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7
8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10
11 NELSON CHILIN,
12 Plaintiff,

13 vs.

14
15 ONTARIO FARMERS MARKET;
16 IMPRESSION HOLDINGS, LLC; and
DOES 1 to 10,
17 Defendants.

Case No.:

COMPLAINT FOR INJUNCTIVE
RELIEF AND DAMAGES FOR DENIAL
OF CIVIL RIGHTS OF A DISABLED
PERSON IN VIOLATIONS OF

1. AMERICANS WITH DISABILITIES
ACT, 42 U.S.C. §12131 et seq.;

2. CALIFORNIA’S UNRUH CIVIL
RIGHTS ACT;

3. CALIFORNIA’S DISABLED
PERSONS ACT;

4. CALIFORNIA HEALTH & SAFETY
CODE;

5. NEGLIGENCE

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24 Plaintiff NELSON CHILIN (“Plaintiff”) complains of Defendants ONTARIO
25 FARMERS MARKET; IMPRESSION HOLDINGS, LLC; and DOES 1 to 10
26 (“Defendants”) and alleges as follows:

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PARTIES

1
2 1. Plaintiff is a California resident with a physical disability. Plaintiff is a
3 paraplegic due to spinal cord injury and is substantially limited in his ability to walk.
4 Plaintiff requires the use of a wheelchair at all times when traveling in public.

5 2. Defendants are, or were at the time of the incident, the real property owners,
6 business operators, lessors and/or lessees of the real property for a produce market
7 (“Business”) located at or about 1701 S. Mountain Ave., Ontario, California.

8 3. The true names and capacities, whether individual, corporate, associate or
9 otherwise of Defendant DOES 1 through 10, and each of them, are unknown to Plaintiff,
10 who therefore sues said Defendants by such fictitious names. Plaintiff will ask leave of
11 Court to amend this Complaint when the true names and capacities have been
12 ascertained. Plaintiff is informed and believes, and, based thereon, alleges that each such
13 fictitiously named Defendants are responsible in some manner, and therefore, liable to
14 Plaintiff for the acts herein alleged.

15 4. Plaintiff is informed and believes, and thereon alleges that, at all relevant
16 times, each of the Defendants was the agent, employee, or alter-ego of each of the other
17 Defendants, and/or was acting in concert with each of the other Defendants, and in doing
18 the things alleged herein was acting with the knowledge and consent of the other
19 Defendants and within the course and scope of such agency or employment relationship.

20 5. Whenever and wherever reference is made in this Complaint to any act or
21 failure to act by a defendant or Defendants, such allegations and references shall also be
22 deemed to mean the acts and failures to act of each Defendant acting individually, jointly
23 and severally.

24 **JURISDICTION AND VENUE**

25 6. The Court has jurisdiction of this action pursuant to 28 USC §§ 1331 and
26 1343 for violation of the Americans with Disabilities Act of 1990, (42 USC §12101, *et*
27 *seq.*).
28

1 7. Pursuant to pendant jurisdiction, attendant and related causes of action,
2 arising from the same nucleus of operating facts, are also brought under California law,
3 including, but not limited to, violations of California Civil Code §§51, 51.5, 52(a), 52.1,
4 54, 54., 54.3 and 55.

5 8. Plaintiff's claims are authorized by 28 USC §§ 2201 and 2202.

6 9. Venue is proper in this court pursuant to 28 USC §1391(b). Defendants
7 reside in this district, San Bernardino County, California.

8 **FACTUAL ALLEGATIONS**

9 10. In or about October of 2023, Plaintiff went to the Business.

10 11. The Business is a produce market business establishment, open to the public,
11 and is a place of public accommodation that affects commerce through its operation.
12 Defendants provide parking spaces for customers.

13 12. While attempting to enter the Business during each visit, Plaintiff personally
14 encountered a number of barriers that interfered with his ability to use and enjoy the
15 goods, services, privileges, and accommodations offered at the Business.

16 13. To the extent of Plaintiff's personal knowledge, the barriers at the Business
17 included, but were not limited to, the following:

- 18 a. Defendants failed to comply with the federal and state standards for
19 the parking space designated for persons with disabilities. Defendants
20 failed to post required signage such as, "Minimum Fine \$250" and
21 "Unauthorized Parking."
22 b. Defendants failed to maintain the parking space designated for
23 persons with disabilities to comply with the federal and state
24 standards. Defendants failed to maintain the mark on the space with
25 the International Symbol of Accessibility, resulting in the paint
26 becoming severely deteriorated, hindering visibility.
27 c. Defendants failed to maintain the parking space designated for
28 persons with disabilities to comply with the federal and state

1 standards. Defendants failed to maintain the blue lines, and “NO
2 PARKING” markings painted on the ground as required, resulting in
3 the markings becoming severely deteriorated, hindering visibility.

4 d. Defendants failed to comply with the federal and state standards for
5 the parking space designated for persons with disabilities. Defendants
6 failed to provide an access aisle with level surface slope.

7 e. Defendants failed to comply with the federal and state standards for
8 the parking space designated for persons with disabilities. Defendants
9 failed to provide a proper ramp for the persons with disabilities, as the
10 one leading up to the entrance of the Business is too steep.

11 14. These barriers and conditions denied Plaintiff full and equal access to the
12 Business and caused Plaintiff difficulty and frustration. Plaintiff wishes to return and
13 patronize the Business; however, Plaintiff is deterred from visiting the Business because
14 his knowledge of these violations prevents him from returning until the barriers are
15 removed.

16 15. Based on the violations, Plaintiff alleges, on information and belief, that
17 there are additional barriers to accessibility at the Business after further site inspection.
18 Plaintiff seeks to have all barriers related to his disability remedied. *See Doran v. 7-*
19 *Eleven, Inc.* 524 F.3d 1034 (9th Cir. 2008).

20 16. In addition, Plaintiff alleges, on information and belief, that Defendants
21 knew that particular barriers render the Business inaccessible, violate state and federal
22 law, and interfere with access for the physically disabled.

23 17. At all relevant times, Defendants had and still have control and dominion
24 over the conditions at this location and had and still have the financial resources to
25 remove these barriers without much difficulty or expenses to make the Business
26 accessible to the physically disabled in compliance with ADDAG and Title 24
27 regulations. Defendants have not removed such barriers and have not modified the
28 Business to conform to accessibility regulations.

FIRST CAUSE OF ACTION

VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990

18. Plaintiff incorporates by reference each of the allegations in all prior paragraphs in this complaint.

19. Under the Americans with Disabilities Act of 1990 (“ADA”), no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the 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. *See* 42 U.S.C. § 12182(a).

20. Discrimination, *inter alia*, includes:

- a. A failure to make reasonable modification in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations. 42 U.S.C. § 12182(b)(2)(A)(ii).
- b. A failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden. 42 U.S.C. § 12182(b)(2)(A)(iii).
- c. A failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities, and transportation barriers in existing vehicles and rail passenger cars used by an

1 establishment for transporting individuals (not including barriers that
2 can only be removed through the retrofitting of vehicles or rail
3 passenger cars by the installation of a hydraulic or other lift), where
4 such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv).

5 d. A failure to make alterations in such a manner that, to the maximum
6 extent feasible, the altered portions of the facility are readily
7 accessible to and usable by individuals with disabilities, including
8 individuals who use wheelchairs or to ensure that, to the maximum
9 extent feasible, the path of travel to the altered area and the
10 bathrooms, telephones, and drinking fountains serving the altered
11 area, are readily accessible to and usable by individuals with
12 disabilities where such alterations to the path or travel or the
13 bathrooms, telephones, and drinking fountains serving the altered area
14 are not disproportionate to the overall alterations in terms of cost and
15 scope. 42 U.S.C. § 12183(a)(2).

16 21. Where parking spaces are provided, accessible parking spaces shall be
17 provided. 1991 ADA Standards § 4.1.2(5); 2010 ADA Standards § 208. One in every
18 eight accessible spaces, but not less than one, shall be served by an access aisle 96 in
19 (2440 mm) wide minimum and shall be designated “van accessible.” 1991 ADA
20 Standards § 4.1.2(5)(b). For every six or fraction of six parking spaces, at least one shall
21 be a van accessible parking space. 2010 ADA Standards § 208.2.4.

22 22. Under the ADA, the method and color of marking are to be addressed by
23 State or local laws or regulations. See 36 C.F.R., Part 1191. Under the California
24 Building Code (“CBC”), the parking space identification signs shall include the
25 International Symbol of Accessibility. Parking identification signs shall be reflectorized
26 with a minimum area of 70 square inches. Additional language or an additional sign
27 below the International Symbol of Accessibility shall state “Minimum Fine \$250.” A
28 parking space identification sign shall be permanently posted immediately adjacent and

1 visible from each parking space, shall be located with its centerline a maximum of 12
2 inches from the centerline of the parking space and may be posted on a wall at the
3 interior end of the parking space. See CBC § 11B-502.6, et seq.

4 23. Moreover, an additional sign shall be posted either in a conspicuous place at
5 each entrance to an off-street parking facility or immediately adjacent to on-site
6 accessible parking and visible from each parking space. The additional sign shall not be
7 less than 17 inches wide by 22 inches high. The additional sign shall clearly state in
8 letters with a minimum height of 1 inch the following: “Unauthorized vehicles parked in
9 designated accessible spaces not displaying distinguishing placards or special license
10 plates issued for persons with disabilities will be towed always at the owner’s expense...”
11 See CBC § 11B-502.8, et seq.

12 24. Here, Defendants failed to provide the signs stating, “Minimum Fine \$250”
13 and the additional sign with the specific language stating “Unauthorized vehicles parked
14 in designated accessible spaces not displaying distinguishing placards or special license
15 plates issued for persons with disabilities will be towed always at the owner’s expense...”

16 25. For the parking spaces, access aisles shall be marked with a blue painted
17 borderline around their perimeter. The area within the blue borderlines shall be marked
18 with hatched lines a maximum of 36 inches (914 mm) on center in a color contrasting
19 with that of the aisle surface, preferably blue or white. The words "NO PARKING" shall
20 be painted on the surface within each access aisle in white letters a minimum of 12 inches
21 (305 mm) in height and located to be visible from the adjacent vehicular way. CBC §
22 11B-502.3.3.

23 26. Here, Defendants failed to provide a proper access aisle as the “NO
24 PARKING” markings and blue hatched lines painted on the parking surface were poorly
25 maintained, resulting in the markings becoming severely deteriorated, hindering
26 visibility.

27 27. The surface of each accessible car and van space shall have surface
28 identification complying with either of the following options: The outline of a profile

1 view of a wheelchair with occupant in white on a blue background a minimum 36” wide
2 by 36” high (914 mm x 914 mm). The centerline of the profile view shall be a maximum
3 of 6 inches (152 mm) from the centerline of the parking space, its sides parallel to the
4 length of the parking space and its lower side or corner aligned with the end of the
5 parking space length or by outlining or painting the parking space in blue and outlining
6 on the ground in white or a suitable contrasting color a profile view of a wheel chair with
7 occupant. See CBC § 11B-502.6.4, et seq.

8 28. Here, Defendants failed to maintain the paint of the International Symbol of
9 Accessibility on the surface as required, resulting in the markings becoming severely
10 deteriorated, hindering visibility.

11 29. Under the 1991 Standards, parking spaces and access aisles must be level
12 with surface slopes not exceeding 1:50 (2%) in all directions. 1991 Standards § 4.6.2.
13 Accessible parking spaces shall be at least 96 in (2440 mm) wide. Parking access aisles
14 shall be part of an accessible route to the building or facility entrance and shall comply
15 with 4.3. Two accessible parking spaces may share a common access aisle. Parked
16 vehicle overhangs shall not reduce the clear width of an accessible route. Parking spaces
17 and access aisles shall be level with surface slopes not exceeding 1:50 (2%) in all
18 directions. 1991 Standards § 4.6.3.

19 30. Here, the access aisle is not level with the parking spaces. Under the 2010
20 Standards, access aisles shall be at the same level as the parking spaces they serve.
21 Changes in level are not permitted. 2010 Standards § 502.4. “Access aisles are required
22 to be nearly level in all directions to provide a surface for transfer to and from vehicles.”
23 2010 Standards § 502.4 Advisory. Id. No more than a 1:48 slope is permitted.

24 31. The cross slope of ramp surfaces shall be no greater than 1:50. Ramp
25 surfaces shall comply with 4.5. 1991 Standards § 4.8.6. Ramps and landings with drop-
26 offs shall have curbs, walls, railings, or projecting surfaces that prevent people from
27 slipping off the ramp. Curbs shall be a minimum of 2 in (50 mm) high. 1991 Standards §
28 4.8.7. Outdoor ramps and their approaches shall be designed so that water will not

1 accumulate on walking surfaces. 1991 Standards § 4.8.8. Ground and floor surfaces
2 along accessible routes and in accessible rooms and spaces including floors, walks,
3 ramps, stairs, and curb ramps, shall be stable, firm, slip-resistant, and shall comply with
4 4.5. 1991 Standards § 4.5.1.3.

5 32. Here, Defendants failed to provide a compliant ramp for the entrance of the
6 building.

7 33. A public accommodation shall maintain in operable working condition those
8 features of facilities and equipment that are required to be readily accessible to and usable
9 by persons with disabilities by the Act or this part. 28 C.F.R. 35.211(a).

10 34. By failing to maintain the facility to be readily accessible and usable by
11 Plaintiff, Defendants are in violation of Plaintiff's rights under the ADA and its related
12 regulations.

13 35. The Business has denied and continues to deny full and equal access to
14 Plaintiff and to other people with disabilities. Plaintiff has been and will continue to be
15 discriminated against due to the lack of accessible facilities, and therefore, seeks
16 injunctive relief to alter facilities to make such facilities readily accessible to and usable
17 by individuals with disabilities.

18 **SECOND CAUSE OF ACTION**

19 **VIOLATION OF THE UNRUH CIVIL RIGHTS ACT**

20 36. Plaintiff incorporates by reference each of the allegations in all prior
21 paragraphs in this complaint.

22 37. California Civil Code § 51 states, "All persons within the jurisdiction of this
23 state are free and equal, and no matter what their sex, race, color, religion, ancestry,
24 national origin, disability, medical condition, genetic information, marital status, sexual
25 orientation, citizenship, primary language, or immigration status are entitled to the full
26 and equal accommodations, advantages, facilities, privileges, or services in all business
27 establishments of every kind whatsoever."
28

1 provided), telephone facilities, adoption agencies, private schools, hotels, loading places,
2 places of public accommodations, amusement, or resort, and other places in which the
3 general public is invited, subject only to the conditions and limitations established by
4 law, or state or federal regulation, and applicable alike to all persons.

5 44. California Civil Code § 54.3(a) states, “Any person or persons, firm or
6 corporation who denies or interferes with admittance to or enjoyment of public facilities
7 as specified in Sections 54 and 54.1 or otherwise interferes with the rights of an
8 individual with a disability under Sections 54, 54.1 and 54.2 is liable for each offense for
9 the actual damages, and any amount as may be determined by a jury, or a court sitting
10 without a jury, up to a maximum of three times the amount of actual damages but in no
11 case less than one thousand dollars (\$1,000) and any attorney’s fees that may be
12 determined by the court in addition thereto, suffered by any person denied the rights
13 provided in Section 54, 54.1, and 54.2.

14 45. California Civil Code § 54(d) specifies, “a violation of the right of an
15 individual under Americans with Disabilities Act of 1990 (Public Law 101-336) also
16 constitute a violation of this section, and nothing in this section shall be construed to limit
17 the access of any person in violation of that act.

18 46. The actions and omissions of Defendants alleged herein constitute a denial
19 of full and equal accommodation, advantages, and facilities by physically disabled
20 persons within the meaning of California Civil Code § 54. Defendants have
21 discriminated against Plaintiff in violation of California Civil Code § 54.

22 47. The violations of the California Disabled Persons Act caused Plaintiff to
23 experience difficulty, discomfort, and embarrassment. The Defendants are also liable for
24 statutory damages as specified in California Civil Code §55.56(a)-(c).

25 **FOURTH CAUSE OF ACTION**

26 **CALIFORNIA HEALTH & SAFETY CODE § 19955, et seq.**

27 48. Plaintiff incorporates by reference each of the allegations in all prior
28 paragraphs in this complaint.

1 54. Defendants breached their duty of care by violating the provisions of ADA,
2 Unruh Civil Rights Act and California Disabled Persons Act.

3 55. As a direct and proximate result of Defendants' negligent conduct, Plaintiff
4 has suffered damages.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff respectfully prays for relief and judgment against
7 Defendants as follows:

8 1. For preliminary and permanent injunction directing Defendants to comply
9 with the Americans with Disability Act and the Unruh Civil Rights Act;

10 2. Award of all appropriate damages, including but not limited to statutory
11 damages, general damages and treble damages in amounts, according to proof;

12 3. Award of all reasonable restitution for Defendants' unfair competition
13 practices;

14 4. Reasonable attorney's fees, litigation expenses, and costs of suit in this
15 action;

16 5. Prejudgment interest pursuant to California Civil Code § 3291; and

17 6. Such other and further relief as the Court deems just and proper.

18 **DEMAND FOR TRIAL BY JURY**

19 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby
20 demands a trial by jury on all issues so triable.

21
22 Dated: January 17, 2024

SO. CAL. EQUAL ACCESS GROUP

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24
25 By: /s/ Jason J. Kim
26 Jason J. Kim, Esq.
27 Attorneys for Plaintiff
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