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

10 DENNIS COOPER,  
11 Plaintiff,  
12 vs.

13  
14 THE TIPSY CACTUS; GENE  
15 MCCLUAN, AS TRUSTEE OF THE  
16 GENE MCCLUAN AND BARBARA  
17 MCCLUAN REVOCABLE LIVING  
TRUST; and DOES 1 to 10,  
18 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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25 Plaintiff DENNIS COOPER (“Plaintiff”) complains of Defendants THE TIPSY  
26 CACTUS; GENE MCCLUAN, AS TRUSTEE OF THE GENE MCCLUAN AND  
27 BARBARA MCCLUAN REVOCABLE LIVING TRUST; and DOES 1 to 10  
28 (“Defendants”) and alleges as follows:

**PARTIES**

1  
2 1. Plaintiff is a California resident with a physical disability. Plaintiff is  
3 paraplegic, suffers from immobility syndrome with chronic pain, and is substantially  
4 limited in his ability to walk. Plaintiff requires the use of a wheelchair at all times when  
5 traveling in public.

6 2. Defendants are, or were at the time of the incident, the real property owners,  
7 business operators, lessors and/or lessees of the real property for a boutique (“Business”)  
8 located at or about 16937 Walnut St., Hesperia, California.

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

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

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

**JURISDICTION AND VENUE**

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

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). The real  
7 property which is the subject of this action is located in this district, San Bernardino  
8 County, California, and that all actions complained of herein take place in this district.

9 **FACTUAL ALLEGATIONS**

10 10. In or about October of 2024, Plaintiff went to the Business.

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

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

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

- 19 a. Defendants failed to comply with the federal and state standards for  
20 the parking space designated for persons with disabilities. Defendants  
21 failed to provide the parking space identification sign with the  
22 International Symbol of Accessibility.
- 23 b. Defendants failed to comply with the federal and state standards for  
24 the parking space designated for persons with disabilities. Defendants  
25 failed to post required signage such as "Van Accessible," "Minimum  
26 Fine \$250" and "Unauthorized Parking."
- 27 c. Defendants failed to comply with the federal and state standards for  
28 the parking space designated for persons with disabilities. Defendants

1 failed to provide proper van accessible space designated for the  
2 persons with disabilities as there were no “NO PARKING” markings  
3 painted on the surface of the access aisle. Additionally, the access  
4 aisle failed to meet the minimum width requirements.

5 d. Defendants failed to comply with the federal and state standards for  
6 the parking space designated for persons with disabilities. Defendants  
7 failed to paint the ground as required.

8 e. Defendants failed to maintain the parking space designated for  
9 persons with disabilities to comply with the federal and state  
10 standards. Defendants failed to maintain the mark on the space with  
11 the International Symbol of Accessibility, resulting in the paint  
12 becoming severely deteriorated, hindering visibility.

13 f. Defendants failed to maintain the parking space designated for  
14 persons with disabilities to comply with the federal and state  
15 standards. Defendants failed to maintain the blue borderlines and blue  
16 hatched lines painted on the ground as required, resulting in the  
17 markings becoming severely deteriorated, hindering visibility.

18 g. Defendants failed to comply with the federal and state standards for  
19 the parking space designated for persons with disabilities. Defendants  
20 failed to provide an access aisle with level surface slope, as there was  
21 a permanent ramp installed within the boundaries of the access aisle.

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

27 15. Based on the violations, Plaintiff alleges, on information and belief, that  
28 there are additional barriers to accessibility at the Business after further site inspection.

1 Plaintiff seeks to have all barriers related to his disability remedied. *See Doran v. 7-*  
2 *Eleven, Inc.* 524 F.3d 1034 (9<sup>th</sup> Cir. 2008).

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

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

12 **FIRST CAUSE OF ACTION**

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

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

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

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

- 22 a. A failure to make reasonable modification in policies, practices, or  
23 procedures, when such modifications are necessary to afford such  
24 goods, services, facilities, privileges, advantages, or accommodations  
25 to individuals with disabilities, unless the entity can demonstrate that  
26 making such modifications would fundamentally alter the nature of  
27 such goods, services, facilities, privileges, advantages, or  
28 accommodations. 42 U.S.C. § 12182(b)(2)(A)(ii).

- 1           b.     A failure to take such steps as may be necessary to ensure that no  
2 individual with a disability is excluded, denied services, segregated or  
3 otherwise treated differently than other individuals because of the  
4 absence of auxiliary aids and services, unless the entity can  
5 demonstrate that taking such steps would fundamentally alter the  
6 nature of the good, service, facility, privilege, advantage, or  
7 accommodation being offered or would result in an undue burden. 42  
8 U.S.C. § 12182(b)(2)(A)(iii).
- 9           c.     A failure to remove architectural barriers, and communication barriers  
10 that are structural in nature, in existing facilities, and transportation  
11 barriers in existing vehicles and rail passenger cars used by an  
12 establishment for transporting individuals (not including barriers that  
13 can only be removed through the retrofitting of vehicles or rail  
14 passenger cars by the installation of a hydraulic or other lift), where  
15 such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv).
- 16           d.     A failure to make alterations in such a manner that, to the maximum  
17 extent feasible, the altered portions of the facility are readily  
18 accessible to and usable by individuals with disabilities, including  
19 individuals who use wheelchairs or to ensure that, to the maximum  
20 extent feasible, the path of travel to the altered area and the  
21 bathrooms, telephones, and drinking fountains serving the altered  
22 area, are readily accessible to and usable by individuals with  
23 disabilities where such alterations to the path or travel or the  
24 bathrooms, telephones, and drinking fountains serving the altered area  
25 are not disproportionate to the overall alterations in terms of cost and  
26 scope. 42 U.S.C. § 12183(a)(2).

27           21.    Where parking spaces are provided, accessible parking spaces shall be  
28 provided. 1991 ADA Standards § 4.1.2(5); 2010 ADA Standards § 208. One in every

1 eight accessible spaces, but not less than one, shall be served by an access aisle 96 in  
2 (2440 mm) wide minimum and shall be designated “van accessible.” 1991 ADA  
3 Standards § 4.1.2(5)(b). For every six or fraction of six parking spaces, at least one shall  
4 be a van accessible parking space. 2010 ADA Standards § 208.2.4.

5 22. Under the ADA, the method and color of marking are to be addressed by  
6 State or local laws or regulations. See 36 C.F.R., Part 1191. Under the California  
7 Building Code (“CBC”), the parking space identification signs shall include the  
8 International Symbol of Accessibility. Parking identification signs shall be reflectorized  
9 with a minimum area of 70 square inches. Additional language or an additional sign  
10 below the International Symbol of Accessibility shall state “Minimum Fine \$250.” A  
11 parking space identification sign shall be permanently posted immediately adjacent and  
12 visible from each parking space, shall be located with its centerline a maximum of 12  
13 inches from the centerline of the parking space and may be posted on a wall at the  
14 interior end of the parking space. See CBC § 11B-502.6, et seq.

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

23 24. Here, Defendants failed to provide the parking space identification sign with  
24 the International Symbol of Accessibility. In addition, Defendants failed to provide the  
25 signs stating, “Minimum Fine \$250” and “Van Accessible.” Moreover, Defendants failed  
26 to provide the additional sign with the specific language stating “Unauthorized vehicles  
27 parked in designated accessible spaces not displaying distinguishing placards or special  
28

1 license plates issued for persons with disabilities will be towed away at the owner's  
2 expense..."

3 25. For the parking spaces, access aisles shall be marked with a blue painted  
4 borderline around their perimeter. The area within the blue borderlines shall be marked  
5 with hatched lines a maximum of 36 inches (914 mm) on center in a color contrasting  
6 with that of the aisle surface, preferably blue or white. The words "NO PARKING" shall  
7 be painted on the surface within each access aisle in white letters a minimum of 12 inches  
8 (305 mm) in height and located to be visible from the adjacent vehicular way. CBC §  
9 11B-502.3.3.

10 26. Here, Defendants failed to provide a proper access aisle as there were no  
11 "NO PARKING" markings painted on the parking surface. Additionally, the blue  
12 borderlines and blue hatched lines painted on the parking surface were poorly  
13 maintained, resulting in the markings becoming severely deteriorated, hindering  
14 visibility. Moreover, Defendants failed to provide the access aisle with the minimum  
15 width of 96 inches.

16 27. The surface of each accessible car and van space shall have surface  
17 identification complying with either of the following options: The outline of a profile  
18 view of a wheelchair with occupant in white on a blue background a minimum 36" wide  
19 by 36" high (914 mm x 914 mm). The centerline of the profile view shall be a maximum  
20 of 6 inches (152 mm) from the centerline of the parking space, its sides parallel to the  
21 length of the parking space and its lower side or corner aligned with the end of the  
22 parking space length or by outlining or painting the parking space in blue and outlining  
23 on the ground in white or a suitable contrasting color a profile view of a wheel chair with  
24 occupant. See CBC § 11B-502.6.4, et seq.

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

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

9 30. Here, the access aisle is not level with the parking spaces, as there was a  
10 permanent ramp installed within the access aisle. Under the 2010 Standards, access aisles  
11 shall be at the same level as the parking spaces they serve. Changes in level are not  
12 permitted. 2010 Standards § 502.4. “Access aisles are required to be nearly level in all  
13 directions to provide a surface for transfer to and from vehicles.” 2010 Standards § 502.4  
14 Advisory. Id. No more than a 1:48 slope is permitted.

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

18 32. By failing to maintain the facility to be readily accessible and usable by  
19 Plaintiff, Defendants are in violation of Plaintiff’s rights under the ADA and its related  
20 regulations.

21 33. The Business has denied and continues to deny full and equal access to  
22 Plaintiff and to other people with disabilities. Plaintiff has been and will continue to be  
23 discriminated against due to the lack of accessible facilities, and therefore, seeks  
24 injunctive relief to alter facilities to make such facilities readily accessible to and usable  
25 by individuals with disabilities.

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**SECOND CAUSE OF ACTION**

**VIOLATION OF THE UNRUH CIVIL RIGHTS ACT**

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

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

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

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

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

39. The violations of the Unruh Civil Rights Act caused Plaintiff to experience difficulty, discomfort, or embarrassment. The Defendants are also liable for statutory damages as specified in California Civil Code §55.56(a)-(c).

**THIRD CAUSE OF ACTION**

**VIOLATION OF CALIFORNIA DISABLED PERSONS ACT**

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

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

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

24 43. California Civil Code § 54(d) specifies, “a violation of the right of an  
25 individual under Americans with Disabilities Act of 1990 (Public Law 101-336) also  
26 constitute a violation of this section, and nothing in this section shall be construed to limit  
27 the access of any person in violation of that act.  
28

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

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

8 **FOURTH CAUSE OF ACTION**

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

10 46. Plaintiff incorporates by reference each of the allegations in all prior  
11 paragraphs in this complaint.

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

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

24 49. Title II of the ADA holds as a “general rule” that no individual shall be  
25 discriminated against on the basis of disability in the full and equal enjoyment of goods  
26 (or use), services, facilities, privileges, and accommodations offered by any person who  
27 owns, operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).  
28 Further, each and every violation of the ADA also constitutes a separate and distinct

1 violation of California Civil Code §§ 54(c) and 54.1(d), thus independently justifying an  
2 award of damages and injunctive relief pursuant to California law, including but not  
3 limited to Civil Code § 54.3 and Business and Professions Code § 17200, et seq.

4 **FIFTH CAUSE OF ACTION**

5 **NEGLIGENCE**

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

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

11 52. Defendants breached their duty of care by violating the provisions of ADA,  
12 Unruh Civil Rights Act and California Disabled Persons Act.

13 53. As a direct and proximate result of Defendants' negligent conduct, Plaintiff  
14 has suffered damages.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff respectfully prays for relief and judgment against  
17 Defendants as follows:

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

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

22 3. Award of all reasonable restitution for Defendants' unfair competition  
23 practices;

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

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

27 6. Such other and further relief as the Court deems just and proper.  
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**DEMAND FOR TRIAL BY JURY**

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

Dated: January 6, 2025

SO. CAL. EQUAL ACCESS GROUP

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