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

10
11 DARWIN BOGGS,
12 Plaintiff,

13 vs.

14
15 HIGHLAND PLAZA CENTER LLC; and
16 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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23 Plaintiff DARWIN BOGGS (“Plaintiff”) complains of Defendants HIGHLAND
24 PLAZA CENTER LLC; and DOES 1 to 10 (“Defendants”) and alleges as follows:

25 **PARTIES**

26 1. Plaintiff is a California resident with a physical disability. Plaintiff suffers
27 from paraplegia and is substantially limited in his ability to walk. Plaintiff requires the
28 use of a wheelchair at all times when traveling in public.

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

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

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

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

19 **FIRST CAUSE OF ACTION**

20 **VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990**

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

23 19. Under the Americans with Disabilities Act of 1990 (“ADA”), no individual
24 shall be discriminated against on the basis of disability in the full and equal enjoyment of
25 the goods, services, facilities, privileges, advantages, or accommodations of any place of
26 public accommodation by any person who owns, leases, or leases to, or operates a place
27 of public accommodation. *See* 42 U.S.C. § 12182(a).

28 20. Discrimination, *inter alia*, includes:

- 1 a. A failure to make reasonable modification in policies, practices, or
2 procedures, when such modifications are necessary to afford such
3 goods, services, facilities, privileges, advantages, or accommodations
4 to individuals with disabilities, unless the entity can demonstrate that
5 making such modifications would fundamentally alter the nature of
6 such goods, services, facilities, privileges, advantages, or
7 accommodations. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 8 b. A failure to take such steps as may be necessary to ensure that no
9 individual with a disability is excluded, denied services, segregated or
10 otherwise treated differently than other individuals because of the
11 absence of auxiliary aids and services, unless the entity can
12 demonstrate that taking such steps would fundamentally alter the
13 nature of the good, service, facility, privilege, advantage, or
14 accommodation being offered or would result in an undue burden. 42
15 U.S.C. § 12182(b)(2)(A)(iii).
- 16 c. A failure to remove architectural barriers, and communication barriers
17 that are structural in nature, in existing facilities, and transportation
18 barriers in existing vehicles and rail passenger cars used by an
19 establishment for transporting individuals (not including barriers that
20 can only be removed through the retrofitting of vehicles or rail
21 passenger cars by the installation of a hydraulic or other lift), where
22 such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv).
- 23 d. A failure to make alterations in such a manner that, to the maximum
24 extent feasible, the altered portions of the facility are readily
25 accessible to and usable by individuals with disabilities, including
26 individuals who use wheelchairs or to ensure that, to the maximum
27 extent feasible, the path of travel to the altered area and the
28 bathrooms, telephones, and drinking fountains serving the altered

1 area, are readily accessible to and usable by individuals with
2 disabilities where such alterations to the path or travel or the
3 bathrooms, telephones, and drinking fountains serving the altered area
4 are not disproportionate to the overall alterations in terms of cost and
5 scope. 42 U.S.C. § 12183(a)(2).

6 21. Where parking spaces are provided, accessible parking spaces shall be
7 provided. 1991 ADA Standards § 4.1.2(5); 2010 ADA Standards § 208. One in every
8 eight accessible spaces, but not less than one, shall be served by an access aisle 96 in
9 (2440 mm) wide minimum and shall be designated “van accessible.” 1991 ADA
10 Standards § 4.1.2(5)(b). For every six or fraction of six parking spaces, at least one shall
11 be a van accessible parking space. 2010 ADA Standards § 208.2.4.

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

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

23 24. The surface of each accessible car and van space shall have surface
24 identification complying with either of the following options: The outline of a profile
25 view of a wheelchair with occupant in white on a blue background a minimum 36” wide
26 by 36” high (914 mm x 914 mm). The centerline of the profile view shall be a maximum
27 of 6 inches (152 mm) from the centerline of the parking space, its sides parallel to the
28 length of the parking space and its lower side or corner aligned with the end of the

1 parking space length or by outlining or painting the parking space in blue and outlining
2 on the ground in white or a suitable contrasting color a profile view of a wheel chair with
3 occupant. See CBC § 11B-502.6.4, et seq.

4 25. Here, Defendants failed to maintain the International Symbol of
5 Accessibility painted on the surface as required, resulting in the markings becoming
6 severely deteriorated, hindering visibility.

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

15 27. Here, the access aisle is not level with the parking spaces, as there was a
16 permanent ramp installed on the accessible aisle. Under the 2010 Standards, access aisles
17 shall be at the same level as the parking spaces they serve. Changes in level are not
18 permitted. 2010 Standards § 502.4. “Access aisles are required to be nearly level in all
19 directions to provide a surface for transfer to and from vehicles.” 2010 Standards § 502.4
20 Advisory. Id. No more than a 1:48 slope is permitted.

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

24 29. By failing to maintain the facility to be readily accessible and usable by
25 Plaintiff, Defendants are in violation of Plaintiff’s rights under the ADA and its related
26 regulations.

27 30. The Business has denied and continues to deny full and equal access to
28 Plaintiff and to other people with disabilities. Plaintiff has been and will continue to be

1 discriminated against due to the lack of accessible facilities, and therefore, seeks
2 injunctive relief to alter facilities to make such facilities readily accessible to and usable
3 by individuals with disabilities.

4 **SECOND CAUSE OF ACTION**

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

6 31. Plaintiff incorporates by reference each of the allegations in all prior
7 paragraphs in this complaint.

8 32. California Civil Code § 51 states, “All persons within the jurisdiction of this
9 state are free and equal, and no matter what their sex, race, color, religion, ancestry,
10 national origin, disability, medical condition, genetic information, marital status, sexual
11 orientation, citizenship, primary language, or immigration status are entitled to the full
12 and equal accommodations, advantages, facilities, privileges, or services in all business
13 establishments of every kind whatsoever.”

14 33. California Civil Code § 52 states, “Whoever denies, aids or incites a denial,
15 or make any discrimination or distinction contrary to Section 51, 51.5, or 51.6, is liable
16 for each and every offense for the actual damages, and any amount that may be
17 determined by a jury, or a court sitting without a jury, up to a maximum of three times the
18 amount of actual damage but in no case less than four thousand dollars (\$4,000) and any
19 attorney’s fees that may be determined by the court in addition thereto, suffered by any
20 person denied the rights provided in Section 51, 51.5, or 51.6.

21 34. California Civil Code § 51(f) specifies, “a violation of the right of any
22 individual under federal Americans with Disabilities Act of 1990 (Public Law 101-336)
23 shall also constitute a violation of this section.”

24 35. The actions and omissions of Defendants alleged herein constitute a denial
25 of full and equal accommodation, advantages, facilities, privileges, or services by
26 physically disabled persons within the meaning of California Civil Code §§ 51 and 52.
27 Defendants have discriminated against Plaintiff in violation of California Civil Code §§
28 51 and 52.

1 constitute a violation of this section, and nothing in this section shall be construed to limit
2 the access of any person in violation of that act.

3 41. The actions and omissions of Defendants alleged herein constitute a denial
4 of full and equal accommodation, advantages, and facilities by physically disabled
5 persons within the meaning of California Civil Code § 54. Defendants have
6 discriminated against Plaintiff in violation of California Civil Code § 54.

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

10 **FOURTH CAUSE OF ACTION**

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

12 43. Plaintiff incorporates by reference each of the allegations in all prior
13 paragraphs in this complaint.

14 44. Plaintiff and other similar physically disabled persons who require the use of
15 a wheelchair are unable to use public facilities on a “full and equal” basis unless each
16 such facility is in compliance with the provisions of California Health & Safety Code §
17 19955 et seq. Plaintiff is a member of the public whose rights are protected by the
18 provisions of California Health & Safety Code § 19955 et seq.

19 45. The purpose of California Health & Safety Code § 1995 et seq. is to ensure
20 that public accommodations or facilities constructed in this state with private funds
21 adhere to the provisions of Chapter 7 (commencing with Section 4450) of Division 5 of
22 Title 1 of the Government Code. The code relating to such public accommodations also
23 require that “when sanitary facilities are made available for the public, clients, or
24 employees in these stations, centers, or buildings, they shall be made available for
25 persons with disabilities.

26 46. Title II of the ADA holds as a “general rule” that no individual shall be
27 discriminated against on the basis of disability in the full and equal enjoyment of goods
28 (or use), services, facilities, privileges, and accommodations offered by any person who

1 owns, operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).
2 Further, each and every violation of the ADA also constitutes a separate and distinct
3 violation of California Civil Code §§ 54(c) and 54.1(d), thus independently justifying an
4 award of damages and injunctive relief pursuant to California law, including but not
5 limited to Civil Code § 54.3 and Business and Professions Code § 17200, et seq.

6 **FIFTH CAUSE OF ACTION**

7 **NEGLIGENCE**

8 47. Plaintiff incorporates by reference each of the allegations in all prior
9 paragraphs in this complaint.

10 48. Defendants have a general duty and a duty under the ADA, Unruh Civil
11 Rights Act and California Disabled Persons Act to provide safe and accessible facilities
12 to the Plaintiff.

13 49. Defendants breached their duty of care by violating the provisions of ADA,
14 Unruh Civil Rights Act and California Disabled Persons Act.

15 50. As a direct and proximate result of Defendants' negligent conduct, Plaintiff
16 has suffered damages.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff respectfully prays for relief and judgment against
19 Defendants as follows:

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

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

24 3. Award of all reasonable restitution for Defendants' unfair competition
25 practices;

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

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

