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12 Attorneys for Plaintiff
FRANCISCO SERRANO, on behalf of himself and
13 others similarly situated

14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**
16

17 FRANCISCO SERRANO, on behalf of)
himself and others similarly situated,)

18 Plaintiff,)

19 v.)

20 FLIXBUS INC.; SCREAMLINE)
21 INVESTMENT CORPORATION D/B/A)
22 TOURCOACH CHARTER & TOURS;)
23 USA COACH SERVICES, INC.; and)
DOES 1 THROUGH 10, inclusive,)

24 Defendants.)
25)
26)
27)
28)

Case No. 2:20-cv-04355

PUTATIVE CLASS ACTION

COMPLAINT

DEMAND FOR JURY TRIAL

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LOS ANGELES, CA 90067-3086

1 Plaintiff Francisco Serrano (“Plaintiff” or “Mr. Serrano”) brings this action on
2 behalf of himself for damages, and on behalf of himself and others similarly situated
3 (“Class Members”)¹ for injunctive relief under Federal Rule of Civil Procedure
4 23(b)(2), against defendants FlixBus Inc. (“FlixBus”), Screamline Investment
5 Corporation d/b/a TourCoach Charter & Tours (“TourCoach”), USA Coach Services,
6 Inc. (“USA Coach”), and Does 1 through 10, inclusive, (all defendants, collectively,
7 “Defendants”), demanding a trial by jury, and hereby alleges, either based on
8 personal knowledge or upon information and belief, as follows:

9 **I. INTRODUCTION**

10 1. Plaintiff and the Class Members are wheelchair users who have been
11 illegally discriminated against on the basis of their disabilities while traveling or
12 attempting to travel on the transportation services offered to the public by
13 Defendants.

14 2. Plaintiff is a person with disabilities who is unable to walk or drive,
15 must use a wheelchair for mobility at all times, and relies on mass transit for his daily
16 transportation needs. Defendants provide intercity bus services throughout
17 California and the United States. Customers like Plaintiff and the Class Members
18 use tickets purchased either in person, via the internet or via a mobile application to
19 ride on Defendants’ buses. FlixBus is a major transportation service provider serving
20 more than 200,000 riders per month in the United States.

21 3. Federal and California law require that Defendants provide accessible
22 transportation services to their customers with disabilities. FlixBus, for example,
23 *claims* on its website that it can accommodate the needs of wheelchair users, states
24 that its mission is to provide “green and smart mobility *for everyone*,” and promises
25 customers “a stress-free ride . . . with *experienced drivers* that will bring you *safely*
26

27

28 ¹ Class Members refers to members of the Classes defined below.

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1 to your destination.” (emphasis added). But as Plaintiff’s experiences demonstrate,
2 FlixBus and the other Defendants frequently fail to live up to these obligations.

3 4. Indeed, on numerous occasions, Plaintiff has been illegally
4 discriminated against while traveling or attempting to travel with FlixBus and the
5 other Defendants between Los Angeles and San Diego because their buses had a
6 broken or malfunctioning wheelchair lift, no lift at all, or no trained personnel to
7 operate a lift. This caused Plaintiff to feel greatly embarrassed, uncomfortable and
8 unsafe on numerous occasions, to be left stranded, to miss important travel
9 engagements with family, and to pay more for alternative travel arrangements when
10 Defendants failed to reasonably accommodate his disability. At each of these times,
11 Defendants effectively excluded Plaintiff from Defendants’ transportation services,
12 solely because Plaintiff has a disability and uses a wheelchair.

13 5. Based on the number of incidents at issue, Plaintiff is informed,
14 believes, and based thereon alleges, that Defendants have and continue to violate the
15 civil rights of Plaintiff and other Class Members under both federal and California
16 antidiscrimination laws applicable to persons with disabilities, and it is extremely
17 likely that, unless enjoined by this Court, Defendants will continue to do so.
18 Accordingly, Plaintiff brings this class action pursuant to Title III of the Americans
19 with Disabilities Act, 42 U.S.C. §§ 12101 et seq. (the “ADA”), California’s Unruh
20 Civil Rights Act, Cal. Civ. Code §§ 51 et. seq. (the “Unruh Act”), and the California
21 Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 et seq. (the “UCL”) to
22 redress these past and ongoing civil rights violations; to ensure that Plaintiff and the
23 Class Members have full and equal access to Defendants’ transportation services;
24 and to correct their advertising that falsely claims to offer their services on an equal
25 basis to passengers with disabilities until Defendants fully comply with applicable
26 laws. The Class Members consist of persons with disabilities, like Plaintiff, who use
27 wheelchairs (or scooters or other similar mobility aids) and experienced similar
28

1 discriminatory conduct while using or attempting to use Defendants’ transportation
2 services.

3 6. On behalf of himself and the Class Members, Plaintiff seeks injunctive
4 and declaratory relief to, among other things, compel Defendants to adopt policies,
5 procedures, and training to ensure that individuals with disabilities are provided full
6 and equal access to Defendants’ transportation services. Plaintiff also seeks statutory
7 and compensatory damages for himself according to proof. Plaintiff also seeks
8 reasonable attorneys’ fees and costs.

9 **II. HISTORY AND PURPOSE OF THE ADA**

10 7. It has been nearly 30 years since the ADA was enacted, establishing the
11 most important and comprehensive civil rights law for people with disabilities in
12 American history. In 2010, Congress amended the ADA, finding that society has
13 continued to segregate and isolate people with disabilities and that such forms of
14 discrimination continue to be a “serious and pervasive social problem.” 42 U.S.C. §
15 12101(a)(2). Therefore, the express purpose of the ADA is to provide “a clear and
16 comprehensive national mandate” for eliminating discrimination against people with
17 disabilities, and “clear, strong, consistent, enforceable standards addressing
18 discrimination against individuals with disabilities.” 42 U.S.C. § 12101(b)(1)-(2).

19 8. Ensuring that individuals with disabilities have full and equal access to
20 transportation is at the core of the ADA’s purpose. Indeed, Congress specifically
21 identified transportation as one of the “critical areas” of discrimination persisting
22 against such individuals. 42 U.S.C. § 12101(a)(3). Ending transportation-related
23 discrimination is crucial to achieving the ADA’s goals of assuring “equality of
24 opportunity, full participation, independent living, and economic self-sufficiency” for
25 individuals with disabilities. 42 U.S.C. § 12101(a)(7). Without consistent and
26 reliable access to transportation, people with disabilities are both literally and
27 figuratively left behind.

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1 9. California’s Unruh Act has the same purpose and goals as the federal
2 ADA. For example, the Unruh Act states that “[a]ll persons within the jurisdiction of
3 this state are free and equal, and no matter what their . . . disability . . . are entitled to
4 the full and equal accommodations, advantages, facilities, privileges, or services in
5 all business establishments of every kind whatsoever.” Cal. Civ. Code § 51(b).

6 10. As alleged below, Defendants have openly violated, and continue to
7 violate, the longstanding mandates of the ADA and Unruh Act to eliminate
8 disability-based discrimination through a pattern and practice of failing to ensure that
9 passengers with disabilities, like Plaintiff and the Class Members, have full and equal
10 access to their transportation services.

11 **III. JURISDICTION AND VENUE**

12 11. This Court has original federal jurisdiction over this civil rights action
13 pursuant to 28 U.S.C. §§ 1331 and 1343 because it alleges that Defendants violated
14 42 U.S.C. § 12101, et seq., of the ADA.

15 12. This Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367
16 over Plaintiff’s claims under California’s Unruh Act and UCL because they arise
17 from the same conduct that forms the basis of Plaintiff’s federal ADA claim.
18 Accordingly, Plaintiff’s state law claims are so related to his federal claim that they
19 form the same case or controversy.

20 13. This Court has jurisdiction over Plaintiff’s claims for injunctive and
21 declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202 and Rule 65 of the Federal
22 Rules of Civil Procedure.

23 14. This Court has personal jurisdiction over Defendants because they are
24 each corporations operating within California, and each systematically and
25 continuously conduct business in California and/or purposefully direct their business
26 toward California through their transportation services. Indeed, Defendants have
27 each voluntarily conducted business and/or solicited customers in California for their
28 transportation services, including in this judicial district, and continue to commit the

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1 wrongful acts alleged herein against California residents. Additionally, TourCoach
2 is formed under the laws of California. Thus, Defendants have all purposefully
3 availed themselves of the benefits and protections of California law such that the
4 exercise of jurisdiction over them by this Court will not offend traditional notions of
5 fair play and substantial justice.

6 15. Venue is proper in this judicial district pursuant to 28 U.S.C.
7 § 1391(b)(2) because it is where a substantial part of the events giving rise to the
8 claims asserted herein occurred. Each of the bus rides that Plaintiff took or
9 attempted to take using Defendants’ transportation services that are at issue in this
10 action originated in, or departed from, Los Angeles, California, which is located in
11 this judicial district. Plaintiff also purchased the tickets for bus rides online from
12 FlixBus while at his home in Los Angeles. Defendants also can be found in, have
13 one or more agents in, and/or transact or have transacted business in Los Angeles.

14 **IV. PARTIES**

15 **A. Plaintiff Francisco Serrano and the Class Members**

16 16. Mr. Serrano is a natural person and is and was at all relevant times a
17 resident of Los Angeles, California.

18 17. Plaintiff is an individual with a disability within the meaning of the
19 ADA and the Unruh Act. 42 U.S.C. § 12102(1); Cal. Civ. Code § 54(b)(1); see Cal.
20 Gov. Code §§ 12926, 12926.1. He is a full-time wheelchair user who is unable to
21 walk or drive and, therefore, relies exclusively on mass transit services from
22 providers like Defendants for his daily transportation needs.

23 18. Plaintiff has used the services of Defendants since August 2018. He
24 frequently takes day trips from his home in Los Angeles to visit family in or around
25 San Diego and prefers to use FlixBus because it is often the least expensive option
26 available and is conveniently located by his home. Mr. Serrano would like to
27 continue using Defendants’ services in the future but is dissuaded from doing so until
28 he can be reasonably sure he will receive an accessible ride.

1 19. The Class Members reside in and are located throughout California and
2 the United States. Like Plaintiff, the Class Members are also individuals with
3 disabilities within the meaning of the ADA and Unruh Act, use a wheelchair or other
4 mobility aid, and use (or would like to use) the mass transit services of Defendants
5 for their transportation needs.

6 **B. FlixBus**

7 20. FlixBus is and was at all relevant times a corporation formed under the
8 laws of Delaware with its principal place of business in Los Angeles, California.

9 21. According to its marketing and promotional materials and documents
10 filed with the State of California, FlixBus is a private company primarily engaged in
11 the business of transporting people. Specifically, it offers or arranges intercity bus
12 services throughout California and the United States.

13 22. On its website, FlixBus holds itself out as the “smart choice,” and asks
14 riders to “[t]ake advantage of [FlixBus’s] affordable prices without compromising
15 the quality or comfort of your ride.” Indeed, FlixBus advertises as the most
16 economical way to travel long-distance in Southern California, with fares
17 considerably cheaper than its competitors. For example, a roundtrip ticket between
18 Los Angeles and San Diego can be as low as \$9.99 from FlixBus, but approximately
19 \$20 on Greyhound and \$36 on Amtrak.

20 23. As a provider of intercity bus transportation services that attracts
21 consumers from different U.S. states, provides the public with general or special
22 transportation services (including charter service) on a regular and continuing basis,
23 and provides bus services that cross state lines, FlixBus owns, leases (or leases to), or
24 operates a public accommodation and is subject to Title III of the ADA, and the
25 regulations promulgated thereunder. See 42 U.S.C. §§ 12181, 12184. On
26 information and belief, FlixBus is a large operator of a fixed route, over the road bus
27 (“OTRB”) service. But even if it is deemed a small operator of a fixed route OTRB
28 service, FlixBus still has violated the law as set forth herein. Additionally, FlixBus is

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1 a business establishment within the meaning of the Unruh Act. See Cal. Civ. Code
2 § 51.

3 **C. TourCoach and USA Coach**

4 24. TourCoach is and was at all relevant times a corporation formed under
5 the laws of California with its principal place of business in Commerce, California.

6 25. USA Coach is and was at all relevant times a corporation formed under
7 the laws of Nevada with its principal place of business in Las Vegas, Nevada.

8 26. As providers of intercity bus transportation services that attract
9 consumers from different states, provide the public with general or special
10 transportation services (including charter service) on a regular and continuing basis,
11 and provide bus services that cross state lines, TourCoach and USA Coach own,
12 lease (or lease to), or operate public accommodations and are subject to Title III of
13 the ADA, and the regulations promulgated thereunder. See 42 U.S.C. §§ 12181,
14 12184. On information and belief, TourCoach and USA Coach are operators of fixed
15 route, over the road bus (“OTRB”) services. But even if they are deemed small
16 operators of fixed route OTRB services, TourCoach and USA Coach still have
17 violated the law as set forth herein. Additionally, TourCoach and USA Coach are
18 business establishments within the meaning of the Unruh Act. See Civ. Code § 51.

19 **D. Does 1 through 10**

20 27. Plaintiff is currently unaware of the true names and identities of Does 1
21 through 10 (“Does”) and therefore sues these Defendants by these fictitious names.
22 Does likely consist of other transportation providers in the FlixBus network. Each of
23 the Defendants designated herein as a Doe is legally responsible for the unlawful acts
24 alleged herein. Plaintiff will amend his Complaint to allege the Does’ legal names
25 and capacities as soon as such information becomes known.

26 **E. All Defendants**

27 28. At all relevant times each and every Defendant was the agent, servant,
28 employee, co-conspirator, and/or representative of each and every other Defendant

1 and was, in engaging in the conduct complained of herein, acting within the scope of
 2 said agency, service, employment, conspiracy, and/or representation, and that each
 3 and every Defendant was acting within his/her actual or apparent authority with the
 4 full knowledge and consent of each other Defendant.

5 29. Defendants are subject to the federal laws governing discrimination
 6 based on disability, including the ADA and the relevant implementing regulations.

7 30. Defendants are also subject to California laws governing discrimination
 8 based on disability, including the Unruh Act and any relevant implementing
 9 regulations.

10 **V. FLIXBUS'S BROKEN PROMISES TO WHEELCHAIR USERS**

11 31. In 2018, FlixBus launched operations in the United States with 180
 12 connections across California, Arizona and Nevada.² In 2019, FlixBus increased its
 13 number of connections and expanded its operations to New York and Texas.³

14 32. On May 15, 2018, André Schwämmlein, Founder and CEO of
 15 FlixBus GmbH, the Germany-based parent company of FlixBus, held a press
 16 conference in Los Angeles, California to mark the official launch of FlixBus's
 17 American operations.⁴ During the press conference, Mr. Schwämmlein spoke about
 18 how the Company has "one of the largest fleets in the world." He described the
 19 buses' modern and premium amenities and how the company is driven by the "vision
 20 of *making mobility accessible for millions of people.*" As alleged below, FlixBus and
 21 the other Defendants have failed to live up to that vision for wheelchair users like
 22 Plaintiff and the Class Members.

23 ² *The New Way to Travel: FlixBus Routes Begin in US May 31*, FLIXBUS (May 31,
 24 2018), <https://www.flixbus.com/company/press-room/press-releases/flixbus-starts-in-usa>.

25 ³ *FlixBus USA Prepares for Expansion to Texas, New York in 2019.*, FLIXBUS
 26 (October 31, 2018), <https://www.flixbus.com/company/press-room/press-releases/flixbus-prepares-us-expansion-to-texas-and-new-york>.

27 ⁴ *FlixBus Press conference – Official Launch of FlixBus USA in Los Angeles – 05-*
 28 *15-2018 (video)*, FLIXBUS, <https://www.flixbus.com/company/press-room/press-releases/video-launch-flixbus-usa> (last visited May 15, 2019).

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1 33. Pierre Gourdain, FlixBus’s Managing Director, also spoke during the
2 press conference. He stated that he expects the United States to be the company’s
3 biggest market, and Los Angeles its second global headquarters. Mr. Gourdain also
4 stated, “We like regulations,” adding that the company is “happy to abide by them.”
5 As alleged below, however, Defendants have knowingly and repeatedly violated
6 federal regulations designed to eliminate discrimination against travelers with
7 disabilities.

8 34. Both Mr. Schwämmlein and Mr. Gourdain touted the significant role
9 that bus drivers on FlixBus trips have in the company’s business. Mr. Gourdain
10 described them as FlixBus “ambassadors” and Mr. Schwämmlein said they are key to
11 providing customers with a positive “personal experience.” As alleged herein, many
12 of the drivers on Plaintiff’s trips with Defendants are not properly trained to operate
13 wheelchair lifts. Additionally, the drivers have, at times, left Plaintiff feeling
14 mistreated and belittled due to his disability.

15 35. Mr. Schwämmlein stated during the press conference that he wants
16 FlixBus to change the bus market in the United States. He remarked, “We’re not
17 here to be another player in the market. We want to reinvent the market.” But in
18 pursuing this profit-driven agenda, FlixBus has disregarded its obligations under the
19 ADA and Unruh Act prohibiting discrimination against persons with disabilities like
20 Plaintiff and the Class Members.

21 36. In sum, Plaintiff’s experiences with Defendants indicates that FlixBus’s
22 promise to provide “green and smart mobility *for everyone*” is false. Plaintiff has
23 repeatedly been denied full and equal access to Defendants’ transportation services
24 due to his disability, indicating a clear pattern of discriminatory misconduct. These
25 encounters are detailed below.

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VI. DEFENDANTS’ DISCRIMINATORY TREATMENT OF PLAINTIFF

A. Summary of Mr. Serrano’s Problematic Trips with Defendants

37. On nearly every occasion that Mr. Serrano traveled or attempted to travel with FlixBus, he complied with the guidance in Section 11 of its General Conditions of Carriage and informed FlixBus in advance that he uses a wheelchair for mobility.

38. Mr. Serrano has repeatedly experienced difficulty in boarding and riding on vehicles traveling between Los Angeles and San Diego that he booked through FlixBus. On information and belief, these buses were leased, owned or operated by TourCoach and/or USA Coach. At least a dozen times the vehicles or personnel were not equipped to handle Mr. Serrano’s wheelchair because the vehicles either did not have any wheelchair lift, had a broken or malfunctioning wheelchair lift, or had no personnel trained to properly operate a wheelchair lift. These instances include, but are not limited to, the following trips on or about the following dates:⁵

- During the first week of August 2018, from San Diego to Los Angeles
- October 13, 2018, from Los Angeles to San Diego
- October 21, 2018, from Los Angeles to San Diego and back
- March 5, 2019, from San Diego to Los Angeles
- March 16, 2019, from Los Angeles to San Diego and back
- March 29, 2019, from San Diego to Los Angeles
- April 17, 2019, from Los Angeles to San Diego
- May 17, 2019, from Los Angeles to San Diego
- May 31, 2019, from Los Angeles to San Diego and back

⁵ This is not intended to be an exhaustive list of incidents where Mr. Serrano experienced discrimination or other unlawful conduct while traveling or attempting to travel with Defendants. Mr. Serrano intends to complete this list through discovery.

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1 39. Although the vehicles used on these problematic trips were all owned,
2 leased, operated, and/or utilized by one of the Defendants, Mr. Serrano does not
3 know at this time which vehicle was owned, leased, operated, and/or utilized by
4 which Defendant. Similarly, all of the non-passenger/non-customer personnel
5 involved with these problematic trips were the employees or contractors of
6 Defendants, but Mr. Serrano does not know at this time the identities of the
7 personnel or which of them were employed with, or contracted by, which of the
8 Defendants. Mr. Serrano intends to pursue this information in discovery.

9 40. All of the vehicles on Mr. Serrano’s problematic trips are classified as
10 over-the-road buses (“OTRB”) because they are characterized by an elevated
11 passenger deck located over a baggage compartment. 42 U.S.C. § 12181(5).

12 **B. Nonexistent, Broken, or Malfunctioning Wheelchair Lifts**

13 41. Mr. Serrano has repeatedly experienced difficulty while traveling or
14 attempting to travel with FlixBus and the other Defendants due to broken wheelchair
15 lifts on their vehicles or the lack of a wheelchair lift altogether.

16 42. One result of Defendants’ failure to ensure that their vehicles are
17 properly equipped with functional wheelchair lifts is that Mr. Serrano has had to rely
18 on other passengers for help boarding and exiting the vehicle. Such assistance has
19 involved other passengers physically carrying Mr. Serrano. For example, on a trip in
20 2018, Mr. Serrano attempted to board one of Defendants’ vehicles on his return trip
21 from San Diego to Los Angeles but was told by the driver that the wheelchair lift
22 was not working. The driver stated that Mr. Serrano could either wait for the next
23 bus with an operational wheelchair lift (though it was unclear whether the next bus
24 would have one) or be carried onto the bus by other passengers. Having no other
25 option, Mr. Serrano reluctantly allowed himself to be carried onto the bus because he
26 urgently needed to return to Los Angeles. In addition to the humiliation and
27 embarrassment this caused Mr. Serrano, his reliance on helpful but untrained
28 passengers greatly increased his risk of injury.

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1 43. Another result of Defendants’ failure to ensure that their vehicles are
2 properly equipped with functional wheelchair lifts is lengthy delays to Mr. Serrano’s
3 travel plans—delays that customers without disabilities would not have experienced.
4 For example, on March 16 and March 29, 2019, Mr. Serrano was forced to wait
5 several hours after his scheduled departure time because the originally scheduled
6 buses did not have a working wheelchair lift.

7 44. Furthermore, when Defendants cannot accommodate Mr. Serrano’s
8 wheelchair, he has been unfairly forced to incur additional travel costs, including
9 purchasing more expensive tickets with Amtrak. For instance, on May 31, 2019, Mr.
10 Serrano had to purchase an Amtrak ticket to San Diego that cost double the FlixBus
11 fare amount because Defendants’ vehicle did not have any wheelchair lift at all and,
12 therefore, he was unable to board. The bus driver did not offer to assist or
13 accommodate Mr. Serrano in any way. This occurred despite Mr. Serrano calling
14 FlixBus’s customer service in advance and confirming there would be appropriate
15 wheelchair access.

16 45. Though there have been occasions where FlixBus offered Mr. Serrano
17 reimbursement if he could not board another vehicle through FlixBus within a
18 reasonable time, those offers have largely been unsatisfactory and insufficient to
19 resolve Defendants’ breaches of their legal duties. For example, on the evening of
20 March 5, 2019, Mr. Serrano was unable to board his scheduled Los Angeles-bound
21 bus in San Diego due to an inoperable wheelchair lift. The driver asked Mr. Serrano
22 if he could get up from his wheelchair and walk. When Mr. Serrano indicated that he
23 could not, the driver said she could not let Mr. Serrano board the bus. The driver
24 also told Mr. Serrano that no one notified her there would be a passenger in a
25 wheelchair, despite Mr. Serrano having informed FlixBus through its online booking
26 system. Prior to the bus departing, Mr. Serrano contacted FlixBus customer service
27 about the situation. The agent did not attempt to rectify Mr. Serrano being denied
28 access to the bus, but instead presented him with two less helpful options: take the

1 next bus, which was scheduled to arrive the following day, or take other
2 transportation back to Los Angeles and receive reimbursement from FlixBus. *The*
3 *bus then departed without Mr. Serrano, leaving him stranded overnight while he*
4 *awaited alternate transportation.* Mr. Serrano eventually took Amtrak to Los
5 Angeles the following morning.

6 **C. Lack of Driver Training in Operation of Wheelchair Lift**

7 46. Mr. Serrano has observed several bus drivers on these problematic trips
8 fail to properly operate the wheelchair lift.

9 47. On October 21, 2018, as Mr. Serrano attempted to board a vehicle from
10 Los Angeles to San Diego, the driver struggled to operate the wheelchair lift and
11 needed the help of another employee. This employee provided Mr. Serrano with his
12 business card and instructed Mr. Serrano to call him at the number provided.
13 Although the driver and other employee were eventually able to deploy the lift, once
14 Mr. Serrano was on the bus, the lift malfunctioned and rendered the entire bus
15 inoperable, forcing the other passengers to board a different vehicle. *Mr. Serrano,*
16 *however, was left stranded on the bus alone for hours before another employee*
17 *later arrived to repair the lift.* Even after the employee was able to retract the lift to
18 its stored position, the driver still did not directly transport Mr. Serrano to San Diego.
19 Instead, he drove Mr. Serrano to a bus yard, where a technician further inspected the
20 lift to ensure that it would continue to operate. Though Mr. Serrano eventually
21 reached San Diego, he arrived at his destination several hours after his fellow
22 passengers.

23 48. After the October 21 incident, Mr. Serrano called the telephone number
24 provided by the employee. On the call, a FlixBus customer service representative
25 intimidated Mr. Serrano, accused Mr. Serrano of causing problems for FlixBus, and
26 told Mr. Serrano not to use the company's services again.

27 49. Similarly, on a return trip from San Diego to Los Angeles on May 31,
28 2019, the driver initially struggled to operate the wheelchair lift and then failed to

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1 correctly fold down the seats. Mr. Serrano had to request the assistance of other
2 passengers to fold the seats so he could maneuver his wheelchair on the bus. The
3 driver also failed to secure the front two wheels of Mr. Serrano’s wheelchair,
4 resulting in a dangerous travel experience in which he was fortunate to not be
5 injured.

6 **D. FlixBus Is Aware of These Problems.**

7 50. Mr. Serrano has submitted multiple complaints regarding the incidents
8 described above to FlixBus’s customer service through its website and by telephone.
9 On April 29, 2019, Daniel Hirsch, Senior Manager of Customer Service at FlixBus,
10 emailed Mr. Serrano and admitted that the company has not been following proper
11 wheelchair lift procedures. Specifically, Mr. Hirsch admitted that FlixBus has not
12 been following United States Department of Transportation (“DOT”) regulations for
13 pre-trip inspections “as they pertain to testing the safe operation of the lift prior to
14 beginning their runs.” Mr. Hirsch further stated that he forwarded Mr. Serrano’s
15 complaint to FlixBus’ Regional Operations Manager. FlixBus provided no further
16 response to Mr. Serrano and subsequent problematic trips taken by Mr. Serrano
17 demonstrated that these concerns were not addressed.

18 51. Prior to filing this lawsuit, Plaintiff provided FlixBus with ample
19 opportunity to resolve this matter amicably. Regrettably, those efforts were
20 unsuccessful, and Plaintiff was left with no choice but to seek the Court’s assistance.

21 **VII. CLASS DEFINITIONS AND ALLEGATIONS**

22 52. Plaintiff realleges and incorporates by reference each of the preceding
23 paragraphs of this Complaint, as if fully set forth herein.

24 53. Plaintiff brings this action on behalf of himself and others similarly
25 situated pursuant to Rule 23(a) and Rule 23(b)(2) of the Federal Rules of Civil
26 Procedure. As set forth below, this action may be maintained as a class action under
27 Rule 23(b)(2) because Defendants’ violations of the ADA and Unruh Act are
28 applicable to all members of the Classes (defined below). An injunction requiring

1 compliance with the ADA and Unruh Act, including all applicable guidelines and
2 regulations, is therefore appropriate.

3 **A. Class Definitions**

4 54. Plaintiff seeks to represent the following national injunctive relief
5 classes under Rule 23(b)(2) (collectively, the “National Classes”):

6 • **FlixBus National Class:** All individuals in the United States
7 who require use of a wheelchair (or other mobility device) as necessary for their
8 mobility and daily living and are located in an area where FlixBus offers, arranges,
9 or provides transportation services.

10 • **TourCoach National Class:** All individuals in the United States
11 who require use of a wheelchair (or other mobility device) as necessary for their
12 mobility and daily living and are located in an area where TourCoach offers,
13 arranges, or provides transportation services.

14 • **USA Coach National Class:** All individuals in the United States
15 who require use of a wheelchair (or other mobility device) as necessary for their
16 mobility and daily living and are located in an area where USA Coach offers,
17 arranges, or provides transportation services.

18 55. Class Members of the National Classes are referred to herein,
19 collectively, as the “National Class Members.”

20 56. Plaintiff also seeks to represent the following California classes
21 (collectively, the “California Classes”) (together with the National Classes, the
22 “Classes”):

23 • **FlixBus California Class:** All individuals in California who
24 require use of a wheelchair (or other mobility device) as necessary for their mobility
25 and daily living and are located in an area where FlixBus offers, arranges, or
26 provides transportation services.

27 • **TourCoach California Class:** All individuals in California who
28 require use of a wheelchair (or other mobility device) as necessary for their mobility

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1 and daily living and are located in an area where TourCoach offers, arranges, or
2 provides transportation services.

3 • **USA Coach California Class:** All individuals in California who
4 require use of a wheelchair (or other mobility device) as necessary for their mobility
5 and daily living and are located in an area where USA Coach offers, arranges, or
6 provides transportation services.

7 57. Class Members of the California Classes are referred to herein,
8 collectively, as the “California Class Members.”

9 58. Plaintiff reserves the right to amend or further define these Classes, or
10 this Complaint, through additional pleadings, evidentiary hearings, a class
11 certification motion and/or hearings, and order of this Court. These Classes may be
12 further sub-classed if necessary, and Plaintiff reserves the right to do so.

13 **B. Numerosity—Fed. R. Civ. P. 23(a)(1)**

14 59. Plaintiff does not know the exact size of the Classes nor the identities of
15 the Class Members since such information is in the exclusive control of Defendants.
16 It is generally accepted that there are approximately 2.7 million people in the United
17 States who have disabilities and use wheelchairs or a similar device for mobility.⁶
18 Plaintiff believes that due to the millions of customers who, according to FlixBus,
19 travel or attempt to travel using FlixBus’ transportation service each year in the
20 United States, there would be thousands who travel or attempt to travel on
21 Defendants’ vehicles through FlixBus. Together with the potentially hundreds or
22 thousands of persons who use wheelchairs who may desire to use the FlixBus
23 transportation service each month in the United States, the number of Class Members
24 in each of the Classes is sufficiently numerous and dispersed throughout the United
25 States. Therefore, it is impracticable to bring or join all Class Members before the
26

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28 ⁶ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4397418/> (last accessed 4/17/20)

1 Court. The names and addresses of certain Class Members can be obtained from
2 Defendants' records.

3 **C. Existence and Predominance of Common Questions of Fact and Law—**
4 **Fed. R. Civ. P. 23(a)(2)**

5 60. Numerous questions of fact and law are common to the Classes,
6 including but not limited to the following:

7 a. Whether Plaintiff and the Class Members have been denied the
8 right to full and equal enjoyment of Defendants' goods, services, facilities,
9 privileges, advantages, or accommodations in violation of the ADA and Unruh Act.

10 b. Whether Defendants are required by the ADA and Unruh Act to
11 maintain operational wheelchair lifts on vehicles used in their transportation services;

12 c. Whether the lack of a wheelchair lift on the vehicles used in
13 Defendants' transportation services violates the ADA and Unruh Act;

14 d. Whether the broken or malfunctioning wheelchair lifts on the
15 vehicles used in Defendants' transportation services violate the ADA and Unruh Act;

16 e. Whether Defendants are required by the ADA and Unruh Act to
17 train personnel to properly operate wheelchair lifts on vehicles used in their
18 transportation services;

19 f. Whether Defendants properly trained their personnel to operate
20 wheelchair lifts on vehicles used in their transportation services, and whether that
21 training, or the lack thereof, violated the ADA and Unruh Act;

22 g. Whether Defendants had policies and procedures in place
23 sufficient to ensure compliance with the ADA and Unruh Act;

24 h. Whether Defendants otherwise acted properly to ensure sufficient
25 compliance with the ADA and Unruh Act;

26 i. Whether Defendants are individually and/or jointly liable for the
27 unlawful conduct alleged herein due to their individual and/or joint ownership,
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1 operation, maintenance, development, control, and/or leasing of the property that is
2 the subject of this litigation;

3 j. Defendants’ intent in committing the wrongful acts alleged
4 herein;

5 k. Whether Plaintiff and Class Members are entitled to declaratory,
6 injunctive, and/or other equitable relief; and

7 l. Whether Plaintiff and Class Members are entitled to an award of
8 attorneys’ fees and costs incurred in bringing this action.

9 **D. Typicality—Fed. R. Civ. P. 23(a)(3)**

10 61. Plaintiff’s claims are typical of the claims of Class Members. Plaintiff
11 is typical of the members of the Classes because he uses a wheelchair for mobility, is
12 located in at least one of the areas where Defendants offer or provide transportation
13 services, and during his travels or attempted travels with Defendants was denied
14 access substantially equal to nondisabled passengers in the manner described above.
15 Defendants’ unlawful practices, as alleged above, were employed similarly to each
16 Class Member. Defendants engaged in a common course of conduct involving
17 similar or identical plans, policies, procedures, intent, design, statutory violations,
18 and schemes—or systemic lack thereof. The injuries sustained by Plaintiff and the
19 Class Members arise from a common nucleus of operative facts involving
20 Defendants’ misconduct.

21 **E. Adequacy—Fed. R. Civ. P. 23(a)(4)**

22 62. Plaintiff will fairly and adequately represent and protect the interests of
23 the Classes and does not have interests that are antagonistic to or in conflict with
24 those he seeks to represent. Furthermore, Plaintiff has retained counsel with
25 considerable experience in class actions, disability rights, and other forms of
26 complex litigation.

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F. Inconsistent and/or Dispositive Adjudications—Fed. R. Civ. P. 23(b)(1)

63. Prosecution of separate actions by individual Class Members will create the risk of adjudications with respect to individual Class Members, which would, as a practical matter, establish incompatible standards of conduct for Defendants and be dispositive of the interests of Class Members who are not parties to those adjudications, and would or could substantially impair or impede their ability to protect their interests.

G. Injunctive and Declaratory Relief Is Appropriate—Fed. R. Civ. P. 23(b)(2)

64. Defendants have acted, failed, or refused to act on grounds generally applicable to the Classes, thereby making final injunctive relief or declaratory relief appropriate with respect to the Injunctive Class as a whole.

FIRST CLAIM FOR RELIEF

**Violation of Title III of the Americans with Disabilities Act by Defendants
(42 U.S.C. §§ 12101 et seq.)**

65. Plaintiff realleges and incorporates by reference each of the preceding paragraphs of this Complaint, as if fully set forth herein.

66. Defendants are private entities subject to Title III of the ADA that own, lease (or lease to), or operate public accommodations and are primarily engaged in the business of transporting people. 42 U.S.C. §§ 12181(6), 12182, 12184.

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

68. Likewise, 42 U.S.C. § 12184(a) prohibits discrimination against individuals “on the basis of disability in the full and equal enjoyment of specified

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1 public transportation services provided by a private entity that is primarily engaged
2 in the business of transporting people and whose operations affect commerce.”

3 69. The Attorney General is responsible for implementing the foregoing
4 statute by promulgating regulations. 42 U.S.C. § 12186(a)(2) and (b).

5 70. Entities that provide public accommodations or public transportation
6 services may not impose “eligibility criteria” that tend to screen out people with
7 disabilities, 42 U.S.C. §§ 12182(b)(2)(A)(i), 12184(b)(1), 49 C.F.R. § 37.5(f); and
8 may not purchase or lease an OTRB that does not comply with the U.S. Department
9 of Transportation (“DOT”) regulations issued under 42 U.S.C. §§ 12182(b)(2)(D),
10 12184(b)(4)(A) and 12186(a)(2).

11 71. Defendants’ conduct, as alleged above, violates Title III of the ADA and
12 the federal regulations promulgated pursuant thereto, including but not limited to
13 DOT regulations issued under 42 U.S.C. §§ 12182(b)(2)(D), 12184(b)(4)(A) and
14 12186(a)(2). See generally 49 C.F.R., part 37.

15 72. Defendants have violated Title III of the ADA by, among other things,
16 failing to operate their services on a nondiscriminatory basis; failing to ensure that
17 Plaintiffs and the National Class Members who are disabled have full and equal
18 enjoyment of the services, facilities, privileges, advantages, or accommodations
19 provided by Defendants; failing to modify practices, policies, and procedures to
20 ensure that personnel and drivers of FlixBus vehicles are properly trained and do not
21 deny access to individuals on the basis of disability; and failing to train their
22 employees to operate their equipment to provide services to those with physical
23 disabilities. 42 U.S.C. §§ 12182(b)(2)(A)(ii), 12184(b)(2)(A); 49 C.F.R. § 37.5(f);
24 28 C.F.R. § 36.302(a).

25 73. As large operators of fixed route services, Defendants further violated
26 Title III of the ADA by failing to ensure that one hundred percent of the buses in
27 their fleets are “readily accessible to and usable by individuals with disabilities,”
28 particularly those who use wheelchairs or similar mobility aids. 49 C.F.R.

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1 § 37.185(b). However, even if Defendants are considered small operators of fixed
2 route OTRBs, Defendants have otherwise violated the ADA by failing to provide
3 accessible buses given proper notice and as otherwise set forth herein. 49 C.F.R.
4 § 37.193(a)(1).

5 74. By Defendants administering their transportation services in a manner
6 that results in individuals with disabilities being denied access to these services on
7 the basis of disability, Defendants are unlawfully denying Plaintiff and National
8 Class Members full and equal access to the services, privileges, advantages, and
9 accommodations of FlixBus. 42 U.S.C. § 12182(b)(1)(D); 28 C.F.R. § 36.204.

10 75. Defendants have also failed to “maintain in operative condition those
11 features of facilities and vehicles that are required to make the vehicles and facilities
12 readily accessible to and usable by individuals with disabilities,” such as wheelchair
13 lifts, and violated the ADA by requiring or requesting that Plaintiff and National
14 Class Members reschedule their trips, or travel at times other than the one requested,
15 “in order to receive transportation as required” by the regulations. 49 C.F.R.
16 §§ 37.161, 37.207(c).

17 76. Defendants have further failed to “establish a system of regular and
18 frequent maintenance checks of lifts sufficient to determine if they are operative,” to
19 “ensure that vehicle operators report [], by the most immediate means available, any
20 failure of a lift to operate in service,” and to take any “vehicle [with a non-operative
21 lift] out of service before the beginning of the vehicle’s next trip and ensure that the
22 lift is repaired before the vehicle returns to service. 49 C.F.R. § 37.203.

23 77. Defendants have further violated the ADA by failing to ensure that their
24 personnel are trained to “proficiency, as appropriate to their duties, so that they
25 operate vehicles and equipment safely and properly assist and treat individuals with
26 disabilities who use the service in a respectful and courteous way, with appropriate
27 attention to the difference among individuals with disabilities.” 49 C.F.R. § 37.173.

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1 78. By engaging in the actions and omissions described herein, Defendants
2 have violated the foregoing statutory and regulatory provisions. Pursuant to 42
3 U.S.C. § 12188 and the remedies, procedures, and rights set forth and/or incorporated
4 therein, Plaintiff prays for judgment on behalf of himself and the National Class
5 Members as set forth below.

6 79. Defendants’ violations of the ADA as alleged herein entitle Plaintiff and
7 the National Class Members to declaratory and injunctive relief to compel
8 Defendants to comply with their obligations under this law. Plaintiff and the
9 National Class Members have suffered and continue to suffer injuries for which they
10 have no adequate remedy at law. The injuries of Plaintiff and the National Class
11 Members are traceable to Defendants’ discriminatory conduct, policies, or lack of
12 policies alleged herein and will be redressed by the relief requested.

13 80. Defendants’ conduct constitutes ongoing and continuous violations of
14 the ADA. Unless the Court enjoins Defendants from continuing to engage in these
15 unlawful practices, Plaintiff and the National Class Members will continue to suffer
16 irreparable harm. Consequently, Plaintiff and National Class Members are entitled to
17 injunctive relief. 42 U.S.C. § 12188. Defendants’ violations also warrant Plaintiff to
18 recover reasonable attorneys’ fees and costs incurred in bringing this action. Id.
19 § 12205.

SECOND CLAIM FOR RELIEF

**Violation of the California Unruh Civil Rights Act by Defendants
(Cal. Civ. Code §§ 51 et seq.)**

23 81. Plaintiff realleges and incorporates by reference each of the preceding
24 paragraphs of this Complaint, as if fully set forth herein.

25 82. California’s Unruh Act prohibits discrimination against individuals with
26 disabilities. California Civil Code § 51(b) provides, in pertinent part: “All persons
27 within the jurisdiction of this state are free and equal, and no matter what their . . .
28 disability . . . are entitled to the full and equal accommodations, advantages,

1 facilities, privileges, or services in all business establishments of every kind
2 whatsoever.”

3 83. Each violation of the ADA also constitutes an independent violation of
4 the Unruh Act. Cal. Civ. Code § 51(f). Therefore, each of Defendants’ ADA
5 violations against Plaintiff and the California Class Members alleged herein
6 constitute independent violations of the Unruh Act for those trips departing from, or
7 arriving to, California.

8 84. In committing the acts herein alleged, Defendants have violated the
9 Unruh Act by discriminating against Plaintiff and the California Class Members on
10 the basis of their disabilities and use of a wheelchair.

11 85. As a direct and proximate result of Defendants’ conduct, Plaintiff has
12 suffered damages and other harm.

13 86. Plaintiff and the California Class Members are entitled to injunctive
14 relief to prevent Defendants from further violating the Unruh Act. Cal. Civ. Code
15 § 52(c)(3). Plaintiff is also entitled to recover up to treble his actual damages
16 according to proof, as well as to reasonable attorneys’ fees and costs incurred in
17 bringing this action. Cal. Civ. Code § 52(a).

18 **THIRD CLAIM FOR RELIEF**

19 **Violation of the California Unfair Competition Law by Defendants**

20 **(Cal. Bus. & Prof. Code §§ 17200 et seq.)**

21 87. Plaintiff realleges and incorporates by reference each of the preceding
22 paragraphs of this Complaint, as if fully set forth herein.

23 88. The acts of Defendants that are alleged herein constitute unlawful,
24 unfair, and fraudulent business practices in violation of California Business and
25 Professions Code §§ 17200 et seq.

26 89. As alleged above, Defendants falsely claimed to offer full and equal
27 access to its transportation services for everyone, including people with disabilities
28 who use wheelchairs. Defendants’ conduct thus constitutes a fraudulent business

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1 practice because it is likely to mislead or deceive the general public; and indeed, as
2 the experiences of Plaintiff and the Class Members demonstrate, it already has.

3 90. Defendants’ conduct constitutes an unlawful business practice in
4 violation of California Business and Professions Code §§ 17200 et seq. because it
5 violates the ADA and Unruh Civil Rights Act. Defendants’ false advertising further
6 constitutes an unlawful business practice because it violates California Business and
7 Professions Code §§ 17500 et seq., which prohibits these types of false or misleading
8 public statements.

9 91. Additionally, Defendants’ conduct that discriminates on the basis of
10 disability constitutes an unfair business practice in violation of California Business
11 and Professions Code §§ 17200 et seq. because it is immoral, unethical, oppressive,
12 unscrupulous, and substantially injurious to customers with disabilities. Defendants’
13 conduct offends established public policies for equal and fair treatment of persons
14 with disabilities.

15 92. Defendants’ conduct constitutes an unfair business practice because the
16 impact of Defendants’ false statements on Plaintiff and the Class Members far
17 outweigh whatever reasons, justifications, or motivations Defendants had or could
18 have had in making such statements. Defendants’ conduct also offends established
19 public policies prohibiting false and misleading public statements. Defendants’
20 conduct is immoral, unethical, oppressive, unscrupulous or substantially injurious to
21 consumers such as Plaintiff and the Class Members.

22 93. Plaintiff has no adequate remedy at law in that the continuing nature of
23 Defendants’ unfair competition will result in ongoing irreparable harm to Plaintiff
24 and the Class Members. As a direct and proximate result of Defendants’ wrongful
25 conduct, Plaintiff and the Class Members have been injured in fact, and such harm
26 will continue unless Defendants’ acts are enjoined.

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PRAYER FOR RELIEF

1 WHEREFORE, Plaintiff, on behalf of himself and the Class Members, prays
2 for relief on the Complaint as follows:

3 1. An order certifying the National and California classes, pursuant to
4 Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure;

5 2. A declaration that Defendants’ conduct as alleged herein has violated,
6 and continues to violate, Title III of the ADA, 42 U.S.C. §§ 12181 et seq. (and
7 applicable regulations) and Cal. Civ. Code §§ 51 et seq.;

8 3. Preliminary and permanent orders and judgment enjoining Defendants,
9 their agents, employees, successors, and all other persons in active concert or
10 participation with Defendants from violating Title III of the ADA,
11 42 U.S.C. §§ 12181 et seq. and its implementing regulations, and Cal. Civ. Code
12 §§ 51 et seq.; and requiring Defendants to undertake remedial measures to mitigate
13 the effects of Defendants’ past and ongoing failure to provide full and equal access to
14 persons with disabilities. At a minimum, Plaintiff and the Class Members request
15 that Defendants be enjoined to take the following actions:

16 a. Cease all action against individuals with mobility impairments
17 that have the effect of discrimination on the basis of their disability;

18 b. Ensure that only accessible OTRBs are used in Defendants’
19 transportation services, or otherwise purchase (or require the purchasing of)
20 accessible OTRBs that comply with federal and state disability rights laws;

21 c. Ensure that any new vehicles purchased for Defendants’
22 transportation services are accessible and comply with federal and state disability
23 rights laws;

24 d. Perform immediate inspections of all OTRBs used in Defendants’
25 transportation services to ensure that the vehicles’ accessible features, including
26 wheelchair lifts, are in operative condition;

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- 1 e. Immediately remove from service any OTRBs owned, operated,
2 and/or utilized by Defendants that have accessibility features that are not in operative
3 condition;
- 4 f. Establish a system of regular and frequent mandatory
5 maintenance checks of Defendants' OTRBs to ensure that:
 - 6 i. accessibility features are in operative condition; and
 - 7 ii. personnel are promptly informed of vehicles that have non-
8 operative accessibility features;
- 9 g. Undertake prompt measures to eliminate physical-based, policy-
10 based, or practice-based barriers to make Defendants accessible to individuals with
11 disabilities in compliance with federal and state disability rights laws, including the
12 development of written policies and other guidance documents;
- 13 h. Properly train all personnel to provide access to Defendants'
14 services to individuals with disabilities and to treat such individuals with courtesy
15 and respect in accordance with federal and state disability rights laws;
 - 16 i. Maintain records of all requests for, and the provision of,
17 wheelchair accessible vehicles;
 - 18 j. Ensure that Defendants' drivers are informed in advance of each
19 trip when they will be transporting passengers with disabilities, and in such
20 instances, ensure that drivers conduct adequate pre-trip inspections of vehicles for
21 compliance with all relevant federal and state laws and regulations;
 - 22 k. Submit to inspection by an independent monitor for a specified
23 term, to ensure full and adequate implementation of these remedial measures;
 - 24 l. Correct their advertising that falsely claims to offer their services
25 on an equal basis with customers without disabilities (until such time as monitoring
26 concludes that the statement is reasonably true); and

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1 m. Remain under this Court’s jurisdiction until Defendants fully
2 comply with the orders of this Court, and until there are reasonable assurances that
3 Defendants will continue to comply in the future, absent continuing jurisdiction.

4 4. Award Plaintiff up to treble his actual damages in an amount to be
5 determined by proof, including but not limited to damages under California Civil
6 Code section 52(a) and as otherwise provided by law;

7 5. Award any other damages as may be allowed under the laws set forth
8 above;

9 6. An order awarding Plaintiff’s attorneys’ fees and costs as provided by
10 law; and

11 7. Such other and further relief as the Court may deem just and proper.

12
13
14 Dated: May 14, 2020

Respectfully submitted,

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17 STEPHEN J. NEWMAN
DUSTIN A. LINDEN
GAGANJYOT K. SANDHU

18
19 DISABILITY RIGHTS LEGAL CENTER
CHRISTOPHER H. KNAUF
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20 BRENDAN HAMME

21 By: /s/ Stephen J. Newman
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22
23 Attorneys for Plaintiff
FRANCISCO SERRANO, on behalf of
24 himself and all others similarly situated
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DEMAND FOR JURY TRIAL

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Plaintiff Francisco Serrano and the Class Members demand a jury trial in this action for all claims so triable.

Dated: May 14, 2020

Respectfully submitted,

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FRANCISCO SERRANO, on behalf of
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