

SETTLEMENT AGREEMENT
REGARDING ACCESS FOR INDIVIDUALS WITH DISABILITIES
TO
MALONY'S TAVERN IN ALBUQUERQUE, NEW MEXICO

I. BACKGROUND

1. The parties to this Settlement Agreement are the United States of America, MasDonald, LLC, and Maloney's Tavern. MasDonald is an Arizona limited liability corporation which operates a privately owned restaurant located at 325 Central Avenue NW, Albuquerque, NM 87102.

2. This Agreement is reached under Title III of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§12181 *et seq.* and its implementing regulation, 28 C.F.R. Part 36, to resolve an investigation initiated by the United States Attorney's Office for the District of New Mexico after it was informed by Susan M. Cash that she had been refused service and asked to leave Maloney's Tavern because she was accompanied by her service animal.

3. Maloney's Tavern is a place of public accommodation under 42 U.S.C. § 12181(7)(B) and 28 C.F.R. § 36.104. MasDonald as sole owner and operator of Maloney's Tavern, acknowledges that the restaurant is a place of public accommodation covered by Title III of the ADA.

II. FACTS

4. The United States found in its investigation and MasDonald and Maloney's Tavern does not dispute that on Monday, August 13, 2012, complainant Susan M. Cash, accompanied by a friend, visited Maloney's Tavern. Because she suffers from multiple sclerosis, Ms. Cash's service animal accompanied them. Once inside the restaurant, the bartender yelled at Ms. Cash across the restaurant that she could not bring her dog into the restaurant and that she could sit outside. Ms. Cash responded that her dog was a service dog and she had a right to dine in the restaurant with her service dog. The bartender and other customers at the bar

made comments about having lost table space for a wheelchair ramp and made jokes about Ms. Cash having a dog to take care of her. The bartender insisted that Ms. Cash eat outside or leave the restaurant.

Ms. Cash dined elsewhere and returned to Maloney's Tavern to speak with the manager. The manager was impolite and told Ms. Cash that she could not dine in the restaurant with the dog. Ms. Cash informed the manager that she intended to file a Complaint with the Department of Justice, Civil Rights Division. The manager responded that she could do as she wished but that the restaurant was not going to make additional accommodations for individuals with disabilities.

5. As a result of its investigation, the United States has determined that Susan M. Cash was denied equal access to the goods and services of the Maloney's Tavern when it failed to modify its policies, practices, and procedures to permit the use of a service animal by an individual with a disability. 42 U.S.C. § 12182(a); 28 C.F.R. § 36.302.

6. The parties have determined their respective interests can be met without engaging in litigation, and this Agreement is made to provide access to persons with disabilities and avoid the costs as well as the burdens of litigation.

III. ACTIONS TO BE TAKEN BY MALONEY'S TAVERN AND MASDONALD

7. Consistent with the law, Maloney's Tavern and MasDonald, shall not discriminate against any individual on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of Maloney's Tavern by excluding or providing unequal treatment to persons with disabilities who use service animals.

8. Maloney's Tavern and MasDonald shall adopt, maintain, and enforce the policy attached as Attachment A to this Settlement Agreement, which covers treatment of customers using service animals. Within 15 days after the effective date of this Agreement, Maloney's Tavern shall provide a copy of the policy in Attachment A to each employee or owner or contract worker ("staff") of Maloney's Tavern. This restaurant shall post a copy of the policy in

the area of the restaurant where staff are given information on company policy (e.g., Worker's Compensation, Wage and Hour Laws, etc.). The policy will be communicated to staff in English and in any additional language(s) necessary for all staff to understand the policy.

9. Within 30 days after the effective date of this Agreement, Maloney's Tavern and MasDonald will also develop or procure a sign, not less than 6" x 12" with a font of 48, stating "This Restaurant Welcomes Customers With Disabilities Who Are Accompanied By Their Service Animals," which will also include this message in Braille. The sign will be installed next to the entry door of the restaurant at a height of 60 inches from the ground to the centerline of the sign.

10. Maloney's Tavern and MasDonald shall pay a civil penalty of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00) by check made payable to the "United States of America." 42 U.S.C. § 12188(b)(2)(C). This payment will be delivered with this signed Agreement to Assistant U.S. Attorney Ruth Keegan, United States Attorney's Office, 201 Third Street NW, Albuquerque, New Mexico 87102. This liability is a joint and several obligation of Maloney's Tavern and MasDonald.

11. All staff or owners who may be in contact with the public (including, but not limited to, hosts, hostesses, wait staff, bartenders, whether employees or contract workers, and similar personnel) of Maloney's Tavern shall undergo suitable training on the obligations of public accommodations to serve persons with disabilities. This training shall be concluded for current staff and the owners of MasDonald within 30 days of the date of this Settlement Agreement. All future staff or owners shall be provided this same training within 30 days of their date of hire. The training, for purposes of this Settlement Agreement only, and which cannot be cited as precedent, shall include each staff member or owner being provided a copy of the "Policy" attached hereto as Exhibit A; a copy of the explanatory items attached hereto as B ("Commonly Asked Questions About Service Animals in Places of Business"); and C ("ADA 2010 Revised Requirements for Service Animals"). If the staff member or owner does not read and comprehend the English language, Maloney's Tavern shall arrange for this information to

be communicated to that staff or owner in their respective native languages so that each staff member or owner will have a full and complete understanding. Each staff member or owner shall date, sign and print their respective names legibly on the Policy indicating their understanding and agreement to abide by the Policy adopted by Maloney's Tavern.

For the duration of this Settlement Agreement, upon the anniversary of its effective date, Maloney's Tavern will provide copies of the signed Policy forms described just above to the United States Attorney's Office at the address provided herein below.

IV. ENFORCEMENT AND MISCELLANEOUS PROVISIONS

12. In consideration for this Agreement, the United States agrees to refrain from filing any civil lawsuit based on the incident that occurred August 13, 2012. The United States reserves, however, the right to file a civil lawsuit to enforce this Agreement under the terms of paragraph 14.

13. If Maloney's Tavern and/or MasDonald fail to take any of the actions described in Section III of this Agreement under the terms and time periods specified, without obtaining sufficient advance written approval from the United States, such failure shall be considered a subsequent violation under 42 U.S.C. § 12188(b)(2)(C)(ii) and 28 C.F.R. § 36.504(a)(3)(ii), and Maloney's Tavern and MasDonald will correct this noncompliance within 30 days of being notified of the noncompliance and shall be liable to the United States of America for a civil penalty of at least \$1,000 for each required action not taken in addition to any appropriate compensatory damages caused by the failure to comply. Payment of the penalty shall not be the exclusive remedy of the United States upon any breach of this Settlement Agreement by Maloney's Tavern and/or MasDonald.

14. Failure by the United States Department of Justice to enforce this entire Agreement, or any provision thereof, with regard to any deadline or any other provision will not be construed as a waiver of its right to do so for other deadlines and provisions of this Agreement.

15. The United States Attorney's Office does not intend any aspect of this Agreement to evidence a legal interpretation of the ADA or any state accessibility law.

16. This Agreement is a public document. A copy of this document, or any information contained in it, may be made available to any person.

17. This Agreement is binding on Maloney's Tavern and MasDonald. This Agreement is also binding on any successors in interest to Maloney's Tavern, and each has a duty to notify all such successors in interest.

18. This Agreement is the entire agreement between the United States of America, Maloney's Tavern and MasDonald. No other statement, promise, or agreement, either written or oral, made by either party or agents of either party, not in this written Agreement will be enforceable.

19. This Agreement is limited to the facts in it. This Agreement does not purport to remedy any other potential violations of the ADA or any other Federal law. This Agreement does not purport to list all violations of the Americans with Disabilities Act that may have occurred or are occurring at Maloney's Tavern.

20. The individuals signing this Agreement represent that they are authorized to bind the parties to this Agreement.

21. Notices of any kind required or contemplated under this Agreement shall be made by mailing the notice via United States Postal Service, first class certified mail, return receipt requested. Notice will be considered given on the date of receipt identified on the return receipt. Notices to the United States Attorney's Office shall be mailed to the address in the signature block below of the undersigned Assistant U.S. Attorney. Notices to the Maloney's Tavern and/or MasDonald shall be mailed to MasDonald.

22. Deadlines listed in this Agreement that fall on weekends or holidays will be extended to the next business day.

23. The effective date of this Agreement is the latest-dated signature below.

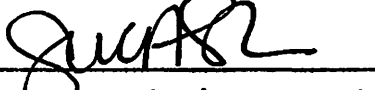
FOR THE UNITED STATES OF AMERICA:

KENNETH GONZALES
United States Attorney

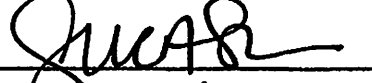
By: 
Ruth Fuess Keegan

Assistant United States Attorney
201 Third Street NW
Albuquerque, NM 87102

FOR MALONEY'S TAVERN


By its: VP, HR! operations

MASDONALD, LLC


By its: VP, HR! operations

January 2, 2013
Date: ~~December 7, 2012~~

Date: December 7, 2012

Date: December 7, 2012