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

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11 DARWIN BOGGS,
12 Plaintiff,
13 vs.

14
15 PHIL VELTO D/B/A HUB CAP ANNIE;
16 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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23 Plaintiff DARWIN BOGGS (“Plaintiff”) complains of Defendants PHIL VELTO
24 D/B/A HUB CAP ANNIE; 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 d. Defendants failed to comply with the federal and state standards for
2 the parking space designated for persons with disabilities. Defendants
3 failed to paint the ground as required.

4 e. Defendants failed to comply with the federal and state standards for
5 the parking space designated for persons with disabilities. Defendants
6 failed to mark the space with the International Symbol of
7 Accessibility properly as the Symbol was not painted in the required
8 white color. Additionally, the background was not painted in the
9 required blue color.

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

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

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

22 17. At all relevant times, Defendants had and still have control and dominion
23 over the conditions at this location and had and still have the financial resources to
24 remove these barriers without much difficulty or expenses to make the Business
25 accessible to the physically disabled in compliance with ADDAG and Title 24
26 regulations. Defendants have not removed such barriers and have not modified the
27 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 parking space identification sign with
13 the International Symbol of Accessibility. In addition, Defendants failed to provide the
14 signs stating, “Minimum Fine \$250” and “Van Accessible.” Moreover, Defendants failed
15 to provide the additional sign with the specific language stating “Unauthorized vehicles
16 parked in designated accessible spaces not displaying distinguishing placards or special
17 license plates issued for persons with disabilities will be towed always at the owner’s
18 expense...”

19 25. For the parking spaces, access aisles shall be marked with a blue painted
20 borderline around their perimeter. The area within the blue borderlines shall be marked
21 with hatched lines a maximum of 36 inches (914 mm) on center in a color contrasting
22 with that of the aisle surface, preferably blue or white. The words "NO PARKING" shall
23 be painted on the surface within each access aisle in white letters a minimum of 12 inches
24 (305 mm) in height and located to be visible from the adjacent vehicular way. CBC §
25 11B-502.3.3.

26 26. Here, Defendants failed to provide a proper access aisle as there were no
27 “NO PARKING” markings painted on the parking surface.
28

1 39. California Civil Code § 54.1(a) states, “Individuals with disabilities shall be
2 entitled to full and equal access, as other members of the general public, to
3 accommodations, advantages, facilities, medical facilities, including hospitals, clinics,
4 and physicians’ offices, and privileges of all common carriers, airplanes, motor vehicles,
5 railroad trains, motorbuses, streetcars, boats, or any other public conveyances or modes
6 of transportation (whether private, public, franchised, licensed, contracted, or otherwise
7 provided), telephone facilities, adoption agencies, private schools, hotels, loading places,
8 places of public accommodations, amusement, or resort, and other places in which the
9 general public is invited, subject only to the conditions and limitations established by
10 law, or state or federal regulation, and applicable alike to all persons.

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

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

24 42. The actions and omissions of Defendants alleged herein constitute a denial
25 of full and equal accommodation, advantages, and facilities by physically disabled
26 persons within the meaning of California Civil Code § 54. Defendants have
27 discriminated against Plaintiff in violation of California Civil Code § 54.
28

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

4 **FOURTH CAUSE OF ACTION**

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

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

8 45. Plaintiff and other similar physically disabled persons who require the use of
9 a wheelchair are unable to use public facilities on a “full and equal” basis unless each
10 such facility is in compliance with the provisions of California Health & Safety Code §
11 19955 et seq. Plaintiff is a member of the public whose rights are protected by the
12 provisions of California Health & Safety Code § 19955 et seq.

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

20 47. Title II of the ADA holds as a “general rule” that no individual shall be
21 discriminated against on the basis of disability in the full and equal enjoyment of goods
22 (or use), services, facilities, privileges, and accommodations offered by any person who
23 owns, operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).
24 Further, each and every violation of the ADA also constitutes a separate and distinct
25 violation of California Civil Code §§ 54(c) and 54.1(d), thus independently justifying an
26 award of damages and injunctive relief pursuant to California law, including but not
27 limited to Civil Code § 54.3 and Business and Professions Code § 17200, et seq.

28 48.

1 **FIFTH CAUSE OF ACTION**
2 **NEGLIGENCE**

3 49. Plaintiff incorporates by reference each of the allegations in all prior
4 paragraphs in this complaint.

5 50. Defendants have a general duty and a duty under the ADA, Unruh Civil
6 Rights Act and California Disabled Persons Act to provide safe and accessible facilities
7 to the Plaintiff.

8 51. Defendants breached their duty of care by violating the provisions of ADA,
9 Unruh Civil Rights Act and California Disabled Persons Act.

10 52. As a direct and proximate result of Defendants' negligent conduct, Plaintiff
11 has suffered damages.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff respectfully prays for relief and judgment against
14 Defendants as follows:

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

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

19 3. Award of all reasonable restitution for Defendants' unfair competition
20 practices;

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

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

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

25 **DEMAND FOR TRIAL BY JURY**

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

1 Dated: July 2, 2024

SO. CAL. EQUAL ACCESS GROUP

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4 By: /s/ Jason J. Kim
5 Jason J. Kim, Esq.
6 Attorneys for Plaintiff
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