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SAN LUIS OBISPO SUPERIOR COURT
BY 
M. Zepeda, Deputy Clerk

5 Attorney for Plaintiff – **TIFFANY HERD**

8 **SUPERIOR COURT OF CALIFORNIA**

9 **COUNTY OF SAN LUIS OBISPO**

10 Case No: 20CV-0430

11 **TIFFANY HERD**, an individual,

12 Plaintiff,

13 vs.

14 **SMART & FINAL STORES, LLC**, a
California limited liability company;
15 **MATTHEW DeWOLF**, an individual;
16 and **DOES 1 through 10**, inclusive,

17 Defendants.

**CLASS ACTION COMPLAINT
FOR INJUNCTIVE RELIEF AND DAMAGES
FOR VIOLATIONS OF:**

1. **Title III of the Americans with Disabilities Act (42 U.S.C. §§ 12181 et seq.)**
2. **Violation of Civil Code §51 et seq.- The Unruh Civil Rights Act; and,**
3. **Violation of Civil Code §54 et seq.- The California Disabled Persons Act**

DEMAND FOR JURY TRIAL

18 **COMES NOW**, plaintiff, **TIFFANY HERD** ("Plaintiff"), who hereby alleges against defendants,
19 **SMART & FINAL STORES, LLC**, a California limited liability company, and **MATTHEW DeWOLF**, an
20 individual, the following based on her knowledge, information and belief:

21 **INTRODUCTION**

22 1. Although the COVID-19 pandemic has made life difficult for everyone, it has caused
23 special problems for the 37 million people in the United States and approximate three million people in
24 California who suffer from respiratory ailments or other conditions that affect their ability to breathe. The
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1 Americans With Disability Act of 1990 (ADA) defines a person with a disability as someone who has a
2 physical or mental impairment that seriously limits one or more major life activities, or who is regarded
3 as having such impairments. Asthma, allergies and other respiratory ailments are usually considered
4 disabilities under the ADA. The ADA lists major life activities to include, but is not limited to: breathing;
5 eating; working and going to school.

6 2. In 2008, the ADA was changed to include more people in the definition of “disabled.”
7 Conditions that only show symptoms at certain times are now included. Asthma, allergies and other
8 respiratory ailments fit this definition. The ADA protects people with asthma, allergies, and other
9 respiratory ailments even if reactions or attacks happen only when triggered.

10 3. California state and local governments, like many governments throughout the country,
11 require (or at least strongly recommend) the use of masks or other face coverings to reduce the spread of
12 the novel coronavirus. In response to these recommendations, many retail companies in California,
13 including defendant Smart & Final Stores, LLC (“Defendant #1”), now require their employees to wear
14 facemasks at work, at least when interacting with customers or co-workers; and, have stretched the
15 requirement to include their customers. These mandatory masking requirements may serve an important
16 public health and safety purposes, but they can be – and in this case have been – implemented in a manner
17 by Smart & Final, LLC in a manner that discriminates – in violation of state and federal law – against
18 disabled people, or people with a medical condition, including Plaintiff, as defined in *Government Code*
19 *§§ 12926 & 12926.1*, who have a medical condition that makes it dangerous to their health to wear any
20 type of facemask. When disabled people, or people with a medical condition, including Plaintiff, as
21 defined in *Government Code §§ 12926 & 12926.1*, who have a medical condition that makes it dangerous
22 to their health to wear any type of facemask seek equal access to retail stores such as Smart & Final, LLC’s
23 they must be provided with reasonable accommodations, such as curbside service or having an employee
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1 shop for the disabled person, if the business has a facemask mandate. Smart & Final, LLC while
2 implementing their mandatory storewide facemask mandate, has not established nor implemented, or even
3 trained their employees to provide reasonable accommodations to disabled people, or people with a
4 medical condition, including Plaintiff, as defined in *Government Code §§ 12926 & 12926.1*, who have a
5 medical condition that makes it dangerous to their health to wear any type of facemask.

6 4. This is a class action for injunctive relief and statutory damages, brought on behalf of
7 disabled Californians, and Californians with a medical condition that precludes them from wearing
8 facemasks who are current or future customers of Smart & Final, LLC at its more than 250 grocery and
9 foodservice stores in California, Arizona and Nevada with additional stores in Northern Mexico operated
10 through a joint venture. (See <https://www.smartandfinal.com/about-us>) All over California, Smart &
11 Final, LLC has implemented a mandatory mask-wearing policy that requires its customers to wear
12 facemasks whenever they wish to shop at its retail stores. Those facemasks create health hazards unique
13 to disabled people and/or people with a medical condition that prevents them from wearing facemasks,
14 because they prohibit those persons' ability to breathe, or in the case of Plaintiff, the ability of her service
15 dog to monitor her blood sugar/diabetes. For the substantial percentage of disabled people and/or people
16 with a medical condition that prevents them from wearing facemasks, like plaintiff Tiffany Herd, who rely
17 on being able to breathe freely, Smart & Final, LLC's facemask requirement interferes with their ability
18 to breathe or other necessary life functions, and endangers their lives.

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20 5. Under the federal ADA, the California Unruh Act ("Unruh Act"), and the California
21 Disabled Persons Act ("CDPA"), retail establishments such as Smart & Final, LLC have an affirmative
22 duty to adopt policies or to make reasonable modifications to existing policies, and to provide auxiliary
23 aids and services sufficient "*to ensure that no individual with a disability is excluded, denied services,*
24 *segregated or otherwise treated differently*" than people without disabilities. See, e.g., 42 U.S.C.
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1 §12182(b)(2)(A)(ii). Smart & Final, LLC’s current statewide policy of requiring all customers to wear
2 facemasks violates each of these laws by excluding disabled persons like Plaintiff, and all those similarly
3 situated, from obtaining equal access to the company’s services.

4 6. There are many ways Smart & Final, LLC could comply with its obligations under federal
5 and state law to accommodate its disabled customers and/or customers with a medical condition that
6 prevents them from wearing facemasks while continuing to mandate the use of masks or other face
7 coverings by its other customers or employees. For example, how simple would it be for Smart & Final,
8 LLC to provide such accommodations such as curbside service, or having an employee shop for the
9 disabled person? This would ensure the safety of Smart & Final, LLC’s employees and customers without
10 discriminating against those customers who are disabled and/or have a medical condition that prevents
11 them from wearing facemasks.

12 7. Neither of these accommodations would pose an undue financial burden on Smart & Final,
13 LLC, a company whose revenues in 2019 exceeded \$31 million. Yet Smart & Final, LLC has failed to
14 take any reasonably appropriate steps to accommodate its customers who are disabled and/or have a
15 medical condition that prevents them from wearing facemasks. While its website acknowledges that the
16 CDC has only issued “*guidelines*” (not mandates) it states “*For Our Customers - Face coverings are*
17 *required for all customers inside Smart & Final stores.*” That same website offers no available
18 accommodations for disabled people. (See <https://www.smartandfinal.com/social-distancing-queuing>)

19 8. This lawsuit seeks an injunction to end the ongoing violations of California’s anti-
20 discrimination law by defendant, Smart & Final Stores, LLC (“Defendant #1”), a California limited
21 liability company, aided by their agents and employees, including but not limited to, (in the case of
22 Plaintiff) defendant, Matthew DeWolf (“Defendant #2”), an individual, who have committed and continue
23 to commit discrimination against disabled people, or people with a medical condition, including Plaintiff,
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1 as defined in *Government Code* §§ 12926 & 12926.1, who have a medical condition that makes it
2 dangerous to their health to wear any type of facemask, as well as statutory damages to Plaintiff and to
3 other similarly situated California disabled customers whose rights have been violated by Smart & Final,
4 LLC's & Defendant #2's unlawful conduct. (Collectively Defendant #1 and Defendant #2 are hereinafter
5 referred to as "Defendants.")

6 9. During the relevant time in this Complaint, and to current, Defendants have discriminated
7 against, denied and continue to deny disabled people or people with a medical condition, including
8 Plaintiff, full and equal accommodations or access to their 255 retail stores, including but not limited to,
9 their retail store located at 1464 E Grand Ave, Arroyo Grande, CA 93420 (hereinafter "Store #358")
10 because of his/her/their disability and/or medical condition, including Plaintiff, that prevents him/her/them
11 from wearing any type of facemask.

12 10. Defendants during the relevant time in this Complaint, and to current, refused/refuse to
13 allow disabled individuals equal access into their Store #358; have insisted that he/she/they leave Store
14 #358; and/or have denied and continue to deny disabled people or people with a medical condition,
15 including Plaintiff, full and equal accommodations or access to Store #358 because of his/her/their
16 disability and/or medical condition, including Plaintiff, that prevents him/her/them from wearing any
17 type of facemask. Neither have they offered any reasonable accommodations. Smart & Final, LLC's
18 position regarding disabled Californians is 'wear a facemask or you cannot shop here.'

19
20 **PARTIES:**

21 11. Plaintiff is a disabled individual with a disability in that she has severe-to-profound
22 diabetes and respiratory health issues, which is a physical impairment that substantially limits her major
23 life activities of breathing. 42 U.S.C. § 12102(1)(A) and (2)(A). Plaintiff relies on a breath sniffing
24 service dog to monitor her severe diabetes. She is a Smart & Final, LLC customer, whose upsetting
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1 experience at a Smart & Final, LLC retail store while unsuccessfully trying to shop for food during the
2 recent pandemic caused her embarrassment and anguish and prevents her from returning to shop for
3 Smart & Final, LLC products at Smart & Final, LLC's retail stores in California that she would otherwise
4 frequent. As a consequence, P has been forced to shop at more expensive food stores. At all times
5 mentioned in this Complaint she is and was a resident of the County of San Luis Obispo, State of
6 California.

7 12. Defendant, Smart & Final Stores, LLC ("Defendant #1"), is a California limited liability
8 company, whose headquarters is in State of California. Defendant #1 has more than 250 grocery and
9 foodservice stores in California, Arizona and Nevada with additional stores in Northern Mexico operated
10 through a joint venture. At all relevant times mentioned in this Complaint, they operate/operated several
11 retail stores in the County of San Luis Obispo, specifically one located at 1464 E Grand Ave, Arroyo
12 Grande, CA 93420 ("Store #358"). Smart & Final, LLC's retail stores are "*public accommodations*"
13 under 42 U.S.C. §12181(7)(E).

14 13. Defendant, Matthew DeWolf ("Defendant #2"), is an individual, and at all relevant times
15 mentioned in this Complaint was an employee and agent of Smart & Final, LLC at Store #358 where he
16 holds the title of store manager.

17 14. Plaintiff does not know the true names, capacities, or basis for liability of defendants
18 sued herein as Does 1 through 10, inclusive, as each fictitiously named Defendant is in some manner
19 liable to Plaintiff. Plaintiff will amend this Complaint to allege their true names and capacities when
20 ascertained. Plaintiff is informed and believes, and thereon alleges, that at all relevant times mentioned
21 in this Complaint, each of the fictitiously named defendants is/are responsible in some manner for the
22 injuries and damages to Plaintiff as alleged and that such injuries and damages were proximately caused
23 by such defendants, and each of them.
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1 20. Venue is proper in this court because the unequal treatment, discrimination, or distinction
2 alleged herein which arise from Smart & Final, LLC's statewide or nationwide policy of requiring all
3 its customers to wear facemasks occurred in the County of San Luis Obispo, State of California.

4 21. At the time of the alleged discrimination, Defendant #1's Store #358 where said alleged
5 discrimination occurred, is/was located in the County of San Luis Obispo, State of California; and,
6 Defendant #2 is/was an employee and agent of Defendant #1 at Store #358 where she holds the title of
7 assistant manager.

8 **GENERAL ALLEGATIONS**

9 22. On August 8, 2020, Plaintiff and her service dog entered Store #358 to shop for groceries
10 as she had on many other occasions. Plaintiff is disabled and has medical conditions that classifies her
11 as an individual with disabilities under both the Americans With Disability Act of 1990 (ADA) and
12 California's Unruh Civil Rights Act (Unruh Act). Plaintiff is/was unable to wear a facemask due to her
13 health issues as was recommended – but was not mandatory – due to the COVID-19 virus as of the date
14 of the alleged discrimination. The recommendation to wear a facemask itself had/has exemptions for
15 individuals with health issues – such as Plaintiff – that precludes him/her from wearing facemasks.
16

17 23. On information and belief, Plaintiff alleges that Smart & Final, LLC has implemented a
18 company-wide policy applicable to all of its stores in California and throughout the United States of
19 requiring its customers to wear masks in order to shop at their retail stores. Smart & Final, LLC has
20 directed its employees to comply with that policy, and to enforced it against its customers. However,
21 Smart & Final, LLC has not implemented any policy to accommodate disabled people or people with
22 medical conditions that preclude them from wearing facemasks to assure equal access to its retail stores.
23 While citing COVID-19 guidelines on its company website related to recommendations for wearing
24 facemasks, Smart & Final, LLC and it employees, including Defendant #2 have unlawfully ignored the
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1 exception to wearing masks for related to disabled people or people with medical conditions that
2 preclude them from wearing facemasks.

3 24. As Plaintiff entered Store #358 with her brother, Andrew Brownsilva (“Brownsilva”), an
4 unknown male employee told Plaintiff she was required to wear a facemask (Brownsilva was wearing
5 one). Plaintiff informed that employee that she has a health condition that prevents her from wearing a
6 mask. That unknown employee respected Plaintiff’s health issues and allowed her to shop. While
7 shopping, Plaintiff maintained the recommended social distancing with others in the store.

8 25. After Plaintiff had briefly shopped, Defendant #2 approached her, and tried to hand her
9 a facemask. Defendant #2 told Plaintiff she must wear a facemask in order to shop at Defendant #1’s
10 Store #358. Plaintiff politely informed Defendant #2 that she had/has a health condition that precludes
11 her from wearing a facemask. Plaintiff explained to Defendant #2 that she is unable to wear a face mask
12 due to her severe diabetic health issues. She advised Defendant #2 that she uses a breath sniffing service
13 dog (which she was holding in her arms) to monitor her blood sugar levels, and a mask would block the
14 service dog’s ability to monitor her. Normally, that is where the conversation should have come to an
15 end as Defendant #2 is/was precluded by HIPPA and the ADA from inquiring about a disabled person’s
16 medical condition, including Plaintiff’s medical conditions. Plaintiff alleges under information and
17 belief that as a high ranking employee of Smart & Final, LLC, *to wit*, a store manager, Defendant #2
18 should have been well aware of this law.
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20 26. However, Defendant #2 at this time escorted Plaintiff out of the store. Once outside
21 Plaintiff again told Defendant #2 about her inability to wear a facemask due to her health issues.
22 Defendant #2 told Plaintiff, *“I don’t care. You must wear a mask to shop here.”*

23 27. Defendant #2 persisted, and again stated loudly to Plaintiff in front of the many other
24 shoppers that he didn’t care about her health issues at all. Defendant #2’s actions embarrassed and
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1 humiliated the disabled Plaintiff in front of a large group of other shoppers.

2 28. Plaintiff informed Defendant #2 that San Luis Obispo County, State and Local COVID-
3 19 recommendations related to mask-wearing protocols state that people with medical issues do not have
4 to wear a mask. (Plaintiff alleges under information and belief that as a high ranking employee of
5 Defendant #1, *to wit*, a store manager, Defendant #2 should have been well aware of this exemption.)
6 Defendant #2 paid no heed and continued to insist Plaintiff wear a facemask notwithstanding the fact
7 she had/has a medical issue, or that she leave Store #358. Defendant #2 offered Plaintiff no other
8 accommodations other than she wear a facemask or leave the store.

9 29. Plaintiff then tried to step back inside Store #358 simply to hand Brownsilva her credit
10 card to enable him to purchase groceries for her. Defendant #2 physically stopped her and again said
11 she could not enter Store #358. Defendant #2 again insisted Plaintiff follow Smart & Final, LLC's
12 mandate to wear a facemask or leave the store. Plaintiff, albeit embarrassed and humiliated, asked
13 Brownsilva to come outside and get her credit card from her.

14 30. Having no other civil choice but to leave, Plaintiff left Store #358 after being refused
15 service because of her disability. Again, she left feeling embarrassed & humiliated as Defendant #2's
16 discrimination and orders to leave Store #358 were witnessed by a store full of other shoppers.

17 31. Plaintiff has shopped in Smart & Final, LLC stores in the past and would like to shop in
18 Smart & Final, LLC stores in the future. However, because of Smart & Final, LLC's discriminatory
19 facemask policy and the negative impacts that policy has had and will continue to have on Plaintiff's
20 health, Plaintiff is currently deterred from returning to Smart & Final, LLC's retail stores and will be
21 deterred in the future, unless and until Smart & Final, LLC eliminates its discriminatory policy. As a
22 consequence, Plaintiff has been forced or is being forced to shop at more expensive food stores, and
23 incur higher costs for her groceries than she would at Defendant #1's discount food store.
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1 32. On information and belief, although Smart & Final, LLC has mandated a company-wide
2 policy requiring all customers to wear masks while shopping in their retail stores, Smart & Final, LLC
3 has not provided any of its employees or agents any training or instructions or guidance on how to
4 accommodate customers who are disabled people or have a medical conditions that preclude them from
5 wearing facemasks.

6 **CLASS ACTION ALLEGATIONS**

7 33. Plaintiff seeks to maintain this action for injunctive relief and statutory damages as a
8 class action under *Code of Civil Procedure §382*. The Class, on whose behalf Plaintiff seeks injunctive
9 relief, consists of all individuals in California who are disabled or have a medical conditions that
10 preclude them from wearing facemasks. Plaintiff also seeks certification of a statutory damages
11 Subclass, consisting of all Class members who, since the onset of the COVID-19 pandemic and Smart
12 & Final, LLC's implementation of its discriminatory, mandatory mask-wearing policy, shopped or
13 desired to shop at a Smart & Final, LLC's retail stores in California but were denied equal access to
14 Smart & Final, LLC's retail stores. Plaintiff reserves the right to allege a nationwide class action if
15 discovery and investigation warrant.

16 34. The proposed Class is believed to consist of approximately three million members. The
17 proposed Subclass is believed to consist of well over 1,000 members. Joinder of all of such Class and
18 Subclass members in this lawsuit is impracticable.

19 35. There are numerous questions of law and fact common to the Class and Subclass,
20 including without limitation, the following:

21 a. Whether Smart & Final, LLC is legally obligated to modify its mask policy and/or
22 provide reasonable accommodations;

23 b. Whether it would be an undue burden for Smart & Final, LLC to modify its mask
24 policy;
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1 policy and/or provide such reasonable accommodations;

2 c. Whether Smart & Final, LLC's policy of requiring its customers to wear
3 facemasks and failing to modify that policy and/or provide reasonable accommodations violates the
4 ADA, the Unruh Act and/or the California Disabled Persons Act ("CDPA").

5 36. Plaintiff's claims are typical of, and not antagonistic to, the claims of all other members
6 of the Class and Subclass. Plaintiff adequately represents the interests of individuals who are disabled
7 or have a medical conditions that preclude them from wearing facemasks, all of whom will suffer the
8 same or similar injury due to Smart & Final, LLC's unlawful conduct.

9 37. Plaintiff and her counsel will fairly and adequately protect the interests of absent Class
10 and Subclass members. There are no material conflicts between Plaintiff's claims and those of absent
11 Class and Subclass members that would make class certification inappropriate.

12 38. Plaintiff's counsel is an experienced litigator with over twenty-years' experience and will
13 vigorously assert Plaintiff's claims, and the claims of all Class and Subclass members.

14 39. Smart & Final, LLC's violations of the ADA, the Unruh Act, and the CDPA affect or
15 potentially affect all members of the Class and Subclass. Therefore, an injunction requiring compliance
16 with the ADA, the Unruh Act, and the CDPA, which is the primary relief sought through this lawsuit,
17 is appropriate. Additionally, the questions of law and fact that are common to Class and Subclass
18 members predominate over individual questions affecting members of the Class and Subclass.

19 40. A class action is superior to other potential methods for achieving a fair and efficient
20 adjudication of this controversy. Whatever difficulties may exist in the management of this case as a
21 class action will be greatly outweighed by the benefits of the class action procedure, including but not
22 limited to providing Class and Subclass members a method for the redress and prevention of their
23 injuries and claims that could not, given the complexity of the issues and the nature of the requested
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1 relief, be pursued in individual litigation. Further, the prosecution of separate actions by the individual
2 Class and Subclass members, even if possible, would create a risk of inconsistent or varying
3 adjudications and incompatible standards of conduct for defendant.

4 ***FIRST CAUSE OF ACTION***
5 ***(Violation of Title III of the Americans With Disabilities Act)***

6 41. Plaintiff incorporates by reference each and every allegation contained in the foregoing
7 paragraphs.

8 42. Congress enacted the ADA 30 years ago upon finding, among other things, that “*society*
9 *has tended to isolate and segregate individuals with disabilities*” and that such forms of discrimination
10 continue to be a “*serious and pervasive social problem.*” 42 U.S.C. §12101(a)(2).

11 43. Acting upon these findings, Congress declared in the ADA that the purpose of the statute
12 is to provide “*a clear and comprehensive national mandate for the elimination of discrimination against*
13 *individuals with disabilities*” and “*clear, strong, consistent, enforceable standards addressing*
14 *discrimination against individuals with disabilities.*” 42 U.S.C. §12101(b)(1) & (2).

15 44. Title III of the ADA states that “*No individual shall be discriminated against on the basis*
16 *of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or*
17 *accommodations of any place of public accommodation by any person who owns, leases (or leases to),*
18 *or operates a place of public accommodation.*” 42 U.S.C. §12182(a).

19 45. Smart & Final, LLC’s retail stores are “*public accommodations*” within the meaning of
20 Title III. 1442 U.S.C. §12181(7)(E).

21 46. The ADA provides that it is discriminatory to subject an individual or class of individuals
22 “*to a denial of the opportunity of the individual or class to participate in or benefit from the goods,*
23 *services, facilities, privileges, advantages, or accommodations of an entity*” on the basis of a disability.
24 42 U.S.C. §12182(b)(1)(A)(i).
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1 47. Discrimination under the ADA also includes a failure to “ensure that no individual with
2 *a disability is excluded, denied services, segregated or otherwise treated differently than other*
3 *individuals because of the absence of auxiliary aids and services.” 28 C.F.R. §36.303(a). The “auxiliary*
4 *aids and services”* required to prevent discrimination in the full and equal enjoyment of a service
5 provided by a place of public accommodation include, but are not limited to, shopping for disabled
6 people while they remained outside the store.

7 48. Both Defendants’ acts and omissions, as described herein, violate the rights of Plaintiff
8 and the Class and Subclass members under Title III of the ADA and its implementing regulations.
9 Defendants’ unlawful discriminatory conduct as alleged herein includes, but is not limited to:

10 a. Discriminatory exclusion and/or denial of goods, services, facilities, privileges,
11 advantages, accommodations, and/or opportunities. 42 U.S.C. 5 §12182(b)(1)(A)(i);

12 b. Provision of goods, services, facilities, privileges, advantages, and/or
13 accommodations that are not equal to those afforded non-disabled individuals. 42 U.S.C. 8
14 §12182(b)(1)(A)(ii);

15 c. Failure “to make reasonable modifications in policies, practices, or procedures,
16 *when such modifications are necessary to afford such goods, services, facilities, privileges, advantages,*
17 *or accommodations to individuals with disabilities, unless the entity can demonstrate that making such*
18 *modifications would fundamentally alter the nature of such goods, services, facilities, privileges,*
19 *advantages, or accommodations.” 42 U.S.C. 14 §12182(b)(2)(A)(ii); and,*

20 d. Failure to “ensure that no individual with a disability is excluded, denied services,
21 *segregated or otherwise treated differently than other individuals because of the absence of auxiliary*
22 *aids and services.” 28 C.F.R. §36.303(a).*

23 49. **WHEREFORE**, pursuant to the remedies, procedures, and rights set forth in 42 U.S.C.
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1 §12188 and 42 U.S.C. §12205, Plaintiff prays for judgment as set forth below.

2 ***SECOND CAUSE OF ACTION***
3 ***(VIOLATION OF CALIFORNIA CIVIL CODE §§ 51, ET SEQ. - THE UNRUH ACT)***

4 50. Plaintiff repeats, re-alleges, refer to and incorporate herein by reference each and every
5 allegation contained in the Paragraphs above as though fully set forth herein.

6 51. ADA Title III, Public Accommodations covers businesses and nonprofit service
7 providers that are public accommodations, privately operated entities offering certain types of courses
8 and examinations, privately operated transportation, and commercial facilities. Public accommodations
9 are private entities who own, lease, lease to, or operate facilities such as restaurants, **retail stores**, hotels,
10 movie theaters, private schools, convention centers, doctors' offices, homeless shelters, transportation
11 depots, zoos, funeral homes, day care centers, and recreation facilities including sports stadiums and
12 fitness clubs. Public accommodations such as Smart & Final LLC stores open to the public **must** comply
13 with basic nondiscrimination requirements that **prohibit exclusion, segregation, and unequal**
14 **treatment.**

15 52. The pertinent part of the Unruh Act (*California Civil Code §51(b)*) holds:

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

21 53. Both “disability” and “medical condition” are defined in *California Business &*
Professions Code §12926 & §112926.1.

22 54. The Unruh Act, *Cal. Civ. Code §51*, guarantees all people within the jurisdiction of
23 California, no matter what their disabilities, the full and equal accommodations, advantages, facilities,
24 privileges and services of all business establishments of every kind whatsoever within the jurisdiction
25 of the State of California. *Cal. Civ. Code § 51(b).*

1 55. Plaintiff and the Class and Subclass members are persons within California who are
2 protected by the Unruh Act.

3 56. Defendant #1 and its retail stores are business establishments that are required to comply
4 with the provisions of the Unruh Act within the meaning of *Cal. Civ. Code §§ 51, et seq.*

5 57. Plaintiff is a person with disabilities under *Cal. Civ. Code §51* and as defined in
6 *California Business & Professions Code §12926 & §112926.1.*

7 58. The pertinent part of the Unruh Act (*California Civil Code §52(a)*) holds:

8 “Whoever ***denies, aids*** or incites a denial, or makes any discrimination or distinction
9 contrary to Section 51, 51.5, or 51.6, is liable for each and every offense for the actual
10 damages, and any amount that may be determined by a jury, or a court sitting without a
11 jury, up to a maximum of three times the amount of actual damage but in no case less than
12 four thousand dollars (\$4,000), and any attorney’s fees that may be determined by the
13 court in addition thereto, suffered by any person denied the rights provided in Section 51,
14 51.5, or 51.6.” (Emphasis added here)

15 59. Defendant #2 is a person within the meaning of *Cal. Civ. Code §§ 51 & 52(a), et seq.*
16 that denied Plaintiff equal access to Store #358, and aided defendant, Smart & Final, LLC in
17 discriminating against Plaintiff on June 9, 2020, as alleged in this Complaint.

18 60. Because of Defendants’ refusal to allow Plaintiff to shop without a facemask, Plaintiff
19 was denied full and equal access to Defendant’s Store #358, and was not provided services that are/were
20 provided to other Californians who are not disabled, and/or Plaintiff was provided services that are
21 inferior to the services provided to non-disabled Californians. These violations are ongoing. Defendants’
22 failure and refusal to correct the barriers to full and equal access to its retail stores to Plaintiff and other
23 disable people constitutes intentional discrimination.

24 61. Defendants acts and omissions, as described herein, violate the rights of Plaintiff and the
25 Class and Subclass members under the Unruh Act by denying, or aiding or inciting the denial of,
Plaintiff’s rights to full and equal use of the accommodations, advantages, facilities, privileges, or

1 services offered by Smart & Final, LLC to the general public. Defendant #1 has also violated the Unruh
2 Act by denying, or aiding or inciting the denial of, Plaintiff's rights to equal access arising from the
3 provisions of the ADA.

4 62. Plaintiff is thus entitled to injunctive relief remedying the discrimination, pursuant to
5 *Cal. Civ. Code §52*.

6 63. Pursuant to California Civ. Code §52.1(f), Defendants are liable to Plaintiff and the
7 Subclass members for up to three times the amount of actual damages, but in no case less than \$4,000
8 for every violation of *California Civil Code § 51 et seq.*, plus attorneys' fees (*Cal. Civ. Code §52*), and
9 is liable to Plaintiff and the Class members for injunctive relief and attorneys' fees and costs incurred in
10 this action.

11
12 **THIRD CAUSE OF ACTION**
(VIOLATION OF CAL. CIV. CODE §§ 54, ET SEQ. - THE CALIFORNIA DISABLED PERSONS ACT)

13 64. Plaintiff, repeats, re-alleges, and incorporates herein by reference each and every
14 allegation contained in the Paragraphs above as though fully set forth herein.

15 65. The California Disabled Persons Act (CDPA) provides that “[i]ndividuals with
16 disabilities shall be entitled to full and equal access, as other members of the general public, to
17 accommodations, advantages, facilities, ... places of public accommodation, ... and other places to
18 which the general public is invited ...” *Cal. Civ. Code §54.1(a)(1)*.

19
20 66. The CDPA further provides that “Any person or persons, firm or corporation who denies
21 or interferes with admittance to or enjoyment of the public facilities as specified in Sections 54 and 54.1
22 or otherwise interferes with the rights of an individual with a disability under Sections 54, 54.1 and 54.2
23 is liable for each offense for the actual damages and any amount as may be determined by a jury, or the
24 court sitting without a jury, up to a maximum of three times the amount of actual damages but in no
25 case less than one thousand dollars (\$1,000) and attorney's fees as may be determined by the court in

1 *addition thereto, suffered by any person denied any of the rights provided in Sections 54, 54.1, and*
2 *54.2.” Cal. Civ. Code § 54.3(a).*

3 67. A violation of the ADA is a violation of the CDPA. *Cal. Civ. Code §54.2(c).*

4 68. Smart & Final, LLC’s retail stores are “*places of public accommodation*” and “*places to*
5 *which the general public is invited,*” and as such must comply with the provisions of the CDPA.

6 69. Defendants are violating the rights of disable people or people with medical conditions
7 that preclude them from wearing facemasks to full and equal access to public places by denying full and
8 equal access to their retail stores, including but not limited to Store #358.

9 70. Defendants’ acts and omissions, described herein, violate the rights of plaintiff and Class
10 and Subclass members under the CDPA.

11 71. Plaintiff prays for statutory damages for the Subclass and attorneys’ fees for the Class
12 and Subclass pursuant to Cal. Civ. Code §54.3(a).

13
14 ***PRAYER FOR RELIEF***

15 72. A declaration that Defendants are violating the ADA, the Unruh Act, and the CDPA;

16 73. An injunction pursuant to Title III of the ADA and Plaintiff’s related state law claims
17 requiring Defendant #1 to take all steps necessary to ensure that the services offered in Defendant #1’s
18 retail stores are fully and equally enjoyable to disabled people or people with medical conditions that
19 preclude them from wearing facemasks, or provide other accommodations to disabled people or people
20 with medical conditions that preclude them from wearing facemasks.

21 74. Damages according to proof, including applicable statutory damages pursuant to *Cal.*
22 *Civ. Code §§ 52 & 54.3.*

23 75. Reasonable attorneys’ fees and costs as authorized by *42 U.S.C. § 12188, Cal. Civ. Code*
24 *§ 52, Cal. Civ. Code §54.3, and/or Cal. Code Civ. Proc. §1021.5; and,*
25

1 76. Such other and further relief as the Court deems just and proper.

2 Date: August 12, 2020

3 Law Offices of
4 Dennis James Balsamo
5 A Professional Law Corporation

6 *Dennis James Balsamo*

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DENNIS JAMES BALSAMO

8 Attorney for Plaintiff

9 TIFFANY HERD

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