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8
9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISON
12

14	_____)	Case No. 20-cv-02954
15	ZACH KARNAZES,)	
16	Plaintiff,)	<i>Civil Rights</i>
17	THE CITY AND COUNTY OF SAN)	COMPLAINT FOR INJUNCTIVE
18	FRANCISCO; SAN FRANCISCO)	RELIEF & DAMAGES: FOR
19	MUNICIPAL TRANSPORTATION)	DISABILITY DISCRIMINATION IN
20	AGENCY; and DOES 1-10, inclusive,)	VIOLATION OF TITLE II OF THE
21	Defendants.)	ADA; THE REHABILITATION ACT
22	_____)	O F 1973 & CALIFORNIA’S CIVIL
23		RIGHTS STATUTES
24		
25		DEMAND FOR JURY TRIAL
26		
27		
28		

1 Plaintiff ZACH KARNAZES complains of Defendants THE CITY AND COUNTY OF
2 SAN FRANCISCO; SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY and
3 DOES 1-10, inclusive, and alleges as follows:

4
5 **PARTIES**

6 1. Plaintiff ZACH KARNAZES (“Plaintiff”) is, and at all times relevant herein was, a
7 qualified individual with a physical “disability” as defined by Department of Justice regulation
8 28 C.F.R. § 36.104 and under California Government Code § 12926. Plaintiff is a resident of San
9 Francisco and typically rides the MUNI buses around 1-2 times per week when his health
10 permits. Plaintiff first experienced permanent physical disabilities in May of 2008 from his hands
11 and arms. Plaintiff had to have multiple surgeries for this. Later in that year Plaintiff began
12 having difficulty walking and had to begin using a cane by 2009. By 2011-2012 Plaintiff could
13 no longer walk even a few city blocks with a cane, and the pain and frustration of trying to get
14 disability seating on buses was a severely challenging issue by this point. Many passengers
15 would not give up their seat to Plaintiff because Plaintiff was in his 20's with a cane and they
16 accused Plaintiff of “faking it.” Sometimes, seniors would outright yell in Plaintiff’s face and
17 swear at him for sitting in the disabled seating on the buses. Around this time, the 14 bus
18 reduced its service to multiple stops which greatly affected Plaintiff. The removal of the
19 Valencia 26 line in late 2009 was also a huge loss for Plaintiff and made traveling with
20 disabilities even harder as buses along Mission street (14 and 49 bus lines) became increasingly
21 packed and unaccommodating to his disabilities.

22 2. Due to his hand and arm disabilities Plaintiff could not use a manual wheelchair going
23 out and had to get a motorized wheelchair which he still uses today. Plaintiff began using a
24 motorized wheelchair to board buses in 2012 and still does so up to this day. Plaintiff is no
25 longer able to walk even a single city block with a cane and must have a wheelchair to travel
26 outside the home at all times. Consequently, Plaintiff requires assistance boarding Defendants’
27 buses as a disabled passenger.

28 3. Plaintiff is informed and believes and based thereon alleges that Defendant CITY AND

1 COUNTY OF SAN FRANCISCO (“CCSF”) is a consolidated city-county and is both a
2 municipal corporation and a county within the State of California.

3 4. Plaintiff is informed and believes and based thereon alleges that Defendant SAN
4 FRANCISCO MUNICIPAL TRANSPORTATION AGENCY (“SFMTA”) is a department of
5 the CCSF within its executive branch. SFMTA is responsible for the management of all ground
6 transportation in San Francisco, including oversight of the Municipal Railway (“MUNI”) public
7 transit, bicycling, paratransit, parking, traffic, walking, and taxis.

8 5. THE CITY AND COUNTY OF SAN FRANCISCO; SAN FRANCISCO MUNICIPAL
9 TRANSPORTATION AGENCY and DOES 1-10, inclusive, (collectively, “Defendants”) were
10 responsible in whole or in part for the condition of the buses and the actions and inactions of the
11 bus operators and is subject to Title II of the Americans with Disabilities Act of 1990, to the
12 requirements of the Rehabilitation Act of 1973, to the requirements of California State law
13 requiring full and equal access to public facilities pursuant to Government Code Section 11135,
14 and to all other legal requirements referred to in this Complaint.

15 6. Defendants DOES 1-10, inclusive, are now, and/or at all times mentioned in this
16 Complaint were, licensed to do business and/or actually doing business in the State of California.
17 Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of
18 DOES 1-10, inclusive, and for that reason, DOES 1-10, inclusive, are sued under such fictitious
19 names. Plaintiff will seek leave of court to amend this Complaint to allege such names and
20 capacities as soon as they are ascertained.

21
22 **JURISDICTION AND VENUE**

23 7. This Court has jurisdiction pursuant to 28 U.S.C. §1331 for violations of the ADA, 42
24 U.S.C. 12101 *et seq.* and the Rehabilitation Act of 1973, 29 U.S.C. § 701 *et seq.* Pursuant to
25 supplemental jurisdiction, attendant and related causes of action, arising from the same facts, are
26 also brought under California law, including but not limited to violations of the Unruh Act, Cal.
27 Civ. Code § 51 *et seq.* and the Disabled Persons Act, Cal. Civ. Code § 54 *et seq.*

28 8. Venue is proper in this Court pursuant to 28 USC 1391(b) and is founded on (1)

1 Plaintiff's information and belief that some or all of the defendants reside in this judicial
2 district; and (2) "a substantial part of the events or omissions giving rise to the claim occurred"
3 in this judicial district.

4 **INTRADISTRICT ASSIGNMENT**

5 9. This case should be assigned to the San Francisco/Oakland intradistrict since Plaintiff's
6 causes of action arose in the County of San Francisco.

7
8 **GOVERNMENT CLAIMS FILED**

9 10. On or about October 7, 2019 Plaintiff timely filed a Tort Claim with CCSF arising out of
10 the May 22, 2019 incident. CCSF rejected this claim on October 31, 2019. On November 26,
11 2019 Plaintiff timely filed a claim with CCSF arising out of the July 24, 2019 incident. CCSF
12 rejected this claim on February 25, 2019. On March 12, 2019 Plaintiff filed a claim with the
13 CCSF arising out of the October 29, 2019; November 3, 2019; November 6, 2019; and January
14 8, 2020 incidents. At the time of filing of this complaint, CCSF has not yet taken any action on
15 this claim.

16 **FACTUAL ALLEGATIONS**

17 11. Plaintiff alleges that Defendants have discriminated and continue to discriminate against
18 him on account of his disability based on the following: (1) SFMTA bus drivers have refused to
19 board Plaintiff simply because he is in a wheelchair (while often letting able-bodied passengers
20 board and disembark); (2) SFMTA bus drivers have told Plaintiff to "catch the next one!"
21 claiming that the bus is too full, without following proper SFMTA MUNI Code published
22 protocol which includes asking other people to move from disabled seating to make it available
23 to Plaintiff; (3) SFMTA bus drivers have failed to ensure that Plaintiff be allowed to board the
24 bus before non-disabled passengers; (4) SFMTA bus drivers have demanded that Plaintiff
25 provide them with his destination before letting him board; (5) SFMTA drivers have mocked,
26 yelled at, and expressed open hostility towards Plaintiff due to his disability needs, sometimes
27 belittling Plaintiff's need to board in a wheelchair; (6) SFMTA drivers have relied on passengers
28 and repeated requests from Plaintiff to lift bus seats to make disability seating available instead

1 of following proper protocols; (7) SFMTA drivers have failed to keep the bus safe and intervene
2 when other passengers have expressed open hostility and swearing at Plaintiff for needing to
3 board in his wheelchair; (8) SFMTA drivers have failed to make physical accommodations to
4 allow Plaintiff to board in his wheelchair, with actions including but not limited to: (a) not
5 pulling the bus close enough to the curb for a ramp to be safely deployed onto the sidewalk and
6 (b) closing bus doors instead of deploying a wheelchair ramp upon request; (9) SFMTA bus
7 drivers have made inaudible requests to passengers to make disability seating available for
8 Plaintiff, without employing the use of the bus PA system or rising from their seat; (10) SFMTA
9 bus drivers have stopped short of pulling into the bus zone in a passive-aggressive tactic to try to
10 not get Plaintiff to board the bus; (11) Defendants have failed to implement an adequate
11 grievance process that would help provide for a prompt and equitable resolution of Plaintiff's
12 complaints; and (12) Defendants have retaliated against Plaintiff for his efforts to resolve the
13 above issues of discrimination.

14 12. On February 23, 2018 Plaintiff was waiting at the intersection of Market St and Van Ness
15 Ave for a bus. When the bus arrived at around 6:00 p.m. A third of the bus was visibly empty,
16 especially in the front. Upon approaching Plaintiff, the bus driver pointed his thumb behind him
17 and said, "catch the next one," suggesting that he might not pick up Plaintiff. The bus driver did
18 not pull all the way to the end of the bus zone where Plaintiff was waiting to board. The bus
19 driver told Plaintiff that the bus was too full. Plaintiff told the bus driver that Plaintiff could tell
20 that there is room. It was only after Plaintiff articulated his right to board and demanded to get on
21 that the bus driver begrudgingly put the ramp down and Plaintiff was able to board. When
22 disembarking at 18th and Mission, Plaintiff asked the bus driver if in the future the bus driver
23 could stop and give Plaintiff the option to board. The bus driver told Plaintiff that wheelchair
24 users always want to get on the bus when it is full.¹ Plaintiff replied to the bus driver that the bus
25 was obviously not too full, as evidenced by Plaintiff being able to get on and off the bus. Plaintiff
26 also asked the bus driver if next time the bus driver could park in a way that would make it easier
27 for Plaintiff to board. The did not acknowledge or respond to Plaintiff's concerns and instead

28 ¹ The surveillance video footage of this portion of the incident was deleted by Defendants.

1 responded with: "I don't like to talk too much."

2 13. On May 31, 2018, around 5:25 p.m. there was a wheelchair user waiting to board the
3 outbound 14 bus at 24th and Missions Street. Plaintiff moved his wheelchair behind another
4 wheelchair user waiting to board the same bus. When the bus pulled up, the bus driver did not let
5 the other wheelchair user or Plaintiff board the bus and drove away. Plaintiff had to wait for 3
6 more buses before he could finally get home.

7 14. On July 2, 2018 Plaintiff stopped his wheelchair in front of the 14 bus going outbound at
8 the bus shelter at 24th and Mission. The bus stopped. The bus driver pulled forward and looked
9 like he was going to drive away so Plaintiff hurried as fast as he could in his wheelchair asking
10 pedestrians to move so he could get to the end of the boarding area where the driver stopped
11 again. The bus driver put the ramp down and started yelling at Plaintiff about how Plaintiff
12 needed to wait in a different part of the loading area for his safety. The bus driver continued to
13 berate Plaintiff like child saying: "You pull up here, don't pull up there!" as if somehow it was
14 Plaintiff's fault that the bus driver stopped the bus in the middle of the bus loading area. The bus
15 driver continued to emphasize "safety" and told Plaintiff that there were nine other buses behind
16 him, insinuating Plaintiff should not have even tried to board this particular bus. When Plaintiff
17 told the bus operator, "I wasn't trying to be unsafe, I was just on the platform like anybody else"
18 the bus driver replied, "two minutes isn't gonna [sic] hurt you." Again, implying that Plaintiff
19 should not have even tried to get on this bus. Plaintiff told the driver that he was making a
20 recording and that, "I don't appreciate your attitude or the way you're treating me." This made
21 the driver much more aggressive, and he began rallying passengers against Plaintiff while
22 continuing to raise his voice. One passenger approached Plaintiff and started to argue with
23 Plaintiff. After driving a little bit, the driver stopped the bus, exited his seat, and went down the
24 aisle to collect witness reports for proof of his "good behavior." The driver seemed very upset
25 that Plaintiff was recording, and that Plaintiff would file a complaint.

26 15. The fact that the driver went out of his way to rally passengers against Plaintiff was both
27 inappropriate and potentially dangerous. Passengers are already usually upset when a wheelchair
28 boards because of the extra time it takes and because they have to move out of the seat

1 sometimes. Pitting passengers against the disabled is potentially dangerous behavior for a driver
2 to be doing. It is not unheard of for vigilantes to physically harm people with disabilities.

3 16. This bus driver's behavior shows inappropriate conduct and discriminatory behavior
4 towards Plaintiff for being in a wheelchair. As Plaintiff said multiple times in the video footage,
5 Plaintiff was simply trying to board the bus just like anybody else and to be treated just like
6 anybody else. Plaintiff feels that wheelchair users should not have to sit there and be
7 reprimanded and yelled at like children because they want to board the bus. Tellingly, in
8 Plaintiff's experience drivers do not say these kinds of things to able-bodied passengers. This
9 kind of intimidation, belittlement, and harassment happens more often than it should.

10 17. The attitude of Defendants towards wheelchair users is often negative. For example,
11 while Plaintiff was riding bus 6633 (49 inbound) on January 17th, 2020 around 12:45pm the bus
12 driver stopped to speak to another SFMTA employee who said, "I had like two wheelchairs, you
13 know, stupid stuff!"

14 18. On July 3, 2018 at approximately 9:45 p.m. at Mission St. and 18th St. Plaintiff attempted
15 to board the 14 bus to head home. The bus driver, however, would not let Plaintiff board the bus
16 and instead directed Plaintiff to take the next bus saying, "Hey buddy, you're gonna [*sic*] have to
17 catch the one behind me..." There were accessible seats available on the bus and the bus driver
18 failed to follow MUNI's own protocol which requires, among other things, asking passengers to
19 yield seats in the securement area for wheelchair users and to ask passengers to yield the forward
20 seats to persons with disabilities.

21 19. On April 7, 2019 around 4:55 pm Plaintiff attempted to board the 14R bus going
22 outbound at 24th and Mission Street. The driver saw Plaintiff and begrudgingly put down the
23 wheelchair ramp in the street. As Plaintiff was on the sidewalk, he could not drive off the ramp-
24 less curb to board. Plaintiff asked the driver if he could back up and put the ramp down on the
25 sidewalk. The bus driver began raising his voice, saying something about the buses not being
26 able to go in reverse. Plaintiff asked the bus driver if he could pull forward a little instead, and let
27 the ramp down for Plaintiff to board. Despite there being plenty of space for the bus, the bus
28 driver said a truck was in the bus stop section blocking the bus from pulling forward. Shortly

1 thereafter, the truck pulled away, leaving the bus driver ample space to pull up and let the ramp
2 down. Plaintiff moved his mobility scooter towards an open area to board. Instead of letting
3 Plaintiff board, without a word, the driver closed the doors and drove away.

4 20. On May 22, 2019 Plaintiff was waiting for a bus to be not too full or not have other
5 wheelchair passengers occupying all of the accessible seats so that he could return home after his
6 appointment. Plaintiff was in a lot of pain and needed to get back into bed to rest and take his
7 medication. Multiple buses passed him while waiting for an outbound bus towards Daly City. In
8 an effort to get home, Plaintiff traveled multiple blocks in his wheelchair to a different
9 intersection where Mission and Van Ness intersect, hoping he would be able to board a 49 bus
10 since he was not able to board the 14 outbound to Daly City due to the aforementioned
11 accessibility issues.

12 21. When a 49 bus, number 6714 arrived, the driver failed to pull all the way up to the curb.
13 Consequently, Plaintiff had to go into the street in his wheelchair in order to try and board the
14 bus. The driver then told Plaintiff that the bus was too full and that there were seniors occupying
15 the accessible seating area. There were, however, no wheelchairs or other physically disabled
16 passengers that Plaintiff could see that were occupying the accessible seats. Plaintiff pointed out
17 that the passengers sitting in the accessible seats did not look to be seniors (over the age of 65)
18 nor were they using wheelchairs or other mobility devices. The entire right side of the bus looked
19 like it was unoccupied by seniors. One of the passengers that was occupying the accessible seats
20 stepped off the bus to yell at Plaintiff for holding up the bus. The bus driver did nothing about
21 this.

22 22. While talking to the driver, another passenger came up to the front of the bus and said to
23 Plaintiff: "You stupid motherfucker, get the fuck out of here." The driver did nothing about this
24 either and continued to blame Plaintiff for wanting to board. The driver then took the bus out of
25 commission and said, "I'm calling." Plaintiff asked the driver who he was calling but the bus
26 driver refused to answer that question. While waiting for the driver to let him on the bus, another
27 bus approached which Plaintiff could have taken home. This second bus was unable to pick up
28 Plaintiff because the 49 bus (6714) was blocking the bus stop/passenger loading area while

1 continuing to deny boarding access to Plaintiff. The driver did not wave or communicate with the
2 approaching bus in any way, so it did not stop, and Plaintiff could not get on that bus, either.
3 Plaintiff pointed this out to the driver and the bus driver blamed Plaintiff, clapping his hands in a
4 mocking gesture and said, “kudos to you!” Eventually, the driver of the 49 (6714) bus closed its
5 doors and drove away, without letting Plaintiff board.

6 23. On July 24, 2019, at approximately 8:20 p.m. Plaintiff was waiting for a 14 or 49 MUNI
7 bus to pick him up so he could go home. Plaintiff was waiting in the designated wheelchair
8 boarding area at the intersection of 16th and Mission Street in San Francisco. Plaintiff saw bus
9 7280 (14 Outbound to Daly City) bus approach and he positioned his motorized wheelchair to try
10 to board, however the bus driver did not pull all the way into the wheelchair boarding area.
11 Instead, the driver stopped short, requiring Plaintiff to move his motorized wheelchair as quickly
12 as he could to try to engage the driver to board. The driver immediately opened his doors, even
13 though Plaintiff was struggling to get to them before other passengers. As soon as the driver
14 opened the doors for boarding, other passengers began to board ahead of Plaintiff, while Plaintiff
15 rushed over as fast as he could in his motorized wheelchair and asked, “can you let the
16 wheelchair on? Hi, can you let the wheelchair on please?” The driver did not assist Plaintiff in in
17 his request to board first. Plaintiff notified the driver, “the wheelchair is supposed to go on first.”
18 The driver responded, “I know, but I got elderly people, I got disabled people, and it's really
19 crowded.” Followed by, “y'know [*sic*] what? Call 311 because there should be another bus in
20 front of me.” The driver then said, “sorry,” closed the doors, and drove away.

21 24. On October 29, 2019, Plaintiff was waiting for a 14 or 49 bus to pick him up so he could
22 go home. Plaintiff was waiting in the designated wheelchair boarding area at the intersection of
23 16th and Mission Street in San Francisco. At around 5:30 p.m. Plaintiff saw bus 6650 (49
24 outbound) approach and Plaintiff positioned his motorized wheelchair to try to board. The driver
25 stopped the bus, the bus driver, however, would not deploy the ramp. Instead, the bus driver
26 asked Plaintiff where Plaintiff was headed. The Plaintiff told the bus driver that he was headed to
27 “Highland.” The driver stepped out of his seat and onto the undeployed ramp. Plaintiff asked,
28 “can I just get on first?” since he was seeing other passengers boarding and was worried he

1 might not have room to board soon. The driver responded: “well, which stop are you getting off
2 at?” Plaintiff told the driver again that he was getting off at “Highland.” The driver gave Plaintiff
3 a disapproving look and continued to stand on the undeployed ramp. “Can I please get on first
4 before the bus gets too full?” Plaintiff asked. “I am getting off at Highland avenue” the Plaintiff
5 said once again, this time raising his voice. The driver continued to stand on the undeployed
6 ramp until eventually saying, “Highland!” and finally allowed Plaintiff to board.

7 25. On November 3, 2019 Plaintiff was waiting for a 14 or 49 bus to pick him up so that he
8 could go home. Plaintiff was waiting in the designated wheelchair boarding area at the
9 intersection of Highland and Mission Avenue in San Francisco. Plaintiff saw bus 7249 (14
10 inbound) bus approach at around 5:40 pm and moved his motorized wheelchair to try board. The
11 bus driver stopped the bus but did not pull all the way up to the curb and would not immediately
12 put down the ramp. Plaintiff saw the bus display mention something about asking the driver for
13 the destination. Plaintiff also saw other passengers board. The following conversation transpired:

14 bus driver: “Going out of service.”

15 Plaintiff: “Where”

16 bus driver: “26th Street”

17 Plaintiff: “...Yeah, I'd like to get on.”

18 bus driver: (in an annoyed tone) “There is one right behind me.”

19 Plaintiff: “I know, but I'd like a chance to get on, too.”

20 Plaintiff: (after boarding) “It's getting cold out there, you know.”

21 “Would you be able to lift the seat for me?”

22 [A customer lifts the seat up]

23 26. At the end of the bus ride, Plaintiff tried to engage with the driver just to ask him if he
24 could pick up the Plaintiff next time, hoping that the bus driver understood the issue and Plaintiff
25 would therefore not need to file a complaint.

26 Plaintiff: “I would appreciate if you would just ask me if I want to get on the bus,
27 instead of just closing the doors”

28 driver: “All right, have a nice night sir--there was a bus behind me”

1 Plaintiff: "I'm just saying there's always a bus behind you--"

2 driver: "I have to go sir I'm on a timed schedule, I ain't [*sic*] got no time to talk!"

3 27. The driver continued to interrupt and raised his voice over Plaintiff as Plaintiff tried to
4 talk to the bus driver while disembarking. After Plaintiff exited the bus, the bus driver muttered
5 something about Plaintiff "trying to be a smart ass."

6 28. On November 6, 2019 Plaintiff was waiting for the 14 or 49 bus to pick him up to go
7 home. Plaintiff was waiting in the designated wheelchair boarding area at the intersection of Van
8 Ness and McCallister street in San Francisco. At around 5:20 pm Plaintiff saw bus 6729 (49
9 outbound) approach and Plaintiff moved his motorized wheelchair to try to board. The bus driver
10 stopped the bus; however, he did not put down the ramp. When Plaintiff moved his wheelchair
11 up to the bus, the following conversation took place:

12 bus driver: "There's another 49"

13 Plaintiff: "Can you ask if people would be willing to make space"

14 driver: "There's another 49 bus behind me, about two blocks or three blocks
15 away..."

16 29. The driver then said something about "Let me call it in for you, okay?" closed his doors,
17 and drove away.

18 30. On January 8, 2020, Plaintiff was waiting for a 14 or 49 bus to pick him up so he could
19 go home. Plaintiff was waiting in the designated wheelchair boarding area at the intersection of
20 Mission and 9th Street in San Francisco. At around 10:00 pm Plaintiff saw bus 5739 (14
21 outbound) approach and Plaintiff moved his motorized wheelchair to try to board. The driver
22 stopped the bus, however the bus driver did not pull all the way to the curb or put down the
23 ramp. When Plaintiff moved his wheelchair up to the bus the following conversation occurred:

24 [the bus doors open to let out able-bodied passengers]

25 Plaintiff: "Hi, I would like to get on the bus, please."

26 [Multiple passengers begin exiting and boarding the bus]

27 bus driver: "You're in the wheelchair, catch the next bus "

28 Plaintiff: "could you please put down the ramp and ask people to move?"

1 bus driver: [interrupting] “I don't have enough room here.”

2 Plaintiff: “you didn't even pull to the curb all the way...”

3 bus driver: “another bus be on its way, sorry about that.”

4 The driver then closed the bus doors and drove off.

5 31. Based on the facts plead above, Defendants failed and refuse to implement and enforce
6 policies and procedures as required by the ADA including but not limited to 49 C.F.R., Part 37,
7 Subpart G §37.173.

8 32. Defendants provide a grievance process purportedly meant to resolve accessibility
9 problems that disabled passengers such as Plaintiff may have while utilizing Defendants’ buses.
10 This grievance process, however, has failed to provide for the prompt and equitable resolution of
11 Plaintiff’s complaints.

12 33. Plaintiff first began to utilize the grievance process in 2018. The grievance process
13 focuses solely on driver discipline, rather than solving accessibility issues with MUNI buses.

14 34. Defendants do not publish in any easy to access location: (1) the rules for their grievance
15 process; or (2) the data retention policy of public bus video footage which may capture an
16 alleged ADA violation. Plaintiff had to engage in lengthy and difficult public records requests
17 over months of correspondence with Defendants to obtain this privately kept information.²

18 35. Many SFMTA buses have no posted notices for the availability of a Title II grievance
19 procedure.

20 36. The arduous grievance process can sometimes take months to get a hearing scheduled. By
21 way of example, Plaintiff is required to call a general complaint hotline for the City and County
22 of San Francisco or type up a complaint via a general online Feedback complaint form, which is
23 not easy to access. The online form is difficult for Plaintiff to fill out due to his disabilities and
24 Plaintiff has experienced ongoing difficulties with the hotline.

25 37. The operators at the general complaint hotline appear to have no specific training
26 pertaining to disability access with MUNI buses. On multiple occasions when Plaintiff called to
27

28 ² Some of the public records have been published on Plaintiff’s website: <https://zkarnazes.wixsite.com/access/muni-for-all>

1 register a grievance, hotline operators failed to inform Plaintiff that he had the right to an ADA
2 hearing. Furthermore, if the call drops (which has happened to Plaintiff while riding the bus),
3 Plaintiff has to restart this process all over again, often times with a different operator and is
4 refused access to the operator that handled the original call.

5 38. This makes the grievance process all that more complicated. Accordingly, the only way
6 that Plaintiff can be sure to successfully begin the grievance process is through the cumbersome
7 online complaint form. Plaintiff had to dig around the SF311.org website and ask for help before
8 eventually finding that ADA grievance processes are not listed, but there is instead an option to
9 “open a new request” to give “Muni Feedback.” The form only let Plaintiff select the option for
10 “discourteous driver” instead of an alleged ADA/Title II violation. The form also defaulted to
11 “No” for letting SFMTA contact Plaintiff.

12 39. The online form generates a reply thanking plaintiff for his “SFMTA/MUNI Feedback”
13 which originally misled Plaintiff about his right to a process and that a grievance hearing would
14 be scheduled.

15 40. At the completion of filing via the online form, Plaintiff is given a tracking number. The
16 tracking number provided is not the actual case number for the grievance; it is passed on to
17 another department. The complaint is subsequently given a new case number and sent to
18 “SFMTA Customer Service,” who appears to have little or no training pertaining to disability
19 access with MUNI buses and reasonable disability accommodations. Defendants have neglected
20 to follow-up with the reference number, requiring Plaintiff to call or email again to engage in a
21 grievance process.

22 41. Defendants have failed to adequately provide a grievance process by exhibiting the
23 following, but not limited to: (1) failing to respond or follow up with Plaintiff’s grievance
24 request(s) for weeks or months (2) ignoring, denying, or delaying responses to reasonable
25 disability accommodations; (3) frequently renaming email subjects and rotating grievance
26 responses among staff to cause unnecessary confusion for Plaintiff; (4) mishandled ADA
27 accessibility questions and the grievance process generally; and (5) responding with “Social
28 Media Coordinator” staff and “SFMTA Customer Service” staff instead of responding through

1 the assigned ADA coordinator to answer disability-related questions and concerns posed by
2 Plaintiff.

3 42. On multiple occasions Defendants have outright refused Plaintiff to access the ADA
4 hearing process and has referred to the process as a “courtesy”³, instead of a legally required
5 process under Title II. At the first hearing, Plaintiff was not able to access the 3rd floor
6 bathroom stall and close the door. Plaintiff had to make a video of this access issue and file a
7 separate complaint to be able to access the bathroom during future hearings. On another
8 occasion in a notice dated July 20th, 2018, Defendants provided Plaintiff with the incorrect room
9 and floor number for the grievance hearing. Plaintiff waited in the 6th floor lobby for some time
10 before learning faulty information was provided. This also caused the hearing to be delayed as a
11 disabled witness supporting Plaintiff struggled to find the correct hearing room.

12 43. Defendants meanwhile, have strict language in their hearing notification that states, “If
13 you fail to appear at the hearing or are more than 15 minutes late, the hearing request will be
14 closed, and we will not reschedule the hearing.” and “if you fail to attend your hearing, your
15 request for a hearing will be dropped” without any notice about the right to attend remotely via
16 telephone if needed as a disability accommodation. The hearing notice also requires that
17 Plaintiff “provide at least five days’ notice for other ADA needs, such as sign language
18 interpreters or Braille documents.”

19 44. The ADA grievance hearing is presided over by a hearing officer who is employed by
20 SFMTA and who, to no surprise, has a clear bias. Such bias is exhibited, but is not limited to: (1)
21 efforts to confuse Plaintiff rather than attempting to objectively assess the facts of the grievance;
22 (2) efforts to coach a bus drivers response or outright speak for the bus driver; (3) efforts to
23 interrupt and intimidate Plaintiff; (4) efforts to prevent the grievance filed by Plaintiff to be read
24 in full; (5) efforts to deny viewing of Plaintiff’s video evidence; and (6) efforts to prevent any
25 recording of the hearing for any reason. Defendants maintain that these grievance hearings are
26 private and do not need to be recorded for the public record.

27 _____
28 ³ In an email dated Wed, Nov 13, 2019, Defendants responded to Plaintiff: “As a courtesy, we will honor your
request for a Neutral Accessibility Hearing.”

1 45. There is also no remedy at the end of the lengthy grievance process. There is also no
2 appeals process. If an outcome is in Plaintiff's favor, a 1-2 page finding is given which may or
3 may not result in disciplining the SFMTA bus driver. This finding includes no mention of any
4 change in driver training, any change in policies and procedures, or any new efforts on
5 Defendants' part to improve compliance with Title II. One such finding was not signed or dated
6 until Plaintiff submitted a specific written request for this.

7 46. Lastly, Defendants have failed to retain public bus video surveillance records for some
8 of the alleged incidents included above. In at least one case, Defendants have deleted part of a
9 video with incriminating evidence. As Plaintiff has engaged with the Defendants' inadequate
10 grievance process, this public video footage has been deleted at an increasing rate. Defendants
11 now maintain that public video footage can be deleted within 72 hours of the alleged incident.
12 After multiple alleged ADA violations, Plaintiff requested public footage from Defendants
13 within ten calendar days, only to be told of the 72-hour policy afterwards, and that the footage
14 Plaintiff requested had already been deleted. In order to retain public records, Plaintiff has had
15 to individually file a public records request each time. This makes the grievance process all the
16 more difficult for Plaintiff.

17 47. Of the video records that are provided to Plaintiff, all are in a proprietary non-standard
18 video format on a Data CD that requires special computer software for playback. Defendants
19 have failed upon repeated requests to provide these public video records in a widely accessible
20 format such as .MP4, .MOV., .MPEG, AVI., or to make them playable on a standard DVD
21 player.

22 48. Of the video records that are recovered and sent to Plaintiff after the filing of a public
23 service request, many will not play on Plaintiff's computers. Plaintiff has attempted with at least
24 three different computers and disc drives, making phone recording of these attempts and sending
25 them to Defendants as proof of his efforts. Plaintiff further sought assistance from a friend who
26 works in IT to bring a laptop over to play the proprietary software from Defendants but was still
27 unsuccessful in securing playback of the proprietary software. At least one video record was sent
28 without the playback software included.

1 49. The above obstacles are among many that make the grievance process all the more
2 difficult for Plaintiff to engage in.

3 50. Plaintiff has spent over one hundred hours engaging in Defendants' grievance process
4 over more than 2 years with no actual beneficial results. Plaintiff has also expended considerable
5 time and energy over the years to request public records from Defendants, which have revealed
6 that hundreds of accessibility related complaints are filed each year pertaining to the MUNI
7 buses.⁴

8 51. Plaintiff attended public meetings such as the SFMTA Multimodal Accessibility
9 Advisory Committee, TRACS, Voices for Public Transit, and others, leaving public comment on
10 the above access issues and alleged violations. Plaintiff has also addressed the SFMTA
11 Executive Board and notified the Mayor's Office on Disability numerous times about alleged
12 access issues. Plaintiff has expended considerable time, energy, and effort to notify Defendants
13 through these meeting bodies of most, if not all, of the allegations being brought in this lawsuit.

14 52. Furthermore, Plaintiff has gone to additional lengths to publish and illustrate an article in
15 the local newspaper⁵, publish public records, as well as provide cell phone recordings⁶ of his bus
16 rides as extended evidence and notification to Defendants of these alleged accessibility
17 problems. Plaintiff has exhausted every means he can conceive of, save a lawsuit, in an effort to
18 gain access to SFMTA services that are granted to able-bodied persons. Because Defendants
19 have failed to address Plaintiff's concerns, provide an adequate grievance process, or remedy the
20 other issues brought forth here, Plaintiff at this stage has no other choice but to seek relief in
21 Court.

22 53. Based on the foregoing, Defendants have failed to adopt a grievance procedure in
23

24 ⁴ By way of example, the following are public records just from 2019 pertaining to the accessibility complaints:
<https://www.docdroid.net/aHevZRZ/cy-2019-passenger-service-reports-ada-yes-pdf>

25 <https://www.docdroid.net/RgdGoBM/cytd-11062019-final-120619-redacted-pdf>

26 <https://www.docdroid.net/2YX2vHu/all-2019-files-redacted-final-5-redacted-pdf>

27 (These records were uploaded by Plaintiff)

28 ⁵ See: <https://www.streetsheet.org/5309/>

⁶ See: <https://youtu.be/M4ftUuXjFjE?list=PLEelAqZVuqxxT3RW6NMn2ligavLmye6vo>

1 accordance with 49 C.F.R., Part 37, Subpart A §37.17.

2
3 **CLAIMS FOR RELIEF**

4 **FIRST CAUSE OF ACTION FOR DISCRIMINATION IN VIOLATION OF THE**
5 **AMERICANS WITH DISABILITIES ACT OF 1990**

6 **(Against all Defendants and each of them)**

7 54. Plaintiff incorporates and re-alleges Paragraphs 1 through 53 of this Complaint.

8 55. Effective January 26, 1992, Plaintiff is entitled to the protections of the “Public Services”
9 provision of Title II of the Americans with Disabilities Act of 1990 (“ADA”). Title II, Subpart A
10 prohibits discrimination by any “public entity,” including any state or local government, as
11 defined by 42 USC Section 12131, section 201 of the ADA.

12 56. Pursuant to 42 USC Section 12132, Section 202 of Title II, no qualified individual with a
13 disability shall, by reason of such disability, be excluded from participation in or be denied the
14 benefits of the services, programs or activities of a public entity, or be subjected to
15 discrimination by any such entity. Plaintiff was at all times relevant herein a qualified individual
16 with a disability as described in this Complaint.

17 57. Defendants failed in their responsibilities under Title II to provide its services, programs
18 and activities in a full and equal manner to disabled persons as described above, including failing
19 to ensure that the public buses are accessible to disabled persons including Plaintiff. As a
20 proximate result of the actions and omissions of Defendants have knowingly and intentionally
21 discriminated against Plaintiff in violation of Title II of the ADA, and of the regulations adopted
22 to implement the ADA.

23 58. Plaintiff alleges that Defendants are violating basic equal access requirements under the
24 ADA and by failing to implement policies and procedures that would prevent discrimination
25 against physically disabled passengers, including Plaintiff. These policies include but are not
26 limited to providing adequate quarterly training to Defendants’ agents and/or employees,
27 including drivers, concerning legal access requirements and explain to their agents/employees
28 consequences for failing to comply with these legal obligations.

1 59. As a result of the aforementioned acts and omissions by Defendants, Plaintiff left feeling
2 like a second-class citizen; was denied the full and equal enjoyment of Defendants' services; and
3 suffered difficulties, physical pain, missed appointments, discomfort, and embarrassment.
4 Plaintiff will seek to supplement this Complaint at the time of trial as to subsequent events,
5 according to proof.

6 60. Plaintiff seeks damages pursuant to Title II of the ADA with regard to his denial of
7 access as alleged above. Plaintiff is informed and believes and thereupon alleges that Defendants
8 had actual and constructive notice prior to the incidents alleged above that the buses were not
9 accessible to disabled persons including Plaintiff. Despite being on notice Defendants failed to
10 correct the access problems as described above. As such, Plaintiff seeks additional damages
11 pursuant to Title II of the ADA.

12 WHEREFORE, Plaintiff requests relief as set forth below.

13
14 **SECOND CAUSE OF ACTION FOR DISCRIMINATION IN VIOLATION OF SECTION**
15 **504 OF THE REHABILITATION ACT**
16 **(Against all Defendants and each of them)**

17 61. Plaintiff incorporates and re-alleges Paragraphs 1 through 60 of this Complaint.

18 62. Defendants are a governmental agency existing under the law of the State of California
19 with responsibility, *inter alia*, for public transportation. Plaintiff is informed and believes and
20 therefore alleges that Defendants receive Federal financial assistance and that part of that
21 financial assistance is used to fund the operations, construction and/or maintenance of the
22 specific public facilities described herein.

23 63. By the actions or inactions of Defendants, Plaintiff was denied and is continued to be
24 denied full and equal access to the services described herein.

25 64. Defendants' failure to provide Plaintiff with full and equal access to the same programs,
26 activities, services, and environment as non-disabled persons, and by otherwise discriminating
27 against Plaintiff constitutes discrimination under the ADA and related state civil rights statutes
28 and is therefore a violation of section 504.

1 WHEREFORE, Plaintiff requests relief as set forth below.

2
3 **THIRD CAUSE OF ACTION FOR DISCRIMINATION IN VIOLATION OF**
4 **CALIFORNIA CIVIL CODE §§54, 54.1 AND 54.3, ET SEQ. (CALIFORNIA DISABLED**
5 **PERSONS ACT)**

6 65. Plaintiff incorporates and re-alleges Paragraphs 1 through 64 of this Complaint.

7 66. Through the acts and omissions described herein above, Defendants are violating
8 California Civil Code § 54.

9 67. Under California Civil Code § 54 (c), a violation of the ADA also constitutes a violation
10 of California Civil Code Section 54 *et seq.*

11 68. Plaintiff is a person with disabilities within the meaning of the California Civil Code §
12 54(b)(1) and California Government Code § 12926(k) and Defendants provide services to the
13 public within the meaning of the California Civil Code § 54(a)(1).

14 69. By failing to provide accommodations and services to physically disabled patrons, as set
15 forth at length elsewhere in this Complaint, Defendants have violated, and continue to violate
16 California Civil Code § 54, by denying customers full and equal access to Defendants' programs,
17 services and activities; and by intentionally prohibiting Plaintiff from utilizing Defendants'
18 services on a full and equal bases with able-bodied passengers solely because Plaintiff is
19 disabled.

20 70. As a direct and proximate result of the aforementioned acts and omissions, Plaintiff has
21 suffered, and continues to suffer difficulty, discomfort, and embarrassment, due to Defendants'
22 failure to address accommodations required by Plaintiff.

23 WHEREFORE, Plaintiff requests relief as set forth below.

24
25 **FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO FULL AND EQUAL**
26 **ACCOMMODATIONS, ADVANTAGES, FACILITIES, PRIVILEGES AND/OR**
27 **SERVICES IN VIOLATION OF CALIFORNIA CIVIL CODE §51, ET SEQ.**
28 **(THE UNRUH CIVIL RIGHTS ACT)**

(Against all Defendants and each of them)

1
2 71. Plaintiff incorporates and re-alleges Paragraphs 1 through 70 of this Complaint.

3 72. Section 51(b) of the California Civil Code, “The Unruh Civil Rights Act,” states the
4 following:

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
9 accommodations, advantages, facilities, privileges, or services in all business
10 establishments of every kind whatsoever.

11 73. The transportation services provided by Defendants to the general public in California is
12 a business establishment within the jurisdiction of the State of California, and as such are
13 obligated to comply with the provisions of the California Unruh Civil Rights Act, California
14 Civil Code §§ 51 et seq.

15 74. Section 52 of the California Civil Code provides that whoever denies, aids or incites a
16 denial, or makes any discrimination or distinction contrary to Section 51 is liable for each and
17 every offense.

18 75. Through the acts and omissions described herein, Defendants have violated California
19 Civil Code § 51., *et seq.*

20 76. Pursuant to California Civil Code § 51(f), a violation of the ADA also constitutes a
21 violation of California Civil Code § 51, *et seq.*

22 77. Defendant’s discriminatory conduct alleged herein includes, *inter alia*, the violation of
23 the rights of persons with disabilities set forth in Title II of the ADA and therefore also violates
24 the Unruh Act. Cal. Civ. Code § 51(f).

25 78. Plaintiff alleges that Defendants conduct was intentional and therefore also an
26 independent violation of the Unruh Act.

27 79. As a direct and proximate result of the aforementioned acts, Plaintiff has suffered, and
28 continues to suffer difficulty, discomfort, and embarrassment due to Defendants’ failure to
address modifications in policies, practices and procedures required by Plaintiff.

80. Due to the continuous nature of Defendants’ discriminatory conduct, which is ongoing,

1 injunctive relief is an appropriate remedy. Moreover, as a result of Defendants' acts and
2 omissions, Plaintiff is suffering irreparable harm, and thus immediate relief is appropriate.
3 Plaintiff is also entitled to reasonable attorneys' fees and costs.

4 WHEREFORE, Plaintiff requests relief as set forth below.

5
6 **FIFTH CAUSE OF ACTION**
7 **VIOLATION OF CALIFORNIA GOVERNMENT CODE § 11135 FOR**
8 **DISCRIMINATION UNDER PROGRAM RECEIVING FINANCIAL ASSISTANCE**
9 **FROM THE STATE OF CALIFORNIA**
10 **(Against all Defendants and each of them)**

11 81. Plaintiff incorporates and re-alleges Paragraphs 1 through 80 of this Complaint.

12 82. Plaintiff is informed and believes and thereupon alleges that the administration,
13 supervision and maintenance of the services offered by Defendants is and was funded in whole
14 or in part by the State of California.

15 83. Defendants have failed to make their programs, services, and activities readily accessible
16 to and useable by disabled persons in violation of California Government Code § 11135 et seq.

17 84. At all times herein mentioned, California Government Code § 11135 provided as follows:

18 (a) No person in the State of California shall, on the basis of race, national
19 origin, ethnic group identification, religion, age, sex, sexual
20 orientation, color, genetic information, or disability, be unlawfully
21 denied full and equal access to the benefits of, or be unlawfully
22 subjected to discrimination under, any program or activity that is
23 conducted, operated, or administered by the state or by any state
24 agency, is funded directly by the state, or receives any financial
25 assistance from the state.

26 (b) With respect to discrimination on the basis of disability, programs and
27 activities subject to subdivision (a) shall meet the protections and
28 prohibitions contained in Section 202 of the federal Americans with
Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules
and regulations adopted in implementation thereof, except that if the
laws of this state prescribe stronger protections and prohibitions, the
programs and activities subject to subdivision (a) shall be subject to
the stronger protections and prohibitions.

85. Plaintiff has no adequate remedy at law, and unless the requested relief is granted,

1 Plaintiff and other disabled persons will suffer irreparable harm in that they will continue to be
2 discriminated against and be denied the benefits of the “programs, services, and activities”
3 offered to the general public. Further, Plaintiff suffered damages, as specified, as the result of the
4 denial of his civil rights on the date(s) alleged above and on continues basis since. Because
5 Plaintiff seeks improvement of access for physically disabled persons, which will benefit a
6 significant portion of the public, Plaintiff seeks attorneys’ fees, litigation expenses and costs
7 pursuant to California Code of Civil Procedure Section 1021.5, as to this claim for relief and as
8 to all claims for relief in this Complaint in which Plaintiff seeks injunctive relief.

9 WHEREFORE, Plaintiff requests relief as set forth below.

10 **SIXTH CAUSE OF ACTION**

11 **RETALIATION AND COERCION IN VIOLATION OF THE ADA 42 USC § 12203**

12 **(Against all Defendants and each of them)**

13
14 86. Plaintiff incorporates the allegations contained in paragraph 1 through 85 of this
15 complaint for this claim.

16 87. At all times relevant to this complaint, the 42 U.S.C. § 12203, provides:

17 No person shall discriminate against any individual because such
18 individual has opposed any act or practice made unlawful by this Act
19 or because such individual made a charge, testified, assisted, or
20 participated in any manner in an investigation, proceeding, or hearing
21 under this Act.

22 [And]

23 It shall be unlawful to coerce, intimidate, threaten, or interfere with
24 any individual in the exercise or enjoyment of, or on account of his or
25 her having exercised or enjoyed, or on account of his or her having
26 aided or encouraged any other individual in the exercise or enjoyment
27 of, any right granted or protected by this Act.

28 88. Based on the aforementioned allegations, Defendants, through their agents, have
retaliated against Plaintiff.

89. Defendants’ conduct is discriminatory, outrageous and tortuous in violation of 42 U.S.C.
§ 12203.

90. Plaintiff is now suffering and will continue to suffer irreparable injury and monetary

1 damages as a result of Defendants' retaliatory practices unless and until the Court grants relief.

2 WHEREFORE, Plaintiff requests relief as set forth below.

3
4 ***PRAYER***

5 Plaintiff prays as follows:

- 6 1. That this Court issue a preliminary and permanent injunction directing Defendants THE
7 CITY AND COUNTY OF SAN FRANCISCO; SAN FRANCISCO MUNICIPAL
8 TRANSPORTATION AGENCY; and DOES 1-10, inclusive, and each of them, to comply with
9 all requirements of Title II of the ADA and Section 504, and the implementing regulations at 28
10 C.F.R. Part 35 and 49 C.F.R. Parts 37 and 38, including but not limited to providing mandatory
11 periodic training to Defendants' agents and/or employees, including drivers, concerning legal
12 access requirements and explain to their agents/employees consequences for failing to comply
13 with these legal obligations; implementing a compliant grievance process including, but not
14 limited to, making the process accessible to Plaintiff, maintaining a recording of the hearing, and
15 a committing to issuing a prompt decision after the hearing. Note: Plaintiff is not invoking § 55
16 of the California Civil Code and is not seeking injunctive relief under the Disabled Persons Act
17 at all;
- 18 2. That this Court award to Plaintiff all appropriate damages, including but not limited to
19 statutory damages, general damages, special damages, and treble damages, in amounts within the
20 jurisdiction of this Court, all according to proof;
- 21 3. That this Court award to Plaintiff all reasonable statutory attorneys' fees, litigation
22 expenses, and costs of this proceeding as provided by law;
- 23 4. That this Court award prejudgment interest pursuant to California Civil Code Section
24 3291; and
- 25 5. For such other, further relief as this Court may deem proper.
- 26
27
28

1 Dated: April 30, 2020

/s/ Irakli Karbelashvili

2 Irakli Karbelashvili, Attorney for Plaintiff
3 ZACH KARNAZES

4 ***DEMAND FOR JURY***

5 Plaintiff hereby demands a jury for all claims for which a jury is permitted.
6
7

8 Dated: April 30, 2020

/s/ Irakli Karbelashvili

9 Irakli Karbelashvili, Attorney for Plaintiff
10 ZACH KARNAZES
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