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8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION
10

11 RENA WYMAN,

12 Plaintiff,

13 v.

14 HIGH TIMES PRODUCTIONS, INC., and
CALIFORNIA EXPOSITION AND
15 STATE FAIR,

16 Defendants.
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Case No. 18-CV-02621-TLN-EFB

**NOTICE OF MOTION AND MOTION
FOR PRELIMINARY INJUNCTION;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

Judge: Hon. Troy L. Nunley

Date: October 18, 2018

Time: 2:00 p.m.

Crtrm.: 2. 15th Floor

501 I Street

Sacramento, CA 95814

Trial Date: None Set

NOTICE OF MOTION

TO DEFENDANTS AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on October 18, 2018 at 2:00 p.m., or as soon thereafter as the matter may be heard, Plaintiff Rena Wyman (“Plaintiff”), by her undersigned counsel, pursuant to Federal Rule of Civil Procedure 65(a), will and hereby does move this Court to issue a preliminary injunction enjoining High Times Productions, Inc. (“High Times”) and California Exposition and State Fair (“Cal Expo,” and collectively “Defendants”) from violating the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.*, Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, *et seq.*, the California Unruh Civil Rights Act, Cal. Civ. Code §§ 51 & 52, and the California Disabled Persons Act, Cal. Civ. Code §§ 54-54.3. The relief that Plaintiff seeks is a preliminary injunction ordering Defendants to make wheelchair accessible future High Times events and events that take place at the Cal Expo Fairgrounds, including the High Times Cannabis Cup event currently scheduled to take place at thereon October 27 and 28, 2018. Plaintiff further requests that the Court waive the requirement for the posting of a bond as security for the entry of preliminary relief. This motion is based on this Notice of Motion, the Memorandum of Points and Authorities filed herewith, the Declaration of Rena Wyman filed herewith, the pleadings in the above-captioned matter, and any oral argument or evidence permitted at any hearing on this motion.¹

DATED: September 25, 2018

Respectfully submitted,

ROSEN BIEN GALVAN & GRUNFELD LLP

By: /s/ Cara E. Trapani
Cara E. Trapani

Attorneys for Plaintiff RENA WYMAN

¹ Pursuant to Local Rule 231(d)(3), Plaintiff hereby informs the Court that she does not currently believe that oral testimony will be required at the hearing, and that the hearing could be conducted within one hour.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 Defendants failed to provide Plaintiff, a wheelchair user, full and equal access to the
4 High Times Central Valley Cannabis Cup festival that took place at the Cal Expo
5 Fairgrounds on May 4 and 5, 2018 (“2018 Central Valley Cannabis Cup”), in violation of
6 the Title II and Title II of the ADA, 42 U.S.C. § 12101, *et seq.*, Section 504 of the
7 Rehabilitation Act, 29 U.S.C. § 794, *et seq.*, the California Unruh Civil Rights Act, Cal.
8 Civ. Code §§ 51 & 52, and the California Disabled Persons Act, Cal. Civ. Code §§ 54-
9 54.3. Plaintiff requests an injunction ordering Defendants to develop and implement
10 policies, practices, and procedures to ensure compliance with these laws and ensure that all
11 High Times events and events at the Cal Expo Fairgrounds, including the High Times
12 Cannabis Cup festival currently scheduled to take place at the Cal Expo Fairgrounds on
13 October 27 and 28, 2018, are wheelchair accessible. Such relief is necessary to enable
14 Plaintiff to obtain full and equal access to the services, facilities, privileges, and
15 accommodations of High Times events and events taking place at the Cal Expo
16 Fairgrounds. Without such relief, Plaintiff will suffer inferior access to, or will be deterred
17 from attending, these events in violation of federal and state law.

18 First, Plaintiff is likely to succeed on the merits of her ADA, Rehabilitation Act,
19 and state law claims. Defendant High Times’ failure to provide wheelchair access to
20 Plaintiff at the 2018 Central Valley Cannabis Cup on May 4 and 5, 2018 violated Title III
21 of the ADA. Similarly, Defendant Cal Expo violated Title II of the ADA and Section 504
22 of the Rehabilitation Act by failing to ensure that the 2018 Central Valley Cannabis Cup,
23 which High Times contracted with Cal Expo to host at the Cal Expo Fairgrounds, was
24 accessible to Plaintiff. For these reasons, Defendants also violated the California Unruh
25 Civil Rights Act and the California Disabled Persons Act. These violations are ongoing
26 because the discriminatory treatment and lack of access Plaintiff has faced deters her from
27 attending future High Times events and events that take place at Cal Expo that she wishes
28 to attend, including the Cannabis Cup currently scheduled to occur at the Cal Expo

1 Fairgrounds on October 27 and 28, 2018.

2 The other factors of the preliminary injunction analysis also decidedly favor
3 Plaintiff. The balance of hardships tips sharply towards Plaintiff because if Defendants are
4 not enjoined, Plaintiff will be denied equal access to future High Times events and events
5 at the Cal Expo Fairgrounds, in particular the High Times Cannabis Cup festival currently
6 scheduled to take place at the Cal Expo Fairgrounds on October 27 and 28, 2018. In
7 contrast, Defendants will suffer little harm, if any. Further, Plaintiff will suffer irreparable
8 harm absent preliminary relief because Defendants' discriminatory treatment on account of
9 her disability denies her equal access to a public accommodation and results in great harm
10 to her overall independence, equality, and dignity. Finally, enforcing the ADA, Section
11 504, and California disability access laws by ensuring that Plaintiff receives equal access
12 to High Times events and events that take place at the Cal Expo Fairgrounds will
13 unquestionably advance the public interest.

14 STATEMENT OF FACTS

15 Plaintiff is an avid event-goer who lives in California. Wyman Decl. ¶¶ 3-4. Due
16 to a neurological disorder, Plaintiff has a physical disability and uses a wheelchair. *Id.* ¶ 2.
17 Plaintiff greatly enjoys attending art and music festivals and events, and has long been
18 interested in attending events hosted by organizations and companies in the cannabis
19 industry, such as the High Times Cannabis Cup. *Id.* ¶¶ 4-5. High Times, an entity that
20 historically has engaged in the publication of a monthly print and on-line cannabis
21 magazine and the production and sponsorship of trade shows and events, compromises
22 businesses across a range of media. One such business is the High Times Cannabis Cup,
23 which High Times promotes as the world's leading cannabis event, celebrating the world
24 of cannabis through concerts, expositions, competitions, instructional seminars, and
25 product showcases. *Id.* ¶ 5. High Times hosts numerous Cannabis Cup festivals
26 throughout the world each year, many of which occur in California.

27 In 2017, Plaintiff attempted to contact High Times to request information regarding
28 wheelchair accessibility at a Cannabis Cup festival in Northern California. *Id.* ¶ 6.

1 However, the vast majority of Plaintiff's requests for information were ignored. *Id.*, Ex. A.
2 As a result, although Plaintiff wanted to attend the event, the lack of any response from
3 High Times deterred her from attending. *Id.*

4 On May 4 and 5, 2018, High Times hosted the 2018 Central Valley Cannabis Cup
5 at the Cal Expo Fairgrounds in Sacramento, California. *Id.* ¶ 7. Prior to this event,
6 Plaintiff searched online for information regarding the wheelchair accessibility of the
7 event. She found none. *Id.* Once again, Plaintiff attempted to contact High Times via
8 email by emailing questions about the accessibility of the event to the following three
9 email addresses: cannabiscuphelp@hightimes.com, hteditor@hitimes.com, and
10 cannabiscup@hightimes.com. *Id.* ¶ 8, Ex. B. Plaintiff never received a response. *Id.* ¶ 8.
11 Plaintiff also emailed the event's ticket provider requesting information regarding ADA
12 accommodation information, but she received no response. *Id.* ¶ 9, Ex. C.

13 In the absence of any information regarding wheelchair accessibility of the 2018
14 Central Valley Cannabis Cup, Plaintiff purchased a VIP ticket based on her expectation
15 that the VIP area—which was advertised online as having designated VIP upgraded
16 restrooms, VIP area for mainstage viewing, designated VIP entrance, and a special tented
17 VIP lounge area—would be more accessible than the rest of the event. *Id.* ¶ 10. It was
18 not.

19 On May 4, 2018, the first day of the 2018 Central Valley Cannabis Cup, Plaintiff
20 arrived at Cal Expo to find that there was no safe accessible path of travel from the parking
21 lot's accessible parking area to the front gate of the event. As a result, Plaintiff was forced
22 to cross traffic and mingle with vehicles to reach the entrance. *Id.* ¶ 11.

23 When Plaintiff arrived in the VIP area, there was no accessible bathroom located
24 there, as the upgraded portable bathrooms provided had steps that Plaintiff could not use
25 due to her physical disability. *Id.* ¶ 12. Plaintiff asked event personnel in the VIP area to
26 provide an accessible bathroom. *Id.* More than five hours later, a single portable toilet
27 without running water was provided in the VIP area. *Id.* This portable toilet was of much
28 lower quality than the inaccessible VIP toilets provided for other VIP attendees. *Id.* This

1 toilet was also frequently full because other non-wheelchair using eventgoers were using
2 it. *Id.* The only handwashing stations provided were those operable by a foot pump,
3 which was inaccessible to Plaintiff due to her disability. *Id.* ¶ 13. Plaintiff's husband, who
4 attended the event with Plaintiff and does not use a wheelchair, had to pump the water for
5 Plaintiff whenever she wanted to wash her hands. *Id.*

6 Plaintiff was met with many other accessibility barriers throughout the day. There
7 were not accessible paths of travel throughout the event, and Plaintiff's wheelchair got
8 caught numerous times on uncovered electrical cables as she attempted to travel
9 throughout the event. *Id.* ¶ 14. To safely traverse many areas, Plaintiff's husband had to
10 step on the cables to stabilize them before Plaintiff could safely traverse across them. *Id.*
11 Despite the heat that weekend, shaded areas were similarly blocked by cables, making it
12 difficult for Plaintiff to access the shade. *Id.* ¶ 15.

13 In addition, other eventgoers were allowed to set up chairs provided by event staff
14 throughout the event in whatever manner they wished. *Id.* ¶ 16. This often resulted in
15 little or no space for Plaintiff's wheelchair to navigate paths of travel. *Id.* As a result,
16 Plaintiff experienced significant difficulty accessing food and water areas, shade, and
17 entrances and exits. *Id.*

18 Many of the picnic tables and vendor booths at the event were also not wheelchair-
19 accessible. *Id.* ¶ 17. For example, many of the vendor booths were too tall for Plaintiff to
20 view the vendors' displays and participate in the activities, services, and demonstrations
21 they offered. *Id.* ¶ 18. Plaintiff also was unable to participate equally in various events
22 throughout the weekend. *Id.* ¶ 19. Over the course of the 2018 Central Valley Cannabis
23 Cup, Plaintiff saw other wheelchair users at the event experiencing the same accessibility
24 barriers. *Id.* ¶ 20.

25 There also was not an accessible viewing area for the concert performances and
26 award presentations, and no crowd control provided. *Id.* ¶ 21. As a result, other event
27 attendees crowded around Plaintiff's wheelchair during the musical performances and
28 award presentations, blocking Plaintiff's view and denying her a safe and accessible path

1 of travel. *Id.* Although Plaintiff left the event frustrated and discouraged with the
2 discriminatory lack of access, she decided to attend the second day in the hopes that it
3 would be a better experience. *Id.* ¶ 22.

4 The next day of the 2018 Central Valley Cannabis Cup, May 5, 2018, Plaintiff
5 returned to the event and experienced similar accessibility barriers as the previous day. *Id.*
6 ¶ 23. There was still no accessible upgraded bathroom in the VIP area, as provided to
7 other VIP attendees. *Id.* ¶ 24. All handwashing stations were still foot pump-operated,
8 and therefore inaccessible to Plaintiff. *Id.* The paths of travel throughout the event were
9 inaccessible in the same ways they had been on May 4, with little or no space for
10 Plaintiff’s wheelchair to navigate safely or access food and water areas, shade, and
11 entrances and exits. *Id.* ¶ 25.

12 Once again, there was no accessible viewing area or crowd control for the award
13 presentations and musical performances. *Id.* ¶ 26. Because it was the second day of the
14 2018 Central Valley Cannabis Cup, the performers were more well-known and drew larger
15 crowds. *Id.* Plaintiff experienced increased access barriers as a result. *Id.* As there was
16 no designated wheelchair-accessible viewing area provided, Plaintiff attempted to view the
17 musical performances on May 5, 2018 within a crowd of concertgoers who did not use
18 wheelchairs. *Id.* The crowds were so large that Plaintiff could not see the stage, and
19 numerous eventgoers climbed over the wheels of Plaintiff’s wheelchair, making her feel
20 unsafe. *Id.* The large crowds also obstructed her path of travel and made it difficult for
21 Plaintiff to navigate her wheelchair to a less crowded, safer area. *Id.*

22 During the concert, one attendee fell on Plaintiff, injuring Plaintiff’s wrist. *Id.* ¶ 27.
23 Immediately thereafter, and before the musical performances ended, Plaintiff sought
24 medical attention at a first aid station provided at the event by a company called American
25 Medical Response. *Id.* ¶ 27. A paramedic evaluated Plaintiff’s wrist and filled out an
26 injury report, noting visible “swelling” and “ligament pain” on the report. *Id.* ¶ 27, Ex. D.
27 After seeing the paramedic, Plaintiff went to the emergency room and had her injury
28 examined. *Id.* ¶ 28. A few weeks later, when Plaintiff attempted to obtain a copy of the

1 incident report from Cal Expo and American Medical Response, she was told they could
2 not provide it and that she would have to email High Times using the very same email
3 address that had been unresponsive to all of Plaintiff's prior accessibility inquiries. *Id.*
4 ¶ 29. Expecting that High Times would continue to ignore her communications, Plaintiff
5 decided not to reach out to High Times regarding the incident report. *Id.* Plaintiff has
6 since sought additional medical attention from her physician for her injury. *Id.* ¶ 28.

7 Over the course of the 2018 Central Valley Cannabis Cup, Plaintiff attempted to
8 locate onsite staff to help her address the accessibility barriers she encountered. *Id.* ¶ 30.
9 Except for her request for an accessible bathroom in the VIP area, in response to which a
10 bathroom was provided many hours later, the personnel with whom she spoke had no
11 knowledge of a way for Plaintiff to complain about the above accessibility problems or
12 have them addressed by High Times or Cal Expo. *Id.* Plaintiff wishes to attend future
13 High Times events and events at the Cal Expo Fairgrounds, including the Cannabis Cup
14 currently scheduled to occur at the Cal Expo Fairgrounds on October 27 and 28, 2018, but
15 the discriminatory treatment and lack of access she has faced deter her from attending. *Id.*
16 ¶ 31.

17 LEGAL STANDARD

18 A preliminary injunction should issue where the plaintiff establishes that "he is
19 likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of
20 preliminary relief, that the balance of equities tips in his favor, and that an injunction is in
21 the public interest." *Rodriguez v. Robbins*, 715 F.3d 1127, 1133 (9th Cir. 2013) (citation
22 omitted). The Ninth Circuit evaluates these factors using a "sliding scale approach" such
23 that "serious questions going to the merits and a balance of hardships that tips sharply
24 towards the plaintiff can support issuance of a preliminary injunction, so long as the
25 plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is
26 in the public interest." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir.
27 2011) (internal citation and quotation marks omitted).

1 **ARGUMENT**

2 **I. PLAINTIFF IS LIKELY TO SUCCEED ON THE MERITS OF HER ADA,**
3 **REHABILITATION ACT, AND STATE LAW CLAIMS**

4 **A. Defendant High Times Violates Title III of the ADA, the Unruh Civil**
5 **Rights Act, and the California Disabled Persons Act By Failing to**
6 **Provide Wheelchair Access at Its Events**

7 Title III of the ADA provides that, “[n]o individual shall be discriminated against
8 on the basis of disability in the full and equal enjoyment of the goods, services, facilities,
9 privileges, advantages, or accommodations of any place of public accommodation by any
10 person who owns, leases (or leases to), or operates a place of public accommodation.” 42
11 U.S.C. § 12182. To prevail on her discrimination claim, Plaintiff “must show that (1) she
12 is disabled within the meaning of the ADA; (2) Defendant is a private entity that owns,
13 leases, or operates a place of public accommodation; and (3) Plaintiff was denied public
14 accommodations by Defendant because of her disability.” *Tamara v. El Camino Hosp.*,
15 964 F. Supp. 2d 1077, 1082 (N.D. Cal. 2013) (quotation marks and citations omitted).
16 Plaintiff meets these requirements.

17 Plaintiff is a qualified individual with a disability because she has a physical
18 disability that substantially limits the major life activities of walking, standing, lifting, and
19 ambulating. Wyman Decl. ¶ 2; 42 U.S.C. §§ 12102, 12181; 28 C.F.R. § 36.105. The Cal
20 Expo Fairgrounds are open to the public, as was the 2018 Central Valley Cannabis Cup
21 that High Times hosted there. Accordingly, these events are places of public
22 accommodation for the purposes of the ADA. 42 U.S.C. § 12181(7)(C), (D), (I). In
23 operating events at Cal Expo, High Times, a private entity, is obligated to comply with
24 Title III. *Disabled Rights Action Comm. v. Las Vegas Events, Inc.*, 375 F.3d 861, 873 (9th
25 Cir. 2004) (“[P]rivate entities otherwise covered by Title III may not avoid their
26 obligations through contract, such as by contracting to provide ‘goods, services, facilities,
27 privileges, advantages, or accommodations’ at venues they do not own.”).

28 A private entity illegally discriminates under the ADA if it denies equal access to a
public accommodation, fails to make reasonable accommodations for a person with a

1 mobility disability, fails to remove architectural barriers, or uses methods of administration
2 that result in discrimination. 42 U.S.C. § 12182(b); 28 C.F.R. §§ 36.202, 36.302, 36.304,
3 36.305, § 36.204. As set forth above, High Times failed to respond to Plaintiff’s numerous
4 requests for accessibility information prior to attending the 2018 Central Valley Cannabis
5 Cup. Wyman Decl. ¶ 8. Plaintiff was also unable to locate any information, including
6 about accessible ticketing options, regarding the accessibility of the event on the internet.
7 *Id.* ¶ 7. Moreover, despite attempting to locate onsite staff throughout the event to help her
8 address the accessibility barriers she encountered, Plaintiff was unable to access any
9 information regarding how to address, or even complain about, these problems. *Id.* ¶ 30.

10 High Times failed to remove barriers at the 2018 Central Valley Cannabis Cup,
11 including remedying inaccessible paths of travel, and administered the event in a manner
12 that denied Plaintiff equal access to a public accommodation on the basis of her disability.
13 *See Doran v. 7-Eleven, Inc.*, 524 F.3d 1034, 1042 (9th Cir. 2008) (holding wheelchair user
14 who experienced accessibility barriers in convenience store “suffered discrimination
15 within the meaning of Title III of the ADA”) (internal quotation marks omitted).
16 Plaintiff’s request that High Times make its event wheelchair accessible was, and is,
17 readily achievable. *See Johnson v. Wayside Prop., Inc.*, 41 F. Supp. 3d 973, 978 (E.D. Cal
18 2014); *Wilson v. Pier 1 Imps. (US), Inc.*, 439 F. Supp. 2d 1054, 1069 (E.D. Cal. 2006).
19 High Times has not, and cannot, show that making its events wheelchair accessible,
20 changing its practices, policies, and procedures to provide Plaintiff with information
21 regarding the accessibility of its events, and responding to and addressing her complaints
22 of accessibility barriers would fundamentally alter the nature of its business. *See Fortune*
23 *v. Am. Multi-Cinema, Inc.*, 364 F.3d 1075, 1084-85 (9th Cir. 2004) (affirming permanent
24 injunction regarding wheelchair access to movie theaters). High Times’ failure to provide
25 Plaintiff with any information regarding accessibility, or ensure that the 2018 Central
26 Valley Cannabis Cup was wheelchair accessible, denied her “the opportunity to participate
27 in or benefit from the goods, services, facilities, privileges, advantages, or
28 accommodations of an entity,” 42 U.S.C. § 12182(b)(1)(A)(i), thereby denying her “the

1 full and equal enjoyment of the goods, services, facilities, privileges, advantages, or
2 accommodations of [High Times’ events].” 42 U.S.C. § 12181(a); *see Fortytune*, 364 F.3d
3 at 1085 (“Indeed, [High Times’] violation resulted in the very discrimination the ADA
4 seeks to prevent: it denied a disabled individual access to a public accommodation.”
5 (internal quotation marks and citations omitted) (quoting *Long v. Coast Records, Inc.*, 267
6 F.3d 918, 923 (9th Cir. 2001) (affirming injunctive relief regarding wheelchair access to
7 casinos, and reversing denial of injunctive relief regarding access to certain parts of casino
8 operations)).

9 Accordingly, Plaintiff is likely to succeed on the merits of her Title III claim against
10 High Times.²

11 **B. Defendant Cal Expo Violates Title II of the ADA and Section 504 of the**
12 **Rehabilitation Act By Failing to Provide Wheelchair Access at the Cal**
Expo Fairgrounds

13 Pursuant to Title II of the ADA, “a qualified individual with a disability” cannot,
14 “by reason of such disability, be excluded from participation in or be denied the benefits of
15 the services, programs, or activities of a public entity, or be subjected to discrimination by
16 any such entity.” 42 U.S.C. § 12132. The Department of Justice has promulgated
17 regulations to enforce this general mandate. *See* 42 U.S.C. § 12134; 28 C.F.R. § 35.101 *et*
18 *seq.* “The regulations flesh out public entities’ statutory obligations with more specificity,
19 but a public entity may violate the ADA even if no regulation expressly proscribes its
20 particular conduct.” *Cohen v. City of Culver City*, 754 F.3d 690, 695 (9th Cir. 2014). To
21 prevail under Title II of the ADA, a plaintiff must show that: (1) she is a qualified
22 individual with a disability, (2) she was either excluded from participation in or denied the
23 benefits of a public entity’s programs, services, or activities, or was otherwise
24 discriminated against by the public entity, and (3) this exclusion, denial of benefits, or

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26 _____
27 ² For these reasons, Plaintiff is also likely to prevail on her California state law claims, as a
28 violation of the ADA constitutes a violation of the California Disabled Persons Act and the
Unruh Civil Rights Act. Cal. Civ. Code §§ 51(f); 54.1(d).

1 discrimination was by reason of her disability.³ *Rodde v. Bonta*, 357 F.3d 988, 995 (9th
2 Cir. 2004). To demonstrate discrimination on the basis of disability, a plaintiff must show
3 that she was denied “meaningful access” to a public entity’s programs or activities. *Lee v.*
4 *City of Los Angeles*, 250 F.3d 668, 691 (9th Cir. 2001). As set forth above, Plaintiff is a
5 qualified individual with a disability. Wyman Decl. ¶ 2; 42 U.S.C. §§ 12102, 12131, and
6 28 C.F.R. § 35.108. Cal Expo qualifies as a public entity. 42 U.S.C. § 12131(1)(B); 28
7 C.F.R. § 35.104; *see also McIver v. Cal. State Exposition and Fair*, No. Civ-S-01-1967
8 GEB/FJ, 2003 WL 24205919 at *1 (E.D. Cal. May 5, 2003) (denying Cal Expo’s motion
9 for summary judgment in Title II ADA wheelchair access case, thereby necessarily finding
10 that Cal Expo qualifies as a public entity).

11 Cal Expo is obligated to ensure by contract that events hosted at the Cal Expo
12 Fairgrounds are operated in a manner that enables it to meet its Title II obligations. 28
13 C.F.R. §§ 35.130(b)(1)(v), (b)(3)(i), (b)(7)(i); *see also* The Americans with Disabilities
14 Act: Title II Technical Assistance Manual (1993), § II–1.3000, *available at*
15 <https://www.ada.gov/taman2.html#II-8.5000> (“Illustration 1: A privately owned restaurant
16 in a State park operates for the convenience of park users under a concession agreement
17 with a State department of parks. ... The parks department is obligated to ensure by
18 contract that the restaurant is operated in a manner that enables the parks department to
19 meet its title II obligations”); *accord Cohen*, 754 F.3d at 697 (relying on ADA
20 Technical Assistance Manual, a DOJ publication that provides guidance to public entities
21 on ADA compliance); *Disabled Rights Action Comm.*, 375 F.3d at 875-76 (same).

22 Cal Expo, which entered into a written agreement with High Times prior to the
23 2018 Central Valley Cannabis Cup that occurred on May 4 and 5, 2018 at the Cal Expo
24

25 _____
26 ³ With the exception of the federal funding requirement, the Rehabilitation Act generally is
27 interpreted as being coextensive with Title II of the ADA, and thus the two claims are
28 discussed together. *Zukle v. Regents of the Univ. of Cal.*, 166 F.3d 1041, 1045 n.11 (9th
Cir. 1999). It is Plaintiff’s understanding that Cal Expo is a public entity in receipt of
federal financial assistance within the meaning of Section 504.

1 Fairgrounds, violated Title II of the ADA by perpetuating and aiding, through contractual
2 and other arrangements, the discrimination against Plaintiff that occurred at the event by
3 failing to ensure that the Cal Expo Fairgrounds were accessible. In addition, Cal Expo
4 violated Title II of the ADA by, either directly or through contractual or other
5 arrangements with High Times, utilizing criteria or methods of administration in the
6 organization and hosting of the 2018 Central Valley Cannabis Cup that had the effect of
7 subjecting Plaintiff to discrimination on the basis of her disability by failing to ensure that
8 Plaintiff was afforded full and equal access to the event. Moreover, Cal Expo has failed to
9 make reasonable modifications in policies, practices, or procedures to avoid discrimination
10 against Plaintiff on the basis of her disability, thereby violating Title II of the ADA.

11 Accordingly, Plaintiff is likely to succeed on the merits of her Title II claim against
12 Cal Expo.

13 **II. PLAINTIFF WILL SUFFER IRREPARABLE HARM ABSENT RELIEF**

14 Plaintiff is likely to suffer irreparable harm absent preliminary injunctive relief.
15 “[I]njuries to individual dignity and deprivations of civil rights constitute irreparable
16 injury.” *Cupolo v. Bay Area Rapid Transit*, 5 F. Supp. 2d 1078, 1084 (N.D. Cal. 1997).
17 As a direct result of Defendants’ actions, Plaintiff suffered and continues to suffer such
18 injuries, including suffering distress and frustration at being denied full and equal access to
19 public accommodations because she has a physical disability and uses a wheelchair.
20 Wyman Decl. ¶ 31; *Chalk v. U.S. Dist. Court. C.D. Cal.*, 840 F.2d 701, 709 (9th Cir. 1988)
21 (discussing the “psychological and physiological distress” that disability discrimination
22 causes as a substantial and irreparable injury); *Tamara*, 964 F. Supp. 2d at 1087 (finding
23 plaintiff suffered irreparable harm when Defendants’ discriminatory actions caused her
24 “[t]o be dependent on others to perform simple physical tasks [which] is both frustrating
25 and painful”); *Hernandez v. Cnty. of Monterey*, 110 F. Supp. 3d 929, 957 (N.D. Cal. 2015)
26 (finding lack of wheelchair access in county jail causes irreparable harm to inmates with
27 mobility disabilities); *Lonberg v. City of Riverside*, Case No. ED-cv-97-0237 SGL
28 (AJWx), 2007 WL 2005177, at *8 (C.D. Cal. May 16, 2007) (finding non-compliant curb

1 ramps and sidewalks caused irreparable harm to wheelchair user).

2 Plaintiff also suffers irreparable harm by being deterred from attending future High
3 Times events and events at the Cal Expo Fairgrounds that she wishes to attend, including
4 the High Times Cannabis Cup currently scheduled to occur at the Cal Expo Fairgrounds on
5 October 27 and 28, 2018. Wyman Decl. ¶ 31; *see Pickern v. Holiday Quality Foods Inc.*,
6 293 F.3d 1133, 1137 (9th Cir. 2002) (“So long as the discriminatory conditions continue,
7 and so long as a plaintiff is aware of them and remains deterred, the injury under the ADA
8 continues.”); *Burriola v. Greater Toledo YMCA*, 133 F. Supp. 2d 1034, 1040 (N.D. Ohio
9 2001) (“[T]he irreparable harm requirement is met when the injuries plaintiff would incur
10 are ‘the very type of injuries Congress tried to avoid.’”) (quoting *E.E.O.C. v. Chrysler*
11 *Corp.*, 733 F.2d 1183, 1186 (6th Cir. 1984)).

12 Unless the Court enjoins Defendants from continuing to engage in these unlawful
13 practices, Plaintiff will continue to suffer irreparable harm.

14 **III. THE BALANCE OF HARMS TIPS HEAVILY IN PLAINTIFF’S FAVOR**

15 The balance of harms heavily favors Plaintiff. Absent the opportunity to enjoy full
16 and equal access to High Times events and events that take place at the Cal Expo
17 Fairgrounds, Plaintiff “face[s] a great harm to [her] overall independence, equality, and
18 dignity.” *Tamara*, 964 F. Supp. 2d at 1087. Where, as here, Defendants “appear[] to face
19 only an administrative inconvenience mandated by law[,] [t]he balance of hardships clearly
20 favors [Plaintiff].” *Id.* at 1087-88; *see also Harris v. Bd. of Supervisors, L.A. Cnty.*, 366
21 F.3d 754, 766 (9th Cir. 2004) (“[F]aced with [] a conflict between financial concerns and
22 preventable human suffering, [the court has] little difficulty concluding that the balance of
23 hardships tips decidedly in plaintiffs’ favor.”) (first alteration added) (quoting *Lopez v.*
24 *Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983)).

25 **IV. GRANTING AN INJUNCTION IS IN THE PUBLIC INTEREST**

26 “[T]he public’s interest [lies] in enforcement of the ADA and in elimination of
27 discrimination on the basis of disability.” *Hernandez*, 110 F. Supp. at 958; *see also*
28 *Tamara*, 964 F. Supp. 2d at 1088 (“Similarly, the public has a strong interest in promoting

1 the equality of all persons.” (citing *Concerned Parents to Save Dreher Park Ctr. v. City of*
2 *West Palm Beach*, 846 F. Supp. 986, 993 (S.D. Fla. 1994))). Accordingly, the public
3 interest clearly lies in Plaintiff’s favor.

4 **V. THE BOND REQUIREMENT SHOULD BE WAIVED**

5 District courts “ha[ve] discretion to dispense with the security requirement ...
6 where requiring security would effectively deny access to judicial review.” *Hernandez*,
7 110 F. Supp. 3d at (internal quotation marks omitted) (declining to require bond where
8 action advanced public interest, plaintiffs were likely to succeed on merits, and plaintiffs
9 lacked ability to pay); *see also Sonoran, Inc. v. Flowers*, 408 F.3d 1113, 1126 (9th Cir.
10 2005); *Cal. ex rel. Van De Kamp v. Tahoe Reg’l Planning Agency*, 766 F.2d 1319, 1325,
11 *as amended*, 775 F.2d 998 (9th Cir. 1985). Plaintiff here should not be required to post a
12 bond given that she brought this action to protect her civil rights, is likely to prevail on the
13 merits, and is unable to post anything more than a nominal bond. *Hernandez*, 110 F. Supp.
14 3d at 958; Wyman Decl. ¶ 2.

15 **CONCLUSION**

16 For the foregoing reasons, Plaintiff’s Motion for Preliminary Injunction should be
17 granted.

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19 DATED: September 25, 2018

Respectfully submitted,

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21 By: /s/ Cara E. Trapani

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