d. Whether Defendants have and continue to breach a duty of due
2 care, in addition to their statutory duties, to the putative class
3 and thereby actually and foreseeably cause them emotional
4 harm.

5 **FIRST CLAIM FOR RELIEF**
6 **TITLE III OF THE AMERICANS WITH DISABILITIES ACT**
7 **42 U.S.C. § 12181 *et seq.***
8 **By Plaintiffs Individually And On Behalf Of The Putative Class**
9 **Against All Defendants**

10 33. Plaintiffs re-allege and incorporate by reference all previous
11 paragraphs.

12 34. Congress enacted the Americans with Disabilities Act upon finding,
13 among other things, that “society has tended to isolate and segregate individuals
14 with disabilities” and that such forms of discrimination continue to be a “serious
15 and pervasive social problem.” 42 U.S.C. §12101(a)(2).

16 35. In response to these findings, Congress explicitly stated that the
17 purpose of the ADA is to provide “a clear and comprehensive national mandate
18 for the elimination of discrimination against individuals with disabilities” and
19 “clear, strong, consistent, enforceable standards addressing discrimination against
20 individuals with disabilities.” 42 U.S.C. §12101(b)(1)-(2).

21 36. Title III of the ADA provides in pertinent part: “No individual shall
22 be discriminated against on the basis of disability in the full and equal enjoyment
23 of the goods, services, facilities, privileges, advantages, or accommodations of
24 any place of public accommodation by any person who owns . . . or operates a
25 place of public accommodation.” 42 U.S.C. §12182(a).

26 37. The ADA further provides that "it shall be discriminatory to afford an
27 individual or class of individuals, on the basis of a disability or disabilities of such
28 individual or class, directly, or through contractual, licensing, or other

1 arrangements with the opportunity to participate in or benefit from a good,
2 service, facility, privilege, advantage, or accommodation that is not equal to that
3 afforded to other individuals." 42 U.S.C. § 12182(b)(1)(A)(ii).

4 38. Discrimination under the ADA includes "a failure to take such steps
5 as may be necessary to ensure that no individual with a disability is excluded,
6 denied services, segregated or otherwise treated differently than other individuals
7 because of the absence of auxiliary aids and services . . ." 42 U.S.C. §
8 12182(b)(2)(A)(iii).

9 39. The ADA further prohibits "a failure to make reasonable modification
10 in policies, practices, or procedures, when such modifications are necessary to
11 afford such goods, services, facilities, privileged, advantages, or accommodations
12 to individuals with disabilities..." 42 U.S.C. § 12182(b)(2)(A)(ii).

13 40. The federal regulations implementing Title III of the ADA provide:
14 "Generally, a public accommodation shall modify policies, practices, or
15 procedures to permit the use of a service animal by an individual with a disability.
16 28 C.F.R. § 36.302 (1999).

17 41. The ADA also prohibits exclusion and denial of equal goods, services,
18 facilities, and privileges to persons because of the known disability of an
19 individual with whom they are known to have a relationship or association. 42
20 U.S.C. § 12182(b)(1)(E).

21 42. At all relevant times, Ms. Thomas has been an individual with a
22 disability within the meaning of the ADA.

23 43. At all relevant times, Ms. Thomas' guide dog, Suzie Q, has been a
24 service animal within the meaning of the ADA.

25 44. At all relevant times, Defendants' employees were aware that Mr.
26 Givens had an association or relationship with Ms. Thomas.

27 45. Defendants each own and operate restaurants constituting "places of
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1 public accommodation” within the meaning of the ADA, including the restaurant
2 where Plaintiffs’ incident occurred.

3 46. By virtue of their acts and omissions herein alleged, Defendants have
4 violated Title III of the ADA as to Plaintiffs individually and as to members of the
5 putative class.

6 47. Pursuant to 42 U.S.C. § 12188(a), Plaintiffs are entitled to declaratory
7 and injunctive relief, and to recover reasonable attorneys’ fees and costs incurred
8 in bringing this action.

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10 **SECOND CLAIM FOR RELIEF**
11 **UNRUH CIVIL RIGHTS ACT**
12 **California Civil Code § 51 *et seq.***

13 **By Plaintiffs Individually And On Behalf Of The Putative Class**
14 **Against All Defendants**

15 48. Plaintiffs re-allege and incorporate by reference all previous
16 paragraphs.

17 49. California’s Unruh Civil Rights Act provides:

18 “All persons within the jurisdiction of this state are free and equal, and no
19 matter what their . . . disability [or] medical condition, are entitled to the full and
20 equal accommodations, advantages, facilities, privileges, or services in all
21 business establishments of every kind whatsoever.” Cal. Civ. Code § 51(b).

22 50. The Unruh Act provides that violations of the Americans with
23 Disabilities Act also constitute violations of the Unruh Act. Cal. Civ. Code §
24 51(f). As such, Plaintiffs’ first claim for relief is expressly incorporated as a
25 violation of the Unruh Act.

26 51. Ms. Thomas is a person with a disability within the meaning of the
27 Unruh Act.

28 52. Defendants’ restaurants are business establishments within the
meaning of the Unruh Act.

1 53. By virtue of the acts and omissions alleged herein, Defendants have
2 violated and continue to violate the Unruh Act.

3 54. Plaintiffs are entitled to declaratory and injunctive relief on behalf of
4 themselves and the putative class, as well as reasonable attorneys' fees and costs.
5 Cal. Civ. Code § 52(a).

6 55. As to the named plaintiffs, Defendants are liable up to a maximum of
7 three times the amount of Plaintiffs' actual damages, including emotional distress
8 damages determined by the jury, and in no case less than \$4,000 per violation.
9 Cal. Civ. Code § 52(a).

10 **THIRD CLAIM FOR RELIEF**
11 **BLIND AND DISABLED PERSONS ACT**
12 **California Civil Code § 54 *et seq.***

13 **By Plaintiffs Individually And On Behalf Of The Putative Class**
14 **Against All Defendants**

15 56. Plaintiffs re-allege and incorporate by reference all previous
16 paragraphs.

17 57. The Blind and Disabled Persons Act ("Disabled Persons Act")
18 provides that people with disabilities shall have "full and equal use" of public
19 facilities and other public places, and have the same right as the general public to
20 the full and free use of, *inter alia*, public buildings, public facilities, and other
21 public places. Cal. Civ. Code § 54(a).

22 58. The Disabled Persons Act further provides:

23 "Individuals with disabilities shall be entitled to full and equal access, as
24 other members of the general public, to accommodations, advantages, facilities, . .
25 . . , and privileges of all . . . places of public accommodation, amusement, or resort,
26 and other places to which the general public is invited, subject only to the
27 conditions and limitations established by law, or state or federal regulation, and
28 applicable alike to all persons.

1 Cal. Civ. Code § 54.1(a)(1).

2 59. California Civil Code section 54.2(a) provides:

3 “Every individual with a disability has the right to be accompanied by a
4 guide dog, signal dog, or service dog, especially trained for the purpose, in any of
5 the places specified in Section 54.1 without being required to pay an extra charge
6 or security deposit for the guide dog, signal dog, or service dog.”

7 60. Like the Unruh Act, the Disabled Persons Act also incorporates
8 violations of the Americans with Disabilities Act. Cal. Civ. Code § 54(c). As
9 such, Plaintiffs’ first claim for relief is expressly incorporated as a violation of the
10 Disabled Persons Act.

11 61. Ms. Thomas is a person with a disability within the meaning of the
12 Disabled Persons Act.

13 62. At all relevant time, Suzie Q was a guide dog and/or service dog
14 within the meaning of the Disabled Persons Act.

15 63. Defendants’ restaurants are public facilities and public places within
16 the meaning of the Disabled Persons Act.

17 64. By virtue of the acts and omissions alleged herein, Defendants denied,
18 interfered with admittance to, and interfered with Plaintiffs’ enjoyment of their
19 restaurants, and otherwise interfered with the rights of Ms. Thomas and other
20 members of the putative class, all of whom are individuals with a disability under
21 California Civil Code sections 54, 54.1 and 54.2.

22 65. “Interfere” as used herein, includes, but is not limited to, preventing or
23 causing the prevention of a guide dog, signal dog, or service dog from carrying
24 out its functions in assisting a person with a disability.

25 66. By virtue of the acts and omissions alleged herein, Defendants have
26 violated and continue to violate the Disabled Persons Act.

27 67. Plaintiffs are entitled to declaratory relief on behalf of themselves and
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1 the putative class, as well as reasonable attorneys' fees and costs. Cal. Civ. Code §
2 54.3.

3 68. As to the named plaintiffs, Defendants are liable up to a maximum of
4 three times the amount of Plaintiffs' actual damages, including emotional distress
5 damages determined by the jury, and in no case less than \$1,000 per violation.
6 Cal. Civ. Code § 54.3(a).

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8 **FOURTH CLAIM FOR RELIEF**
UNFAIR COMPETITION ACT

9 **California Business & Professions Code § 17200 *et seq.***
10 **By Plaintiffs Individually And On Behalf Of The Putative Class**
11 **And General Public, Against All Defendants**

12 69. Plaintiffs re-allege and incorporate by reference all previous
13 paragraphs.

14 70. Plaintiffs bring their claims in their individual capacities, on behalf of
15 the putative class, and as provided in the Unfair Competition Act, on behalf of the
16 general public.

17 71. By engaging in the conduct described herein, Defendants have
18 committed acts of unlawful and unfair business practices within the meaning of
19 the Unfair Competition Act.

20 72. The unlawful and unfair business practices conducted by Defendants
21 are ongoing and present a threat and likelihood of continuing discrimination
22 against Plaintiffs and other members of the general public who may visit
23 Defendants' restaurants. Accordingly, Plaintiffs seek injunctive and declaratory
24 relief.

25 73. Pursuant to California Code of Civil Procedure § 1021.5, Plaintiffs are
26 entitled to recover from Defendants their reasonable attorneys' fees and costs
27 incurred in bringing this action.
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1 **FIFTH CLAIM FOR RELIEF**
2 **NEGLIGENCE AND NEGLIGENCE PER SE**
3 **By Plaintiffs Individually And On Behalf Of The Putative Class**
4 **Against All Defendants**

5 74. Plaintiffs re-allege and incorporate by reference all previous
6 paragraphs.

7 75. At all relevant times, Defendants owed a duty of due care to Plaintiffs
8 and the putative class.

9 76. Defendants breached their duty of due care to Plaintiffs and the
10 putative class by the acts and omissions alleged herein.

11 77. By their acts and omissions as alleged herein, Defendants violated
12 state and federal statutes and regulations, including but not limited to the ADA,
13 the Unruh Act, and the Disabled Persons Act.

14 78. Defendants' breach of duty and violations of law proximately caused,
15 and were a substantial factor in causing, Plaintiffs' damages as alleged herein.
16 Such damages were reasonably foreseeable to Defendants.

17 79. Plaintiffs' damages resulted from an occurrence the nature of which
18 the violated statutes and regulations were designed to prevent.

19 80. At all relevant times, Plaintiffs have belonged to the class of persons
20 for whose protection the statutes and regulations were adopted.

21 81. By virtue of Defendants' acts and omissions as alleged herein,
22 Plaintiffs and the putative class are entitled to preliminary and permanent
23 injunctive relief.

24 82. The named plaintiffs are entitled to an award of damages, including
25 exemplary damages, in an amount according to proof, as a result of Defendants'
26 conduct alleged herein.
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1 b. For appropriate preliminary and permanent injunctive relief
2 pursuant to the Americans with Disabilities Act, Unruh Civil
3 Rights Act, and the Unfair Competition Act only;

- 4 2. For the named plaintiffs:
5 a. Treble actual damages, pursuant to Cal. Civ. Code §§ 52.1 and
6 54.3;
7 b. Exemplary damages, pursuant to California Civil Code § 3294;
8 3. Attorneys' fees and costs of suit, pursuant to 42 U.S.C. § 12188,
9 California Civil Code §§ 52.1 and 54.3, and California Code of Civil
10 Procedure § 1021.5.
11 4. For other just and proper relief as the Court may order.

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13 Dated: February 29, 2012

KNAUF ASSOCIATES

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16 By: Christopher H. Knauf
17 Attorneys for Plaintiffs

18 **DEMAND FOR JURY TRIAL**

19 Plaintiffs hereby request a jury trial.

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21 Dated: February 29, 2012

KNAUF ASSOCIATES

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23 _____
24 Christopher H. Knauf
25 Attorneys for Plaintiffs
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