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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 COUNTY OF LOS ANGELES

10 CHRIS HICKS, on behalf of himself and
 11 all others similarly situated,

12 Plaintiff,

13 vs.

14 FIVE BELOW, INC.,

15 Defendant.

Case No.: 22STCV38125

CLASS ACTION COMPLAINT FOR:

(1) VIOLATIONS OF THE UNRUH ACT,
 CALIFORNIA CIVIL CODE § 51, et seq.

(2) VIOLATIONS OF THE CDPA,
 CALIFORNIA CIVIL CODE § 54.1, et seq.

(3) VIOLATIONS OF CAL. CIV. CODE §
 55.1, et seq.

JURY TRIAL DEMANDED

18 Plaintiff Chris Hicks ("Plaintiff"), by and through his attorneys, alleges the following
 19 based upon personal knowledge as to his own acts, and upon information and belief and his
 20 attorneys' investigation as to all other facts.

21 1. Plaintiff, on behalf of himself and on behalf of a class of mobility
 22 impaired/wheelchair-bound persons, alleges that defendant Five Below, Inc. ("Five Below" or
 23 "Defendant"), is in violation of the anti-discrimination state statutes of California, the Unruh
 24 Civil Rights Act, California Code § 51 et seq. ("Unruh Act"), the California Disabled Persons
 25 Act, California Civil Code § 54 et seq. ("CDPA"), and Cal. Civ. Code § 55 et seq.

26 2. Plaintiff seeks statutory damages and reasonable attorneys' fees and costs on
 27 behalf of himself, and injunctive relief on behalf of the putative Class (defined herein) who has
 28 patronized or would like to patronize the stores identified below.

STATUTORY BACKGROUND

3. Both the CDPA, which was enacted in 1968, and the Unruh Act, which was amended in 1987 to cover persons with disabilities, prohibit discrimination on the basis of disability and require full and equal access to services, facilities and advantages of public accommodations.

4. All buildings constructed or altered after July 1, 1970, must comply with standards governing the physical accessibility of public accommodations.

5. From December 31, 1981 until the present, the standards have been set forth in Title 24 of the California regulatory code (the “California Standards”). In addition to setting forth design and construction standards, the California Standards require public accommodations to maintain in operable working condition those features of facilities and equipment that are required to be accessible to and usable by persons with disabilities. California Standards, § 1101B.3.

6. A violation of a California Standard constitutes a violation of both the CDPA and the Unruh Act. A violation of 42 U.S.C. § 12181, et seq., of the Americans with Disabilities Act (“ADA”), also constitutes a violation of both statutes. Cal. Civ. Code, §§ 51(f) and 54 (c). A prevailing plaintiff is entitled to, among other relief, statutory minimum damages regardless of whether the plaintiff has suffered any actual damages. Cal. Civ. Code, § 54.3.

7. The Unruh Act, Cal. Code, § 51, prohibits discrimination on the basis of disability by “all business establishments of every kind whatsoever.”

8. In 1992, the Unruh Act was amended to provide that “violation of the right of any individual under the Americans with Disabilities Act of 1990... shall also constitute a violation of this section. Cal. Civ. Code, § 51(f); *Presta v. Peninsula Corridor Joint Powers Bd.*, 16 F. Supp. 2d 1134, 1135 (N.D. Cal.1998).

9. Under Cal. Civ. Code, § 55, a plaintiff may file an action to enjoin any technical violations of California’s access laws, without an actual attempt to access the facility or to prove the violation results from discrimination. Injunctive relief under § 55 is available as a cumulative

1 remedy under the Unruh Act and/or the CDPA. *Molsky v. Arciero Wine Group*, 164 Cal. App. 4th
2 786, 79 Cal. Rptr. 3d 574 (2008).

3 10. Despite an extended period of time in which to become compliant and despite the
4 extensive publicity the CDPA and Unruh Act have received over the years, Defendant continues
5 to discriminate against people who are disabled, in ways that block them from equal access to,
6 and use of their stores.

7 **PARTIES AND STANDING**

8 11. Plaintiff is a citizen of the State of California, is domiciled in Sun Valley, CA, and
9 qualifies as an individual with disabilities. Plaintiff is a T-7 incomplete paraplegic and requires a
10 wheelchair to move about. Plaintiff has visited and patronized Five Below stores within the State
11 of California, and has experienced discrimination at such stores as more fully set forth below.
12 Plaintiff is being deterred from patronizing Five Below stores but intends to return to these stores
13 for the dual purpose of availing himself of the goods and services offered to the public at such
14 stores and to ensure that these stores cease evading their responsibilities under state law.

15 12. Plaintiff has been, and continues to be, adversely affected by Defendant's
16 violations of the laws of the State of California. Plaintiff has suffered direct and indirect injury as
17 a result of Defendant's actions and/or omissions as described herein.

18 13. Plaintiff has reasonable grounds to believe that Defendant will continue to subject
19 him and other disabled individuals to discrimination in violation of the laws of the State of
20 California given that the Defendant has failed to bring existing stores into compliance for over
21 twenty (20) years, and has allowed new stores to be constructed that are similarly out of
22 compliance.

23 14. Defendant Five Below, at all relevant times to this litigation acted, or failed to act,
24 by and through its officers, representatives, subsidiaries, agents, workers and/or its employees.
25 Five Below is a Pennsylvania corporation with a registered agent for service of process located at
26 CSC – Lawyers Incorporating Service, 2710 Gateway Oaks Dr., Ste. 150N, Sacramento, CA
27 95833.

28

1 15. Upon information and belief, Defendant operates at least twenty-four (24) stores
2 in California. Defendant's stores that are located in the State of California are required to comply
3 with California state law and be fully accessible to the mobility impaired.

4 **JURISDICTION AND VENUE**

5 16. This Court has original jurisdiction of the Unruh Act and CDPA claims pursuant
6 to Cal. Civ. Code §§ 51, 54, and 55.

7 17. Venue lies in this district as Defendant is found and/or does substantial business
8 here, and a part of the store that is the subject of the action is so situated.

9 **CLASS ACTION ALLEGATIONS**

10 18. Class actions are certified when the question is one of a common or general
11 interest, of many persons, or when the parties are numerous, and it is impracticable to bring them
12 all before the court. Cal. Civ. Proc. Code § 382. The California Supreme Court has stated that a
13 class should be certified when the party seeking certification has demonstrated the existence of a
14 "well-defined community of interest" among the members of the proposed class. *Richmond v.*
15 *Dart Indus., Inc.*, 29 Cal.3d 462, 470 (1981); *see also Daar v. Yellow Cab Co.*, 67 Cal.2d 695,
16 704 (1967).

17 19. Class actions are especially valuable in a context such as this one, in which
18 individual damages are modest. It is well settled that Plaintiff need not prove the merits of his
19 action at the class certification stage.

20 20. Rather, the decision of whether to certify a class is "essentially a procedural one"
21 and the appropriate analysis is whether, assuming the merits of the claims, they are suitable for
22 resolution on a class-wide basis:

23 As the focus in a certification dispute is on what types of questions common or
24 individual are likely to arise in the action, rather than on the merits of the case, in
25 determining whether there is substantial evidence to support a trial court's
26 certification order, we consider whether the theory of recovery advanced by the
proponents of certification is, as an analytical matter, likely to prove amenable to
class treatment.

27 *Sav-On Drug Markets, Inc. v. Superior Court*, 34 Cal.4th 319, 327 (2004) (citations omitted).

1 21. In addition, the assessment of suitability for class certification entails addressing
2 whether a class action is superior to individual lawsuits or alternative procedures for resolving
3 the controversy. *Capitol People First v. State Dept. of Developmental Services* (2007) 155
4 Cal.App.4th 676, 689.

5 22. The Class consists of all mobility impaired/wheelchair-bound persons located in
6 California who have patronized the Five Below stores identified herein, who have been, or who
7 were, prior to the filing of the Complaint, denied the full and equal enjoyment of the goods,
8 services, programs, facilities, privileges, advantages, or accommodations of any of the Five
9 Below stores identified herein (the Class).

10 23. The Class is believed to consist of thousands of members. Upon information and
11 belief, census statistics demonstrate that there are over 150,000 non-institutionalized people
12 sixteen years of age or older in California who use wheelchairs. The members of the Class are so
13 numerous that joinder of all members is impracticable.

14 24. Common questions of law and fact exist as to all members of the Class, and
15 predominate over any questions affecting solely individual members of the Class. Among the
16 questions of law and fact common to the Class are:

17 (a) Whether Defendant provides goods, services, programs, facilities,
18 privileges, advantages, or accommodations to individuals with disabilities in an
19 integrated setting;

20 (b) Whether Defendant's stores have made reasonable modifications in
21 policies, practices, and procedures when such modifications are necessary to afford such
22 goods, services, programs, facilities, privileges, advantages, or accommodations to
23 individuals with disabilities;

24 (c) Whether Defendant has failed to take steps to ensure that individuals with
25 disabilities are not excluded, denied services, segregated, or otherwise treated differently
26 than other individuals because of the absence of auxiliary aids and services;

27 (d) Whether Defendant has failed to remove architectural and communication
28 barriers in existing stores, where such removal is readily achievable and technically

1 feasible, or has failed to make such goods, services, programs, facilities, privileges,
2 advantages, or accommodations available through alternative methods, if removal of the
3 barriers is not readily achievable or technically feasible;

4 (e) Whether violations of the ADA also constitute per se violations of the
5 California anti-discrimination statutes Cal. Civ. Code §§ 51, 54, and 55 et. seq.;

6 (f) Whether Defendant has violated and/or continues to violate the state anti-
7 discrimination statutes identified herein by denying equal access to disabled persons at
8 places of public accommodation;

9 (g) Whether the state anti-discrimination statutes identified above provide for a
10 private right of action;

11 (h) Whether the state anti-discrimination statutes identified above provide for
12 injunctive relief;

13 (j) Whether to recover under the Unruh Act a plaintiff must plead and prove
14 intentional discrimination;

15 (k) Whether a plaintiff must prove intentional conduct to recover under the
16 CDPA; and

17 (l) Whether injunctive relief is available as a cumulative remedy for
18 violations of state disability access laws regardless of if a plaintiff elects to recover under
19 the Unruh Act or CDPA.

20 25. Plaintiff's claims are typical of the claims of the members of the Class as Plaintiff
21 and members of the Class sustained and continue to sustain injuries arising out of Defendant's
22 conduct or omissions in violation of state law as complained of herein. Plaintiff, like all other
23 members of the Class, claims that Defendant has violated state law by violating the ADA and
24 Title 24 by failing to make its stores accessible to individuals with disabilities and by excluding
25 Plaintiff, and other similarly situated persons, from full and equal enjoyment of the goods,
26 services, programs, facilities, privileges, advantages, or accommodations of Defendant's stores,
27 and subjecting Plaintiff to discrimination by failing to provide its facilities and other goods,
28

1 services, programs, facilities, privileges, advantages or accommodations to Plaintiff, as well as
2 other similarly situated persons.

3 26. Plaintiff will fairly and adequately protect the interests of the members of the
4 Class, and has retained counsel competent and experienced in class action litigation. Plaintiff has
5 no interests antagonistic to, or in conflict with, those of the Class.

6 27. A class action is superior to other available methods for the fair and efficient
7 adjudication of the controversy, since joinder of all members is impracticable. Furthermore,
8 because the damages suffered by the individual Class members may be relatively small, the
9 expense and burden of individual litigation make it impossible for members of the Class
10 individually to redress the wrongs done to them.

11 28. There will be no difficulty in the management of this action as a class action.
12 Moreover, judicial economy will be served by the maintenance of this lawsuit as a class action,
13 in that it is likely to avoid the burden which would be otherwise placed upon the judicial system
14 by the filing of thousands of similar suits by disabled people across the California. There are no
15 obstacles to effective and efficient management of the lawsuit as a class action.

16 **FIVE BELOW STORES OWNED/OPERATED BY DEFENDANT IN VIOLATION OF**
17 **CALIFORNIA'S ACCESS LAWS**

18 29. On September 22, 2022, Plaintiff patronized the Five Below located at 2 South
19 Garfield Ave., Alhambra, CA to purchase various items and suffered discrimination as a result of
20 being denied full and equal access. Specifically, this store denied Plaintiff equal access because it
21 did not provide an accessible parking lot and/or restroom area. First, Plaintiff was deterred from
22 parking in a handicap accessible parking space because the parking lot lacked the requisite
23 number of handicap and/or van handicap accessible parking spaces and because absent from the
24 parking lot was accessible parking signage to deter the use of handicap accessible parking spaces
25 by persons who are not disabled. As a result, Plaintiff was unable to park in a handicap accessible
26 parking space. Once inside the store, Plaintiff was denied equal access to the store's restroom.
27 Initially, Plaintiff was unable to access the restroom without assistance due to the excessive force
28 required by him to open the restroom door, and because the restroom door closer was not

1 adjusted to allow the bathroom door to remain open for at least three (3) seconds, thereby
 2 making it impossible for him to wheel himself inside, unassisted. Once inside the restroom,
 3 Plaintiff was deterred from using the toilet because restroom stall door lacked accessible
 4 hardware that would allow him to close and lock the door. As a result, Plaintiff did not use the
 5 restroom toilet. Prior to exiting the restroom, Plaintiff was deterred from using the sink to wash
 6 his hands because the pipes under the lavatory were uncovered and Plaintiff feared burning his
 7 legs, and because the paper towel dispenser was mounted excessively high and out of reach to
 8 him. As a result, Plaintiff was unable to use the restroom

9 30. In an attempt to avoid litigation, Plaintiff provided notice and the opportunity to
 10 cure to Defendant. On September 23, 2022, Plaintiff sent a letter to the store manager of the 2
 11 South Garfield Ave., Alhambra store location informing him/her that this store is not accessible
 12 to him, that he was aware of similar accessibility barriers at other Five Below locations and
 13 asking that these problems be fixed within thirty (30) days.

14 31. Plaintiff did not receive a response to his written demand to Defendant. As a
 15 result, he is now being deterred from patronizing all of Defendant's stores.

16 32. Plaintiff has retained attorneys to prosecute the claims alleged herein who, in turn,
 17 retained professional building experts to investigate, identify and document Defendant's
 18 discriminatory barriers. Those investigations, which are still ongoing, have to date identified the
 19 stores listed below as being in serious violation of state law as a result of their violations of the
 20 California Standards governing the physical accessibility of public accommodations and/or the
 21 ADA which results in a violation of both the Unruh Act and CDPA. This information has been
 22 disseminated to Plaintiff providing him with actual notice of the violations at Defendant's stores
 23 listed below:

- 24 1. 2 South Garfield Ave., Alhambra, CA
- 25 2. 802 W. Arrow Hwy., San Dimas, CA
- 26 3. 2444 Foothill Blvd., La Verne, CA
- 27 4. 2700 E. Workman St., Ste. B, West Covina, CA
- 28 5. 1134 S. Harbor Blvd., Fullerton, CA

6. 2226 E. Lincoln Ave., Anaheim, CA
7. 586 Euclid St., Anaheim, CA
8. 9921 Chapman Ave., Garden Grove, CA
9. 18309 Brookhurst St., Suite 5, Fountain Valley, CA
10. 8371 La Palma Ave., Buena Park, CA
11. 1785 Alameda St., Compton, CA
12. 14350 Ocean Gate Ave., Hawthorne, CA
13. 8512-A Painter Ave., Whittier, CA
14. 8850 Washington Blvd., Pico Rivera, CA
15. 886 W. Beverly Blvd., Montebello, CA
16. 2401 Via Campo, Montebello, CA
17. 10653 Valley Blvd., El Monte, CA
18. 39180 10th St. W, Palmdale, CA
19. 24355 Magic Mountain Pkwy., Santa Clarita, CA
20. 25670 The Old Rd., Stevenson Ranch, CA
21. 1555 Simi Town Center Way, Simi Valley, CA
22. 19881 Rinaldi St., Porter Ranch, CA
23. 7880 Van Nuys Blvd., Panorama City, CA
24. 5545 E. Stearns St., Long Beach, CA

33. Despite receiving notice and an opportunity to cure from Plaintiff, Defendant has refused to address its accessibility violations. The aforementioned violations are ongoing and continue to result in Plaintiff and unnamed mobility impaired class members suffering discrimination as a result of being denied full and equal access to these stores.

34. Defendant has discriminated and is discriminating against Plaintiff, and others similarly situated, by failing to, *inter alia*, have accessible parking lots and/or restrooms, as described below, and required by both the California Standards and by the ADA. The following list describes Defendant's violations in or at the Five Below stores identified above:

1. **2 South Garfield Ave.
Alhambra, CA 91801**

Violation 1

There is not the required number of accessible parking spaces. This is in violation of Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(a).

Violation 2

There is not the required number of van accessible spaces. This is in violation of Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(b).

Violation 3

There is no van accessible parking signage. This is in violation of Title 24 Code 1129B.5; ADAAG – Section 4.6.4.

Violation 4

The van accessible parking spaces do not have accessible aisles. This is in violation of Title 24 Code 1129B.4.2; ADAAG – Section 4.6.3.

Violation 5

The pipes under the lavatory are not covered. This is in violation of Title 24 Code 1115B.2.1.2.1; ADAAG – Section 4.19.4.

Violation 6

The restroom door force is 8 lbs. and is not accessible. This is in violation of Title 24 Code 1133B2.5; ADAAG – Section 4.13.11(2)(b).

Violation 7

The toilet stall door hardware is not compliant. This is in violation of Title 24 Code 1115B.7.1.4; ADAAG – Section 4.13.9.

Violation 8

The restroom door closer is not adjusted to allow the bathroom door to remain open for at least three (3) seconds. This is in violation of Title 24 Code 1115B.7.1.4; ADAAG – Section 4.13.10.

Violation 9

The paper towel dispenser in the restroom is located 48” above the floor. This is in violation of Title 24 Code 1115B.8.3; ADAAG – Section 4.23.7

**2. 802 W. Arrow Hwy.
San Dimas, CA 91773**

Violation 1

The pipes under the lavatory are not covered. This is in violation of Title 24 Code 1115B.2.1.2.1; ADAAG – Section 4.19.4.

Violation 2

The center of the toilet or water closet is 20” from the wall and is not accessible. This is in violation of Title 24 Code 1115B.7.1.2; ADAAG – Section 4.17.3.

Violation 3

The restroom door force is 7 lbs. and is not accessible. This is in violation of Title 24 Code 1133B2.5; ADAAG – Section 4.13.11(2)(b).

Violation 4

The mirror in the restroom is 49” from the floor and is not compliant. This is in violation of Title 24 Code 1115B.9.2; ADAAG – Section 4.22.6.

**3. 2444 Foothill Blvd.
La Verne, CA 91750**

Violation 1

There is not the required number of accessible parking spaces. This is in violation of Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(a).

Violation 2

There is not the required number of van accessible spaces. This is in violation of Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(b).

Violation 3

The restroom door force is 8 lbs. and is not accessible. This is in violation of Title 24 Code 1133B2.5; ADAAG – Section 4.13.11(2)(b).

**4. 2700 E. Workman St., Ste. B
West Covina, CA 91791**

Violation 1

There is not the required number of accessible parking spaces. This is in violation of Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(a).

Violation 2

There is not the required number of van accessible spaces. This is in violation of Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(b).

Violation 3

The center of the toilet or water closet is 16 1/4” from the wall and is not accessible. This is in violation of Title 24 Code 1115B.7.1.2; ADAAG – Section 4.17.3.

Violation 4

The restroom door force is 8 lbs. and is not accessible. This is in violation of Title 24 Code 1133B2.5; ADAAG – Section 4.13.11(2)(b).

Violation 5

The restroom door closer is not adjusted to allow the bathroom door to remain open for at least three (3) seconds. This is in violation of Title 24 Code 1115B.7.1.4; ADAAG – Section 4.13.10.

Violation 6

1 The soap dispenser in the restroom is located 43" above the floor. This is in
2 violation of Title 24 Code 1115B.8.3; ADAAG – Section 4.23.7.

3 **5. 1134 S. Harbor Blvd.**
4 **Fullerton, CA 92832**

5 **Violation 1**

6 The restroom door force is 9 lbs. and is not accessible. This is in violation of Title
7 24 Code 1133B2.5; ADAAG – Section 4.13.11(2)(b)..

8 **Violation 2**

9 The soap dispenser in the restroom is located 44" above the floor. This is in
10 violation of Title 24 Code 1115B.8.3; ADAAG – Section 4.23.7.

11 **Violation 3**

12 The paper towel dispenser in the restroom is located 41" above the floor. This is
13 in violation of Title 24 Code 1115B.8.3; ADAAG – Section 4.23.7

14 **Violation 4**

15 The toilet seat cover dispenser in the restroom is located 48" above the floor. This
16 is in violation of Title 24 Code 1115B.8.3; ADAAG – Section 4.23.7.

17 **6. 2226 E. Lincoln Ave.**
18 **Anaheim, CA 92806**

19 **Violation 1**

20 There is not the required number of accessible parking spaces. This is in violation
21 of Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(a).

22 **Violation 2**

23 There is not the required number of van accessible spaces. This is in violation of
24 Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(b).

25 **Violation 3**

26 There is no accessible parking signage. This is in violation of Title 24 Code
27 1129B.5; ADAAG – Section 4.6.4.

28 **Violation 4**

There is no van accessible parking signage. This is in violation of Title 24 Code
1129B.5; ADAAG – Section 4.6.4.

Violation 5

There is no additional sign or language below the symbol of accessibility stating
"minimum fine \$250.00." This is a violation of Title 24 Code 1129B.4.

Violation 6

There is no warning sign regarding the penalty for unauthorized use of designated
disabled parking spaces and where they are towed. This is in violation of Title 24
Code 1129B.4.

Violation 7

The accessible parking spaces do not have accessible aisles. This is in violation of Title 24 Code 1129B.4.1; ADAAG - Section 4.6.3.

Violation 8

The van accessible parking spaces do not have accessible aisles. This is in violation of Title 24 Code 1129B.4.2; ADAAG – Section 4.6.3.

Violation 9

The aisle is blocked with merchandise and does not provide minimum clear width for single wheelchair passage of 32" at a point and 36" continuously. This is in violation of Title 24 Code 1102B; ADAAG - Sections 3.5, 4.2.1.

**7. 586 Euclid St.
Anaheim, CA 92801**

Violation 1

There is not the required number of accessible parking spaces. This is in violation of Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(a).

Violation 2

There is not the required number of van accessible spaces. This is in violation of Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(b).

Violation 3

There is no accessible parking signage. This is in violation of Title 24 Code 1129B.5; ADAAG – Section 4.6.4.

Violation 4

There is no van accessible parking signage. This is in violation of Title 24 Code 1129B.5; ADAAG – Section 4.6.4.

Violation 5

There is no additional sign or language below the symbol of accessibility stating "minimum fine \$250.00." This is a violation of Title 24 Code 1129B.4.

Violation 6

There is no warning sign regarding the penalty for unauthorized use of designated disabled parking spaces and where they are towed. This is in violation of Title 24 Code 1129B.4.

Violation 7

The accessible parking spaces do not have accessible aisles. This is in violation of Title 24 Code 1129B.4.1; ADAAG - Section 4.6.3.

Violation 8

The van accessible parking spaces do not have accessible aisles. This is in

violation of Title 24 Code 1129B.4.2; ADAAG – Section 4.6.3.

Violation 9

The aisle is blocked with merchandise and does not provide minimum clear width for single wheelchair passage of 32" at a point and 36" continuously. This is in violation of Title 24 Code 1102B; ADAAG - Sections 3.5, 4.2.1.

**8. 9921 Chapman Ave.
Garden Grove, CA 92841**

Violation 1

There is not the required number of accessible parking spaces. This is in violation of Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(a).

Violation 2

There is not the required number of van accessible spaces. This is in violation of Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(b).

Violation 3

The aisle is blocked with merchandise and does not provide minimum clear width for single wheelchair passage of 32" at a point and 36" continuously. This is in violation of Title 24 Code 1102B; ADAAG - Sections 3.5, 4.2.1.

Violation 4

The restroom door hardware is not compliant. This is in violation of Title 24 Code 1133B.2.5.1; ADAAG – Section 4.13.9.

Violation 5

The restroom door force is 9 lbs. and is not accessible. This is in violation of Title 24 Code 1133B.2.5; ADAAG – Section 4.13.11(2)(b).

**9. 18309 Brookhurst St., Ste. 5
Fountain Valley, CA 92708**

Violation 1

There is not the required number of accessible parking spaces. This is in violation of Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(a).

Violation 2

There is not the required number of van accessible spaces. This is in violation of Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(b).

Violation 3

There is no accessible parking signage. This is in violation of Title 24 Code 1129B.5; ADAAG – Section 4.6.4.

Violation 4

There is no van accessible parking signage. This is in violation of Title 24 Code

1129B.5; ADAAG – Section 4.6.4.

Violation 5

There is no additional sign or language below the symbol of accessibility stating “minimum fine \$250.00.” This is a violation of Title 24 Code 1129B.4.

Violation 6

The accessible parking spaces do not have accessible aisles. This is in violation of Title 24 Code 1129B.4.1; ADAAG - Section 4.6.3.

Violation 7

The van accessible parking spaces do not have accessible aisles. This is in violation of Title 24 Code 1129B.4.2; ADAAG – Section 4.6.3.

Violation 8

The pipes under the lavatory are not covered. This is in violation of Title 24 Code 1115B.2.1.2.1; ADAAG – Section 4.19.4.

Violation 9

The center of the toilet or water closet is 16 3/4” from the wall and is not accessible. This is in violation of Title 24 Code 1115B.7.1.2; ADAAG – Section 4.17.3.

Violation 10

The restroom door force is 8 lbs. and is not accessible. This is in violation of Title 24 Code 1133B2.5; ADAAG – Section 4.13.11(2)(b).

**10. 8371 La Palma Ave.
Buena Park, CA 90620**

Violation 1

The aisle is blocked with merchandise and does not provide minimum clear width for single wheelchair passage of 32" at a point and 36" continuously. This is in violation of Title 24 Code 1102B; ADAAG - Sections 3.5, 4.2.1.

Violation 2

The restroom door hardware is not compliant. This is in violation of Title 24 Code 1133B.2.5.1; ADAAG – Section 4.13.9.

Violation 3

The restroom door force is 8 lbs. and is not accessible. This is in violation of Title 24 Code 1133B2.5; ADAAG – Section 4.13.11(2)(b).

Violation 4

The soap dispenser in the restroom is located 48” above the floor. This is in violation of Title 24 Code 1115B.8.3; ADAAG – Section 4.23.7.

**11. 1785 Alameda St.
Compton, CA 90220**

Violation 1

The aisle is blocked with merchandise and does not provide minimum clear width for single wheelchair passage of 32" at a point and 36" continuously. This is in violation of Title 24 Code 1102B; ADAAG - Sections 3.5, 4.2.1.

**12. 14350 Ocean Gate Ave.
Hawthorne, CA 90250**

Violation 1

There is not the required number of van accessible spaces. This is in violation of Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(b).

Violation 2

There is no van accessible parking signage. This is in violation of Title 24 Code 1129B.5; ADAAG – Section 4.6.4.

Violation 3

The van accessible parking spaces do not have accessible aisles. This is in violation of Title 24 Code 1129B.4.2; ADAAG – Section 4.6.3.

Violation 4

The restroom door hardware is not compliant. This is in violation of Title 24 Code 1133B.2.5.1; ADAAG – Section 4.13.9.

Violation 5

The restroom door force is 8 lbs. and is not accessible. This is in violation of Title 24 Code 1133B.2.5; ADAAG – Section 4.13.11(2)(b).

Violation 6

The restroom signage is not compliant. This is in violation of Title 24 Code 1117B.5.8.1.1; ADAAG - Section 4.1.2.

Violation 7

The soap dispenser in the restroom is located 49" above the floor. This is in violation of Title 24 Code 1115B.8.3; ADAAG – Section 4.23.7.

**13. 8512-A Painter Ave.
Whittier, CA 90602**

Violation 1

The restroom door force is 7 lbs. and is not accessible. This is in violation of Title 24 Code 1133B.2.5; ADAAG – Section 4.13.11(2)(b).

**14. 8850 Washington Blvd.
Pico Rivera, CA 90660**

Violation 1

1 The restroom door hardware is not compliant. This is in violation of Title 24 Code
2 1133B.2.5.1; ADAAG – Section 4.13.9.

3 **Violation 2**

4 The restroom door force is 8 lbs. and is not accessible. This is in violation of Title
5 24 Code 1133B2.5; ADAAG – Section 4.13.11(2)(b).

6 **Violation 3**

7 The soap dispenser in the restroom is located 54” above the floor. This is in
8 violation of Title 24 Code 1115B.8.3; ADAAG – Section 4.23.7.

9 **15. 886 W. Beverly Blvd.**
10 **Montebello, CA 90640**

11 **Violation 1**

12 There is not the required number of accessible parking spaces. This is in violation
13 of Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(a).

14 **Violation 2**

15 There is not the required number of van accessible spaces. This is in violation of
16 Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(b).

17 **Violation 4**

18 The restroom door force is 8 lbs. and is not accessible. This is in violation of Title
19 24 Code 1133B2.5; ADAAG – Section 4.13.11(2)(b).

20 **16. 2401 Via Campo**
21 **Montebello, CA 90640**

22 **Violation 1**

23 There is not the required number of van accessible spaces. This is in violation of
24 Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(b).

25 **Violation 2**

26 There is no accessible parking signage. This is in violation of Title 24 Code
27 1129B.5; ADAAG – Section 4.6.4.

28 **Violation 3**

The center of the toilet or water closet is 19 1/2” from the wall and is not
accessible. This is in violation of Title 24 Code 1115B.7.1.2; ADAAG – Section
4.17.3.

Violation 4

The restroom door hardware is not compliant. This is in violation of Title 24 Code
1133B.2.5.1; ADAAG – Section 4.13.9.

Violation 5

The restroom door force is 7 lbs. and is not accessible. This is in violation of Title
24 Code 1133B2.5; ADAAG – Section 4.13.11(2)(b).

Violation 6

The mirror in the restroom is 41" from the floor and is not compliant. This is in violation of Title 24 Code 1115B.9.2; ADAAG – Section 4.22.6.

Violation 7

The soap dispenser in the restroom is located 48" above the floor. This is in violation of Title 24 Code 1115B.8.3; ADAAG – Section 4.23.7.

Violation 8

The paper towel dispenser in the restroom is located 47" above the floor. This is in violation of Title 24 Code 1115B.8.3; ADAAG – Section 4.23.7.

**17. 10653 Valley Blvd.
El Monte, CA 91731**

Violation 1

The restroom door force is 8 lbs. and is not accessible. This is in violation of Title 24 Code 1133B2.5; ADAAG – Section 4.13.11(2)(b).

Violation 2

The soap dispenser in the restroom is located 47" above the floor. This is in violation of Title 24 Code 1115B.8.3; ADAAG – Section 4.23.7.

**18. 39180 10th St. W
Palmdale, CA 93551**

Violation 1

There is not the required number of accessible parking spaces. This is in violation of Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(a).

Violation 2

There is not the required number of van accessible spaces. This is in violation of Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(b).

Violation 3

The restroom door force is 7 lbs. and is not accessible. This is in violation of Title 24 Code 1133B2.5; ADAAG – Section 4.13.11(2)(b).

Violation 4

The restroom door closer is not adjusted to allow the bathroom door to remain open for at least three (3) seconds. This is in violation of Title 24 Code 1115B.7.1.4; ADAAG – Section 4.13.10.

**19. 24355 Magic Mountain Pkwy.
Santa Clarita, CA 91355**

Violation 1

1 There is not the required number of accessible parking spaces. This is in violation
2 of Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(a).

3 **Violation 2**

4 There is not the required number of van accessible spaces. This is in violation of
5 Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(b).

6 **Violation 3**

7 The restroom door force is 9 lbs. and is not accessible. This is in violation of Title
8 24 Code 1133B2.5; ADAAG – Section 4.13.11(2)(b).

9 **Violation 4**

10 The soap dispenser in the restroom is located 46” above the floor. This is in
11 violation of Title 24 Code 1115B.8.3; ADAAG – Section 4.23.7.

12 **Violation 5**

13 The paper towel dispenser in the restroom is located 48” above the floor. This is
14 in violation of Title 24 Code 1115B.8.3; ADAAG – Section 4.23.7.

15 **20. 25670 The Old Rd.
16 Stevenson Ranch, CA 91381**

17 **Violation 1**

18 There is not the required number of accessible parking spaces. This is in violation
19 of Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(a).

20 **Violation 2**

21 There is not the required number of van accessible spaces. This is in violation of
22 Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(b).

23 **Violation 3**

24 The restroom door force is over 8 lbs. and is not accessible. This is in violation of
25 Title 24 Code 1133B2.5; ADAAG – Section 4.13.11(2)(b).

26 **Violation 4**

27 The restroom door closer is not adjusted to allow the bathroom door to remain
28 open for at least three (3) seconds. This is in violation of Title 24 Code
1115B.7.1.4; ADAAG – Section 4.13.10.

Violation 5

The soap dispenser in the restroom is located more than 40” above the floor. This
is in violation of Title 24 Code 1115B.8.3; ADAAG – Section 4.23.7.

**21. 1555 Simi Town Center Way
Simi Valley, CA 93065**

Violation 1

There is not the required number of accessible parking spaces. This is in violation
of Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(a).

Violation 2

There is not the required number of van accessible spaces. This is in violation of Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(b).

Violation 3

The restroom door force is 9 lbs. and is not accessible. This is in violation of Title 24 Code 1133B2.5; ADAAG – Section 4.13.11(2)(b).

Violation 4

The mirror in the restroom is 41 1/4” from the floor and is not compliant. This is in violation of Title 24 Code 1115B.9.2; ADAAG – Section 4.22.6.

Violation 5

The restroom door closer is not adjusted to allow the bathroom door to remain open for at least three (3) seconds. This is in violation of Title 24 Code 1115B.7.1.4; ADAAG – Section 4.13.10.

**22. 19881 Rinaldi St.
Porter Ranch, CA 91326**

Violation 1

There is not the required number of accessible parking spaces. This is in violation of Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(a).

Violation 2

There is not the required number of van accessible spaces. This is in violation of Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(b).

Violation 3

The center of the toilet or water closet is 19 1/4” from the wall and is not accessible. This is in violation of Title 24 Code 1115B.7.1.2; ADAAG – Section 4.17.3.

Violation 4

The restroom door force is 8 lbs. and is not accessible. This is in violation of Title 24 Code 1133B2.5; ADAAG – Section 4.13.11(2)(b).

Violation 5

The mirror in the restroom is 41” from the floor and is not compliant. This is in violation of Title 24 Code 1115B.9.2; ADAAG – Section 4.22.6.

**23. 7880 Van Nuys Blvd.
Panorama City, CA 91402**

Violation 1

The restroom is not on an accessible route (steps) and is not accessible to a wheelchair.

This is in violation of Title 24 Code 1115B.1; ADAAG - Sections 4.1.2(6) and 4.1.2(11).

Violation 2

The pipes under the lavatory are not covered. This is in violation of Title 24 Code 1115B.2.1.2.1; ADAAG – Section 4.19.4.

Violation 3

The restroom door force is 7 lbs. and is not accessible. This is in violation of Title 24 Code 1133B2.5; ADAAG – Section 4.13.11(2)(b).

Violation 4

The restroom does not provide proper floor space and is not accessible. This is in violation of Title 24 Code 1115B.7.2; ADAAG – Section 4.23.3.

Violation 5

The soap dispenser in the restroom is located 50” above the floor. This is in violation of Title 24 Code 1115B.8.3; ADAAG – Section 4.23.7.

**24. 5545 E. Stearns St.
Long Beach, CA 90815**

Violation 1

There is not the required number of accessible parking spaces. This is in violation of Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(a).

Violation 2

There is not the required number of van accessible spaces. This is in violation of Title 24 Code 1129B.1; ADAAG – Section 4.1.2(5)(b).

Violation 3

There is no accessible parking signage. This is in violation of Title 24 Code 1129B.5; ADAAG – Section 4.6.4.

Violation 4

There is no van accessible parking signage. This is in violation of Title 24 Code 1129B.5; ADAAG – Section 4.6.4.

Violation 5

There is no additional sign or language below the symbol of accessibility stating “minimum fine \$250.00.” This is a violation of Title 24 Code 1129B.4.

Violation 6 (CA code only)

There is no warning sign regarding the penalty for unauthorized use of designated disabled parking spaces and where they are towed. This is in violation of Title 24 Code 1129B.4.

Violation 7

1 The accessible parking spaces do not have accessible aisles. This is in violation of
2 Title 24 Code 1129B.4.1; ADAAG - Section 4.6.3.

3 **Violation 8**

4 The van accessible parking spaces do not have accessible aisles. This is in
5 violation of Title 24 Code 1129B.4.2; ADAAG – Section 4.6.3.

6 **Violation 9**

7 The aisle is blocked with merchandise and does not provide minimum clear width
8 for single wheelchair passage of 32" at a point and 36" continuously. This is in
9 violation of Title 24 Code 1102B; ADAAG - Sections 3.5, 4.2.1.

10 35. The discriminatory violations described above are not an exclusive or exhaustive
11 list of the Defendant's accessibility barriers and, upon information and belief, there are other
12 miscellaneous violations of both the California Standards and the ADA at Defendant's stores.

13 36. The correction of these violations is readily achievable or Defendant is obligated
14 to have its places of public accommodation readily accessible as defined by both the ADA and
15 the California Standards.

16 37. To date, barriers and other violations still exist and have not been remedied or
17 altered in such a way as to effectuate compliance with the provisions of the California Standards
18 or the ADA. The effect of Defendant's failure to comply with these standards or regulations is
19 that Defendant has discriminated against disabled persons by denying them the full and equal
20 enjoyment of the goods, services, programs, facilities, privileges, advantages, or
21 accommodations of Defendant's stores.

22 38. As a result of that failure to remedy existing barriers to accessibility, Plaintiff and
23 others similarly situated have been denied access to the benefits of the goods, services, programs,
24 facilities, and activities of Defendant's stores, and have otherwise been discriminated against and
25 have suffered damages caused by Defendant's accessibility violations. Unless Defendant's stores
26 are brought into compliance, said persons will continue to suffer injury in the future.

27 **COUNT I**

28 **(Unruh Civil Rights Act)**

39. Plaintiff re-alleges and incorporates by reference the above allegations set forth in
the Complaint as if fully set forth herein.

1 40. Defendant operates business establishments within the jurisdiction of the State of
2 California and, as such, is obligated to comply with the provisions of the Unruh Act, Cal. Civ.
3 Code, § 51, et seq.

4 41. The conduct alleged herein violates the Unruh Act, including Cal. Civ. Code § 51,
5 et seq.

6 42. The Unruh Act guarantees, *inter alia*, that persons with disabilities are entitled to
7 full and equal accommodations, advantages, facilities, privileges, or services in all business
8 establishments of every kind whatsoever within the jurisdiction of the State of California. The
9 Unruh Act also provides that a violation of the ADA is a violation of the Unruh Act.

10 43. Defendant has violated the Unruh Act by, *inter alia*, denying Plaintiff and
11 members of the proposed Class, as persons with disabilities, full and equal accommodations,
12 advantages, facilities, privileges, or services offered by Defendant. Defendant has also violated
13 the Unruh Act by violating the ADA, as set forth above.

14 44. Defendant has violated the Unruh Act, by *inter alia*, failing to operate its services
15 on a nondiscriminatory basis and failing to ensure that persons with disabilities have
16 nondiscriminatory access to its locations.

17 45. In doing the acts and/or omissions alleged herein, Defendant wrongfully and
18 unlawfully denied access of individuals with disabilities to its locations and facilities, and acted
19 intentionally and with knowledge of the effect its conduct was having on physically disabled
20 persons.

21 46. Defendant has violated the Unruh Act by both being in violations of the
22 California Standards and rights provided under the Americans with Disabilities Act of 1990.

23 47. Further, Defendant has violated the Unruh Act by having, maintaining,
24 establishing, or failing to abolish policies that discriminate against the mobility impaired, which
25 have resulted in barriers to access in their stores.

26 48. Plaintiff is being deterred from patronizing Defendant's stores as a result of his
27 actual knowledge of the violations stated above.

28

49. Pursuant to the remedies, procedures, and rights set forth in Cal. Civ. Code § 52, Plaintiff prays for judgment as set forth below.

COUNT II

(California Disabled Persons Act)

50. Plaintiff re-alleges and incorporates by reference the above allegations set forth in the Complaint as if fully set forth herein.

51. Defendant operates, within the jurisdiction of the State of California, places of public accommodation and/or places to which the general public is invited and, as such, is obligated to comply with the provisions of the CDPA, Cal. Civ. Code § 54, et seq.

52. The conduct alleged herein violated the CDPA, including without limitation Cal. Civ. Code, § 54.1, et seq. and relevant provisions of the California building code regulations.

53. The CDPA guarantees, *inter alia*, that persons with disabilities are entitled to full and equal access, as other members of the general public, to accommodations, advantages, facilities, and privileges of covered entities.

54. Defendant has violated the CDPA by, *inter alia*, denying Plaintiff and members of the proposed class, as persons with disabilities, full and equal access, as other members of the general public, to accommodations, advantages, and facilities offered by Defendant.

55. Defendant has violated the CDPA by, *inter alia*, failing to operate their services on a nondiscriminatory basis and failing to ensure that persons with disabilities have nondiscriminatory access to its stores.

56. In doing the acts and/or omissions alleged herein, Defendant wrongfully and unlawfully denied access of individuals with disabilities to its stores and facilities, and acted with knowledge of the effect its conduct was having on physically disabled persons.

57. Defendant has violated the CDPA by being, as listed above, in violation of both California Standards and the ADA. Plaintiff is not required to prove intent or actual damages to recovery minimum statutory damages under the CPDA.

58. Plaintiff is being deterred from patronizing Defendant's stores as a result of his actual knowledge of the violations stated above.

1 D. that this Court declares that the policies, procedures, services, and
2 facilities of Defendant are discriminatory and violative of the state anti-discrimination
3 statutes of California and the California Standards;

4 E. that this Court declare that Defendant's violations of the state anti-
5 discrimination statutes of California is intentional.

6 F. that this Court Order injunctive relief to require Defendant to become in
7 compliance and remain in compliance with state anti-discrimination statutes.

8 G. that this Court award minimum statutory damages on behalf of the
9 Plaintiff against Defendant pursuant to the state statutes identified above;

10 H. that this Court award reasonable attorneys' fees and costs (including
11 expert fees) and other expenses of suit; and


12 I. that this Court awards such other and further relief as it deems necessary,
13 just, proper, and appropriate.

14 **DEMAND FOR JURY TRIAL**

15 Plaintiff hereby demands a jury on all issues which can be heard by a jury.

16 Dated: December 7, 2022

BRODSKY & SMITH

17
18 By: 
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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Five Below Fails to Comply with California Accessibility Laws, Class Action Alleges](#)
