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**SAN LUIS OBISPO SUPERIOR COURT  
BY: **

5 Attorney for Plaintiff – **SANDRA PRAGER BALSAMO**

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8 **SUPERIOR COURT OF CALIFORNIA**

9 **COUNTY OF SAN LUIS OBISPO**

10 **SANDRA PRAGER BALSAMO**, an  
11 individual,

Case No: 20CV-0400

12 Plaintiff,

**VERIFIED COMPLAINT  
FOR DAMAGES AND DECLARATORY  
RELIEF:**

13 vs.

- 14 **SMART & FINAL STORES, LLC**, a  
California limited liability company;  
15 **MARTI BUENTIEMPO**, an individual;  
16 and **DOES 1 through 10**, inclusive,
1. **Violation of Civil Code § 51 et seq.- The Unruh Civil Rights Act; and,**
  2. **Violation of Civil Code § 54 et seq.- The California Disabled Persons Act**

17 Defendants.

**DEMAND FOR JURY TRIAL**

18 **COMES NOW**, plaintiff, **SANDRA PRAGER BALSAMO** ("Plaintiff"), hereby alleges against  
19 defendants, **SMART & FINAL STORES, LLC**, a California limited liability company, and **MARTI**  
20 **BUENTIEMPO**, an individual, the following based on her knowledge, information and belief:

21 ***INTRODUCTION***

22 1. This lawsuit seeks to end the ongoing violations of California's anti-discrimination law by  
23 defendant, Smart & Final Stores, LLC ("Defendant #1"), a California limited liability company, aided by their  
24 agents and employees, including but not limited to, defendant, Marti Buentiempo ("Defendant #2"), an  
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1 individual, who have committed and continue to commit discrimination against disabled people, or people  
2 with a medical condition, including Plaintiff, as defined in *Government Code §§ 12926 & 12926.1*, who have  
3 a medical condition that makes it dangerous to their health to wear any type of facemask. (Collectively  
4 Defendant #1 and Defendant #2 are hereinafter referred to as “Defendants.”)

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

11 3. Defendants during the relevant time in this Complaint, and to current, refused/refuse to allow  
12 into their Store #358; insisted that they leave Store #358; and/or have denied and continue to deny disabled  
13 people or people with a medical condition, including Plaintiff, full and equal accommodations or access to  
14 Store #358 because of his/her/their disability and/or medical condition, including Plaintiff, that prevents  
15 him/her/them from wearing any type of facemask.

16 **PARTIES:**

17 4. Plaintiff is a disabled individual with a disability in that she has severe back and  
18 respiratory health issues, including but not limited to asthma, and at all times alleged in this Complaint  
19 was a resident of the County of San Luis Obispo, State of California.

20 5. Defendant, Smart & Final Stores, LLC (“Defendant #1”), is a California limited liability  
21 company, whose headquarters is in State of California, and at all relevant times mentioned in this  
22 Complaint, they operate/operated several retail stores in the County of San Luis Obispo, specifically one  
23 located at 1464 E Grand Ave, Arroyo Grande, CA 93420 (“Store #358”).  
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1           6.       Defendant, Marti Buentiempo (“Defendant #2”), is an individual, and at all relevant times  
2 mentioned in this Complaint was an employee and agent of Defendant #1 at Store #358 where she holds  
3 the title of assistant manager.

4           7.       Plaintiff does not know the true names, capacities, or basis for liability of defendants  
5 sued herein as Does 1 through 10, inclusive, as each fictitiously named Defendant is in some manner  
6 liable to Plaintiff. Plaintiff will amend this Complaint to allege their true names and capacities when  
7 ascertained. Plaintiff is informed and believes, and thereon alleges, that at all relevant times mentioned  
8 in this Complaint, each of the fictitiously named defendants is/are responsible in some manner for the  
9 injuries and damages to Plaintiff as alleged and that such injuries and damages were proximately caused  
10 by such defendants, and each of them.

11           8.       Plaintiff is informed and believes that at all times mentioned herein, each defendant has  
12 acted and is continuing to act in concert with the other defendants named in this complaint and each of  
13 them has participated in the acts and transactions referred to below and each of them is responsible for  
14 said acts and transactions. Plaintiff, therefore sues said defendant under such fictitious names, pursuant  
15 to the provisions of *California Code of Civil Procedure §474*.

16           9.       Plaintiff is informed and believes and thereon alleges that at all times herein mentioned  
17 each of the defendants sued herein as a Doe was the agent, partner, assignee, successor and/or employee  
18 of each of the remaining defendants and was at all times acting within the purpose and scope of such  
19 agency and or employment When Plaintiff ascertains the true names and capacities of said Does 1  
20 through 10, inclusive, Plaintiff will ask leave of the Court to amend this complaint to allege the true  
21 names and capacities of such defendants at such time as the same have been ascertained.

22                               **JURISDICTION**

23           10.       This court has subject matter jurisdiction over this matter pursuant to Article VI, §10 of  
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1 the California Constitution because this action is a cause not given by statute to other trial courts, and  
2 seeks (among other relief) a permanent injunction. Subject matter jurisdiction is further premised on,  
3 *inter alia*, California Civil Code §§ 51, 51.5, & 51.6.

4 11. This court has personal jurisdiction over Defendants because Defendants do sufficient  
5 business in California and have sufficient minimum contacts in California to render the exercise of  
6 personal jurisdiction over them by California courts consistent with traditional notions of fair play and  
7 substantial justice.

8 12. Venue is proper in this court because the unequal treatment, discrimination, or distinction  
9 alleged herein occurred in the County of San Luis Obispo, State of California.

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

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15 **FACTUAL SUMMARY**

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

23 15. As Plaintiff entered Store #358 an unknown male employee said she was required to wear  
24 a mask. Plaintiff informed that employee that she has a health condition that prevents her from wearing  
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1 a mask. That unknown employee respected Plaintiff's health issues and allowed her to shop. While  
2 shopping, Plaintiff maintained the recommended social distancing with others in the store.

3 16. After Plaintiff had shopped and as she waited her turn in line to check out, Defendant #2  
4 approached her. Defendant #2 at first politely said Plaintiff must wear a facemask in order to check out.  
5 Plaintiff politely informed Defendant #2 she had/has a health condition that precludes her from wearing  
6 a facemask. Normally, that is where the conversation should have come to an end as Defendant #2 is/was  
7 precluded by the ADA from inquiring about a disabled person medical condition, including Plaintiff's  
8 medical conditions.

9 17. However, Defendant #2 at this time stopped being polite and stated to Plaintiff, "*It*  
10 *doesn't matter. You must wear a mask to stay here.*" Plaintiff, knowing her rights, informed Defendant  
11 #2 of the Americans with Disabilities Act (which Plaintiff alleges under information and belief that as  
12 an assistant manager Defendant #2 should have been well aware of). Plaintiff informed Defendant #2  
13 that she was committing a crime by challenging Plaintiff's health issues and/or disability.

14 18. Defendant #2 then persisted, and accused Plaintiff in front of the many other shoppers of  
15 lying, and not having a health issue at all. Defendant #2's false accusations embarrassed and humiliated  
16 the disabled client Plaintiff in front of a large group of other shoppers.

17 19. Plaintiff informed Defendant #2 that San Luis Obispo County, State and Local COVID-  
18 19 recommendations related to mask-wearing protocols state that people with medical issues do not have  
19 to wear a mask. (Plaintiff alleges under information and belief that as an assistant manager Defendant  
20 #2 should have been well aware of this exemption.) Defendant #2 paid no heed and continued to insist  
21 Plaintiff wear a mask notwithstanding the fact she had/has a medical issue, or that she leave Store #358.  
22 Defendant #2 offered no other accommodations to Plaintiff other than wear a mask or leave the store.

23 20. Defendant #2 advised Plaintiff that Store #358 was "*private property*" and they "*make*  
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1 *the rules.*” Defendant #2 insisted Plaintiff follow Defendant #1’s rule to wear a facemask or leave the  
2 store. Plaintiff, albeit embarrassed and humiliated, but firm in the knowledge of her rights remained in  
3 line, and requested Defendant #2 to call the police as she was not leaving, and it was Defendant #2 not  
4 her that was breaking the law.

5 21. Defendant #2 refused to call the police, and continue to insist Plaintiff wear a mask or  
6 leave her store. Plaintiff objectively and politely, said she had a right to shop there just like all the other  
7 non-disabled shoppers, and she would not leave.

8 22. At that point, it was Plaintiff’s turn to approach the checkout stand. Plaintiff proceeded  
9 calmly with her basket of groceries to the checkout stand. As she did so, Defendant #2 ran ahead of her  
10 in a major huff, and ordered the checker to leave the checkout counter. Defendant #2 then locked the  
11 drawer and refused to check out Plaintiff (hence refusing her equal access to Store #358). Having no  
12 other civil choice but to leave, Plaintiff left Store #358 after being refused service because of her  
13 disability. Again, she left feeling embarrassed & humiliated as Defendant #2 antics at the checkout stand  
14 was witnessed by a store full of other shippers.  
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16 ***FIRST CAUSE OF ACTION***  
17 ***(VIOLATION OF CALIFORNIA CIVIL CODE §§ 51, ET SEQ. - THE UNRUH ACT)***

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

20 24. ADA Title III, Public Accommodations covers businesses and nonprofit service  
21 providers that are public accommodations, privately operated entities offering certain types of courses  
22 and examinations, privately operated transportation, and commercial facilities. Public accommodations  
23 are private entities who own, lease, lease to, or operate facilities such as restaurants, retail stores, hotels,  
24 movie theaters, private schools, convention centers, doctors' offices, homeless shelters, transportation  
25 depots, zoos, funeral homes, day care centers, and recreation facilities including sports stadiums and

1 fitness clubs. Public accommodations such as Smart & Final LLC stores open to the public **must** comply  
2 with basic nondiscrimination requirements that **prohibit exclusion, segregation, and unequal**  
3 **treatment**.

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

5 “All persons within the jurisdiction of this state are free and equal, and no matter  
6 what their sex, race, color, religion, ancestry, national origin, **disability, medical**  
7 **condition**, genetic information, marital status, sexual orientation, citizenship,  
8 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.” (Emphasis added)

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

11 27. The Unruh Act, *Cal. Civ. Code §51*, guarantees all people within the jurisdiction of  
12 California, no matter what their disabilities, the full and equal accommodations, advantages, facilities,  
13 privileges and services of all business establishments of every kind whatsoever.

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

16 29. Defendant #1 is a business establishment within the meaning of *Cal. Civ. Code §§ 51, et*  
17 *seq.*

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

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

1 31. Defendant #2 is a person within the meaning of *Cal. Civ. Code §§ 51 & 52(a), et seq.*  
2 that denied Plaintiff equal access to Store #358, and aided Defendant #1 in discriminating against  
3 Plaintiff on June 9, 2020, as alleged in this Complaint.

4 32. Because of Defendants' refusal to allow Plaintiff to shop without a facemask, Plaintiff  
5 was denied full and equal access to Defendant's Store #358, and was provided services that are/were  
6 provided to other Californians who are not disabled, and/or have been provided services that are inferior  
7 to the services provided to non-disabled Californians. These violations are ongoing. Defendants' failure  
8 and refusal to correct the barriers to full and equal access to its retail stores to Plaintiff and other disable  
9 people constitutes intentional discrimination.

10 33. Defendants' actions were and are in violation of the Unruh Act.

11 34. Plaintiff is thus entitled to injunctive relief remedying the discrimination, pursuant to  
12 *Cal. Civ. Code §52.*

13 35. Plaintiff is also entitled to statutory damages under *Cal. Civ. Code §52.*

14 36. *Cal. Civ. Code §52* further entitles Plaintiffs to reasonable attorneys' fees and costs.

15 **WHEREFORE**, Plaintiffs request relief as set forth below.

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17 **SECOND CAUSE OF ACTION**  
18 ***(VIOLATION OF CAL. CIV. CODE §§ 54, ET SEQ. - THE CALIFORNIA DISABLED PERSONS ACT)***

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

21 38. The California Disabled Persons Act, *Cal. Civ. Code §§ 54 & 54.1* (CDPA) guarantees  
22 people with disabilities full and free use of all public places and full and equal access to all places to  
23 which the public is invited.

24 39. Defendants are violating the right of people with medical conditions that preclude them  
25 from wearing facemasks to full and equal access to public places by denying full and equal access to



1 their retail stores, including but not limited to Store #358.

2 40. Defendant #1's Store #358 constitutes a "*public place*" within the meaning of the CDPA,  
3 *Cal. Civ. Code §54.1*.

4 41. By failing to provide full and equal access to people with medical conditions that  
5 preclude them from wearing facemasks, the actions of Defendants were and are in violation of the  
6 CDPA.

7 42. Plaintiff is thus entitled to statutory minimum damages for each offense, and to  
8 declaratory relief, under *Cal. Civ. Code § 54.3*.

9 43. Plaintiff is also entitled to reasonable attorneys' fees and costs.

10 **WHEREFORE**, Plaintiffs request relief as set forth below.

11 **THIRD CAUSE OF ACTION**  
12 **(DECLARATORY RELIEF, CODE CIV. PROC. § 1060)**

13 44. 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 45. Plaintiff contends that Defendant #1 and Defendant #2 must provide disabled people or  
16 people with a medical condition that prevents them from wearing facemasks, including Plaintiff, as defined  
17 in *Government Code §§ 12926 & 12926.1*, full and equal access to its retail stores, including but not  
18 limited to Store #358, under *California Civil Code §§ 51, et seq.* and *California Civil Code §§ 54, et*  
19 *seq.*, which prohibit discrimination against disabled people or people with a medical condition, including  
20 Plaintiff. Defendants contend that Defendant #1 may lawfully deny disabled people or people with a  
21 medical condition that prevents them from wearing facemasks, including Plaintiff, as defined in *Government*  
22 *Code §§ 12926 & 12926.1*, with full and equal access to its retail stores, including but not limited to  
23 Store #358.  
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1 46. A judicial declaration is necessary and appropriate at this time in order that each of the  
2 parties may know their respective rights and duties and act accordingly.

3 ***PRAYER FOR RELIEF***

4 47. A declaration that Defendants are violating the Unruh Act, *Cal. Civ. Code §§51 & 52*  
5 and the California Disabled Persons Act, *Cal. Civ. Code §§54 & 54.3*, by failing to provide full and  
6 equal access to their retail stores, including Store #358, to disabled people or people with medical  
7 conditions that preclude them from wearing facemasks;

8 48. A preliminary and permanent injunction, prohibiting Defendants from continuing to  
9 violate section 51 of the Unruh Act in California, and requiring Defendant to take steps necessary to  
10 ensure that the benefits and advantages offered by Smart & Final, LLC retail stores are fully and equally  
11 enjoyable to disabled people or people with medical conditions that preclude them from wearing  
12 facemasks in California;

13 49. Damages in an amount to be determined by proof, including applicable statutory damages  
14 pursuant to *Cal. Civ. Code §52* or *Cal. Civ. Code § 54.3*, see *Cal. Civ. Code § 54.3(c)*. ("A person may  
15 not be held liable for damages pursuant to both [Section 54.3] and Section 52 for the same act or failure  
16 to act.");

17 50. Plaintiff's reasonable attorneys' fees, expenses, and costs of suit as provided for by law,  
18 including *Cal. Civ. Code §§ 52 & 54.3* and *Cal. Code Civ. Pro. §1021.5*, to be paid for by both  
19 Defendants; and,

20 51. Such other and further relief as the Court deems just and proper.

21 Date: July 29, 2020

22 Law Offices of  
23 Dennis James Balsamo  
24 A Professional Law Corporation

25 *Dennis James Balsamo*  
**DENNIS JAMES BALSAMO**  
Attorney for Plaintiff  
**SANDRA PRAGER BALSAMO**

1 **VERIFICATION**

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3 I, Sandra Prager Balsamo, the undersigned, declare:

4 I am the plaintiff in the foregoing action. I have read the forgoing Verified Complaint for Damages  
5 and Declaratory Relief, and know the contents thereof; that the same is true of my knowledge except as  
6 to matters which are therein stated upon my information or belief, and, as to those matters, I believe it to  
7 be true.

8 I declare under penalty of perjury under the laws of the State of California, that the foregoing is  
9 true and correct. Executed on July 29, 2020, at Arroyo Grande, California.  
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11   
12 SANDRA PRAGER BALSAMO  
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