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18 IN THE UNITED STATES DISTRICT COURT  
19 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
20 SAN FRANCISCO DIVISION

21 SCOTT CRAWFORD,

22 Plaintiff,

23 v.

24 UBER TECHNOLOGIES, INC. and  
RASIER, LLC,

Defendants.

Case No. 3:17-cv-02664-RS

PLAINTIFFS' PROPOSED FINDINGS OF  
FACT AND CONCLUSIONS OF LAW

STEPHAN NAMISNAK and FRANCIS  
FALLS,

Plaintiffs,

v.

UBER TECHNOLOGIES, INC. and  
RASIER, LLC,

Defendants.

Case No. 3:17-cv-06124-RS

PLAINTIFFS' PROPOSED FINDINGS OF  
FACT AND CONCLUSIONS OF LAW

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**PLAINTIFFS’ PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Plaintiffs Stephan Namisnak, Francis Falls, and Dr. Scott Crawford, submit this proposed Findings of Fact and Conclusions of Law in accordance with the Court’s Standing Order for Bench Trials and Federal Rule of Civil Procedure 52(a).

**I. TABLE OF CONTENTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

I. TABLE OF CONTENTS..... 3

II. SUMMARY / BACKGROUND..... 6

III. STANDING..... 9

    A. Legal Standard ..... 9

    B. Finds of Fact Related to Standing..... 9

    C. Conclusions of Law Related to Standing..... 11

IV. PLAINTIFF’S CLAIM FOR FAILURE TO MAKE REASONABLE MODIFICATIONS  
    CLAIM UNDER § 12182(b)(2)..... 14

    A. Legal Standard ..... 14

    B. Finding of Fact Related to Reasonable Modification Claim ..... 16

        i. Plaintiffs' Requests for Reasonable Modification. .... 16

        ii. Uber Could Make UberWAV Available by Removing Restrictions and Creating an  
            Incentive Program. .... 18

        iii. Uber Could Make UberWAV Available Through a Partnership with a Commercial  
            Operator Such as MV Transportation. .... 22

        iv. Uber Could Make UberWAV Available Through a Rental or Leasing Program. 233

        vi. Uber Could Implement a Dispatch Program to Make UberWAV Available by  
            Pooling WAV Resources with Other Transportation Companies. .... 266

        vii. Uber Could Finance UberWAV Through a 3-4 Cent Fee. .... 28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
4

- viii.** Uber Could Use Combination of the Above Methods and Existing Supply to Make UberWAV Available. .... 31
- ix.** Accessibility is fundamentally consistent with the nature of Uber’s business, not a fundamental alteration. .... 32
- x.** Plaintiffs’ Expert Evidence Establishes that the Provision of UberWAV is Reasonable; Uber Has No Experts..... 34
- xi.** The Evidence Shows that Uber Has Not Provided UberWAV in New Orleans and Jackson Due to Lack of Prioritization, Not Infeasibility. .... 39
- C. Conclusions of Law Related to Reasonable Modification Claim..... 43**
  - i.** Plaintiffs Are Qualified Individuals with Disabilities Under the ADA..... 43
  - ii.** Plaintiffs Requested Modification Under the ADA..... 44
  - iii.** The Modification Requested by Mr. Namisnak and Mr. Falls in New Orleans Was Reasonable. .... 46
  - iv.** The Modification Requested by Dr. Crawford in Jackson Was Reasonable..... 53
- V. PLAINTIFFS’ CLAIM FOR IMPERMISSIBLE ELIGIBILITY CRITERIA (“SCREENED-OUT”) UNDER § 12182(b)(1)..... 56**
  - A. Legal Standard ..... 56**
  - B. Findings of Fact Related to Eligibility Criteria Claim..... 57**
  - C. Conclusions of Law Related to Eligibility Criteria Claim..... 59**
- VI. UBER’S AFFIRMATIVE DEFENSES..... 61**
  - A. Legal Standard ..... 61**
  - B. Findings of Fact Concerning Uber’s Affirmative Defenses ..... 62**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

C. Conclusions of Law Related to Uber’s Affirmative Defenses..... 66

VII. REMEDIES..... 67

    A. Legal Standard ..... 66

    B. Decision on Remedies..... 67

CERTIFICATE OF SERVICE ..... 69

1 **II. SUMMARY AND BACKGROUND**

2 1. Uber operates a ride-for-hire service that utilizes a mobile phone app to connect  
3 riders with drivers who have signed up with the app.<sup>1</sup>

4 2. Overall, Uber operates in over 700 cities on six continents.<sup>2</sup> It runs a transportation  
5 system that provides 14 million passenger trips per day, totaling over 10 billion trips over the last  
6 decade.<sup>3</sup>

7 3. Since Uber’s launch in 2010, Uber’s gross income has grown exponentially,  
8 reaching \$50 billion in annual gross bookings in 2018.<sup>4</sup>

9 4. Uber’s basic ride product is UberX, which it presently describes as a “private ride  
10 at an everyday price.”<sup>5</sup>

11 5. But UberX is not Uber’s only product. According to Uber’s CEO, what “began as  
12 ‘tap a button and get a ride’ has become something much more profound: ridesharing and  
13 carpooling; meal delivery and freight; electric bikes and scooters; and self-driving cars and urban  
14 aviation.”<sup>6</sup>

15 6. One of those other products is UberWAV, “a ride product to [Uber’s] riders that  
16 allows for a wheelchair accessible ride.”<sup>7</sup>

17 7. With UberWAV, “[r]iders who use motorized wheelchairs or scooters can in certain  
18 cities request a ride in a wheelchair-accessible vehicle (WAV).”<sup>8</sup>

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23 <sup>1</sup> Dkt. 197 at 2.

24 <sup>2</sup> Ex. PT-1 (Uber’s Apr. 11, 2019 SEC Filing) at 001214.

<sup>3</sup> *Id.* at 001216.

<sup>4</sup> *Id.* at 001325.

<sup>5</sup> Ex. PT-3, (Uber’s Website, “What is UberX”), at 002888, available at [www.uber.com/us/en/ride/uberx](http://www.uber.com/us/en/ride/uberx).

<sup>6</sup> Ex. PT-1, at 001224.

<sup>7</sup> Uber 30(b)(6) Deposition, via Robert Rupp at 21:2-4.

<sup>8</sup> Ex. PT-4, (Website, “What is UberWAV”), available at [www.uber.com/us/en/ride/uberwav/](http://www.uber.com/us/en/ride/uberwav/) (last accessed April 10, 2021).

1 8. UberWAV was first deployed in 2014, and then expanded to twelve U.S. cities and  
2 six countries.<sup>9</sup>

3 9. According to Uber, “UberWAV at its core offers the wheelchair bound population  
4 the same access to new age transportation technology that the rest of the world is benefitting  
5 from.”<sup>10</sup>

6 10. In total, UberWAV has had “[s]uccessful operations in over two dozen cities”<sup>11</sup>  
7 offering hundreds of thousands of rides per year; in 2019, Uber provided 290,000 WAV trips to  
8 53,000 unique WAV riders.<sup>12</sup>

9 11. As of Fall 2019, UberWAV operated in eleven U.S. cities and seven foreign cities,  
10 stretching from San Francisco to Newcastle, Australia.<sup>13</sup>

11 12. In recent years, Uber has provided WAV service primarily through a partnership  
12 with a third-party WAV provider called MV Transportation.<sup>14</sup>

13 13. According to a 2019 analysis commissioned by Uber, with the “introduction of  
14 more WAVs through the partnership with MV Transportation, average wait times for WAVs has  
15 been reduced to 15 minutes or less.”<sup>15</sup>

16 14. Because Plaintiffs use motorized wheelchairs, they can only ride in a WAV.<sup>16</sup>

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21 <sup>9</sup> Ex. PT-5, at 00006939; anticipated testimony of Patel and/or Rupp.

22 <sup>10</sup> Ex. PT-6, at 00011903. The phrase “wheelchair-bound” is a disfavored term because an  
23 individual with mobility limitations is not “bound” to their wheelchair. *See Guidelines for Writing*  
24 *About People With Disabilities*, ADA National Network, available at  
adata.org/factsheet/ADANN-writing. Plaintiffs do not ascribe malice or animus to Uber’s use of  
this phrase; they merely point out the phraseology here for the benefit of the Court and other  
parties.

<sup>11</sup> Ex. PT-6, at 00011903.

<sup>12</sup> *See* Ex. PT-7, (Uber’s “Accessibility Monthly Business Review,” Jan. 22, 2020), at 00012522.

<sup>13</sup> Ex. PT-5, at 00006941.

<sup>14</sup> *See* Ex. PT-8, at 00019378 (listing current cities as of April 2020).

<sup>15</sup> Ex. PT-9 (“Uber Wheelchair Accessible Vehicle (WAV) Study Proposal, April 9, 2019”) at  
008548.

<sup>16</sup> *See, e.g.*, Crawford Dep. at 14:18-22.

1 15. Plaintiffs Namisnak and Falls live in New Orleans, Louisiana.<sup>17</sup> Plaintiff Crawford  
2 lives in Jackson, Mississippi.<sup>18</sup> Each Plaintiff is unable to drive a motor vehicle.<sup>19</sup>

3 16. Defendant Uber Technologies, Inc. is a corporation organized under the laws of the  
4 State of Delaware, with its principal place of business in San Francisco, California.<sup>20</sup>

5 17. Defendant Rasier, LLC is a subsidiary of Uber.<sup>21</sup>

6 18. Together, Defendants Uber Technologies, Inc. and Rasier, LLC are herein referred  
7 to as “Uber.”  
8

9 19. UberWAV is not available in New Orleans or Jackson,<sup>22</sup> and so Plaintiffs have no  
10 way of obtaining a ride in a WAV through Uber in their home cities.

11 20. Not only has Uber failed to make WAVs available in Plaintiffs’ cities, but as  
12 described herein, most WAVs are also explicitly forbidden from participating in Uber in those  
13 cities.<sup>23</sup>

14 21. For the reasons described below, this Court finds that Uber has violated the ADA  
15 for two reasons: first, because it has failed to make the reasonable modifications to its services that  
16 would allow Plaintiffs to participate and to in, and fully and equally enjoy, those services; and  
17 second, because its eligibility criteria for vehicles tend to screen out WAVs, which prevents  
18 Plaintiffs from fully enjoying Uber’s services.  
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23  
24 <sup>17</sup> Dkt. 230, Undisputed Facts at Fact # 3.

<sup>18</sup> *Id.*, Undisputed Facts at Fact # 4.

<sup>19</sup> *Id.*, Undisputed Facts at Fact # 9.

<sup>20</sup> *Id.*, Undisputed Facts at Fact # 1.

<sup>21</sup> *Id.*, Undisputed Facts at Fact # 2.

<sup>22</sup> *Id.*, Undisputed Facts at Fact # 7.

<sup>23</sup> *See* Section II(I), *infra* (“Uber Violated Section 12184 by forbidding WAVs from operating on its platform in New Orleans and Jackson”).



III. STANDING

A. Legal Standard

22. As the party seeking to invoke the federal court’s jurisdiction, Plaintiffs have the burden of demonstrating their standing under Article III of the U.S. Constitution. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992).

23. A plaintiff must demonstrate standing “with the manner and degree of evidence required at the successive stages of the litigation.” *Id.* In a case that proceeds to trial, the “specific facts set forth by the plaintiff to support standing must be supported adequately by the facts adduced at trial.” *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2208 (2021) (internal quotations omitted).

24. To demonstrate Article III standing, Plaintiffs must have suffered “an injury in fact that is concrete, particularized, and actual or imminent”; that injury must have been “likely caused by the defendant”; and it must be likely that judicial relief would redress the injury. *Ramirez*, 141 S. Ct. at 2203.

25. In ADA cases in the Ninth Circuit, injury in fact is established where a plaintiff who is a person with a disability is deterred from attempting to use a service based on their knowledge that said service is inaccessible to people with disabilities. *Namisnak v. Uber Technologies, Inc.*, 971 F.3d 1088, 1092-93 (9th Cir. 2020).

B. Findings of Fact Related to Standing

19. Per stipulation of the parties, Plaintiffs are qualified individuals with disabilities under the ADA.<sup>24</sup>

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<sup>24</sup> Dkt. 190, pp. 20-21, Stipulation 5 (“Plaintiffs are qualified individuals with disabilities within the meaning of Title III of the Americans with Disabilities Act.”).

1 20. All three Plaintiffs' disabilities impact their ability to walk, stand, lift, and care for  
2 themselves.<sup>25</sup>

3 21. The Plaintiffs' conditions require them to use a motorized wheelchair for  
4 mobility.<sup>26</sup>

5 22. Because each Plaintiff uses an electric wheelchair, they require a WAV to travel by  
6 car. (A non-electric wheelchair can often be folded into a typical car's trunk; an electric wheelchair  
7 cannot.)

8 23. If Plaintiffs lived in one of the cities where Uber offers UberWAV, they would be  
9 able to use Uber's services.

10 24. But Plaintiffs live in New Orleans, LA, or Jackson, MS, where Uber does not offer  
11 UberWAV.<sup>27</sup>

12 25. Plaintiff Stephan Namisnak has muscular dystrophy.<sup>28</sup>

13 26. Plaintiff Namisnak would like to use Uber to travel independently throughout New  
14 Orleans without needing to rely on his wife for assistance.<sup>29</sup>

15 27. If Uber's transportation were available to him, Namisnak would use Uber to go to  
16 the grocery store, the airport, and the library across the river.<sup>30</sup>

17 28. Namisnak has not downloaded the Uber app because he knows it does not currently  
18 offer an option to request wheelchair-accessible vehicles.<sup>31</sup>

19 29. If Uber's transportation were available to him, Plaintiff Falls would use Uber to  
20 visit the grocery stores and conduct other daily errands.<sup>32</sup>

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23 <sup>25</sup> See Namisnak Dep. at 14:16-18:5; see Falls Dep. at 11:9-11, 20:8-10 (Falls requires a  
24 caretaker to bathe and dress him, *etc.*).

<sup>26</sup> *Id.* at 14:16-22; Falls Dep. at 11:21-23; Crawford Dep. at 13:11-16.

<sup>27</sup> Dkt. 197 at 2.

<sup>28</sup> Namisnak Dep. Vol. II, at 14:14-15.

<sup>29</sup> *Id.* at 47.

<sup>30</sup> *Id.* at 35-36.

<sup>31</sup> *Id.* at 34:21-25.

<sup>32</sup> Falls Depo. at 50.

1 30. Falls has not downloaded the Uber app because he was told it is not “handicap  
2 accessible.”<sup>33</sup>

3 31. Specifically, Mr. Falls testified that, prior to filing suit, he was made aware that  
4 Uber does not have UberWAV in New Orleans when he was stranded during an outing with  
5 friends.<sup>34</sup> His friends took an Uber home, and because Uber was not wheelchair-accessible, Mr.  
6 Falls had to wheel himself home – and was hit by a car.<sup>35</sup>

7 32. Plaintiff Dr. Crawford has multiple sclerosis.<sup>36</sup>

8 33. If Uber’s transportation were available to him, Dr. Crawford would use Uber to get  
9 to doctor’s appointments and to go out to eat in the evenings with his friends.<sup>37</sup>

10 34. Crawford has not downloaded the Uber app because it is not accessible to motorized  
11 wheelchair users in Jackson, but he would use it if it became accessible.<sup>38</sup>

12 35. All three plaintiffs wish to use Uber because other accessible transportation services  
13 like paratransit must be requested in advance, whereas Uber provides the option of spontaneous,  
14 on-demand transportation.<sup>39</sup>

15 **C. Conclusions of Law Related to Standing**

16 36. Plaintiff Namisnak has suffered an actual, concrete and particularized injury from  
17 his inability to use UberWAV in New Orleans to run errands, visit the library across the river, or  
18 for other reasons.

19 37. Plaintiff Namisnak has suffered an actual, concrete and particularized injury  
20 because his knowledge that UberWav is not available in New Orleans has deterred him from  
21 attempting to download the Uber app and use it to request transportation. *See Namisnak*, 971 F.3d  
22 at 1094 (because Plaintiffs had actual knowledge that Uber did not provide UberWAV in New  
23

24  

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<sup>33</sup> Falls Depo. 47:16-48:6.

<sup>34</sup> *Id.* at 46:16 – 47:6.

<sup>35</sup> *Id.*

<sup>36</sup> Crawford Depo. at 13:9.

<sup>37</sup> *Id.* at 33.

<sup>38</sup> *Id.* at 33:2-9.

<sup>39</sup> Namisnak Depo. 24-25, 28; Falls Depo. 27, 37-38; Crawford Depo. 33.

1 Orleans, “[t]hat barrier to entry makes downloading the Uber App and creating an account a futile  
2 gesture.”)

3 38. Plaintiff Namisnak suffered a concrete, particularized injury when Uber refused to  
4 offer UberWAV in New Orleans in response to his request for a reasonable modification under 42  
5 U.S.C. § 12184(b)(2)(A).

6 39. Plaintiff Namisnak has also demonstrated a real and immediate threat of future  
7 injury to support his claim for injunctive relief because Uber’s discriminatory policies of failing  
8 to offer UberWAV in New Orleans and screening out many WAVs from the Uber platform are  
9 ongoing.<sup>40</sup>

10 40. Plaintiff Falls has suffered an actual, concrete and particularized injury from his  
11 inability to use UberWAV in New Orleans to run errands, go to the grocery store, and for other  
12 reasons.

13 41. Plaintiff Falls has suffered an actual, concrete and particularized injury because his  
14 knowledge that UberWav is not available in New Orleans has deterred him from attempting to  
15 download the Uber app and use it to request transportation.<sup>41</sup>

16 42. Plaintiff Falls suffered a concrete, particularized injury when Uber refused to offer  
17 UberWAV in New Orleans in response to his request for a reasonable modification under 42  
18 U.S.C. § 12184(b)(2)(A).

19 43. Plaintiff Falls has also demonstrated a real and immediate threat of future injury to  
20 support his claim for injunctive relief because Uber’s discriminatory policies of failing to offer  
21 UberWAV in New Orleans and screening out many WAVs from the Uber platform are ongoing.<sup>42</sup>

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<sup>40</sup> See *Chapman v. Pier 1 Imports (U.S.) Inc.*, 631 F.3d 939, 948-49 (9th Cir. 2011) (*en banc*).

<sup>41</sup> See *Namisnak*, 971 F.3d at 1094 (because Plaintiffs had actual knowledge that Uber did not provide UberWAV in New Orleans, “[t]hat barrier to entry makes downloading the Uber App and creating an account a futile gesture.”)

<sup>42</sup> *Chapman v. Pier 1 Imports (U.S.) Inc.*, 631 F.3d 939, 948-49 (9th Cir. 2011) (*en banc*).

1           44. Plaintiff Crawford has suffered an actual, concrete and particularized injury from  
2 his inability to use UberWAV in Jackson to attend doctor’s appointments, go on social outings  
3 with friends, and for other reasons.

4           45. Plaintiff Crawford has suffered an actual, concrete and particularized injury  
5 because his knowledge that UberWav is not available in Jackson has deterred him from attempting  
6 to download the Uber app and use it to request transportation.<sup>43</sup>

7           46. Plaintiff Crawford suffered a concrete, particularized injury when Uber refused to  
8 offer UberWAV in Jackson in response to his request for a reasonable modification under 42  
9 U.S.C. § 12184(b)(2)(A).

10           47. Plaintiff Crawford has also demonstrated a real and immediate threat of future  
11 injury to support his claim for injunctive relief because Uber’s discriminatory policies of failing  
12 to offer UberWAV in Jackson and screening out many WAVs from the Uber platform are  
13 ongoing.<sup>44</sup>

14           48. Plaintiffs’ injuries under § 12184(b)(2)(A) are traceable to Uber because Uber  
15 refused their requests for reasonable modification.

16           49. Plaintiffs’ injuries under § 12184(b)(1) are traceable to Uber because Uber  
17 instituted the bans on vans and similar vehicles, vehicles with after-market seating modifications,  
18 and vehicles with fewer than five factory-installed seats.

19           50. Uber’s bans on vans and similar vehicles, after-market seating modifications and  
20 vehicles with fewer than five factory-installed seats have caused a concrete, particularized injury  
21 to Plaintiffs Namisnak and Falls by depressing the supply of wheelchair-accessible vehicles  
22 available on the Uber platform in New Orleans that would be available to provide rides to  
23 Plaintiffs.  
24

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<sup>43</sup> See *Namisnak*, 971 F.3d at 1094.

<sup>44</sup> *Chapman*, 631 F.3d at 948-49.

1 51. Uber’s bans on vans and similar vehicles, after-market seating modifications and  
2 vehicles with fewer than five factory-installed seats have caused a concrete, particularized injury  
3 to Plaintiff Crawford by depressing the supply of wheelchair-accessible vehicles available on the  
4 Uber platform in Jackson that would be available to provide rides to Plaintiff.

5 52. An injunction requiring Uber to offer the UberWAV option in New Orleans and  
6 Jackson would redress Plaintiffs’ injuries by allowing them to request rides in their home cities in  
7 wheelchair-accessible vehicles.  
8

9 53. An injunction requiring Uber to eliminate the bans on vans and vehicles with after-  
10 market seating modifications would redress Plaintiffs’ injuries by allowing more wheelchair-  
11 accessible vehicles to participate on the Uber platform.

12 54. Even if the Court were to find that injunctive relief under either of Plaintiffs’ two  
13 ADA claims might not afford complete relief without the other, Plaintiffs still possess standing to  
14 pursue each claim independently because the redressability prong of standing is satisfied when a  
15 remedy would provide “much of” but not all of the relief the plaintiff seeks.<sup>45</sup>  
16

17 **IV. PLAINTIFFS’ CLAIM FOR FAILURE TO MAKE REASONABLE**  
18 **MODIFICATIONS UNDER § 12182(b)(2)**

19 **A. Legal Standard**

20 50. Under Title III of the ADA, “[n]o individual shall be discriminated against on the  
21 basis of disability in the full and equal enjoyment of specified public transportation services  
22 provided by a private entity that is primarily engaged in the business of transporting people and  
23 whose operations affect commerce.”<sup>46</sup>  
24

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<sup>45</sup> See *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 152 (2010); *Namisnak v. Uber*, 971 F.3d 1088, 1094 (9th Cir. 2020).<sup>45</sup>

<sup>46</sup> 42 U.S.C. § 12184(a).

1           51.     This Court has already determined that Uber is an entity covered by Title III of the  
2 ADA because it is an entity that is “primarily engaged in the business of transporting people and  
3 whose operations affect commerce.”<sup>47</sup>

4           52.     Here, Plaintiffs bring claims under two subsections of Section 12184: a “reasonable  
5 modification” claim under 42 U.S.C. 12184(b)(2), and a “screened out” claim under 42 U.S.C.  
6 12184(b)(1).

7           53.     Under 42 U.S.C. 12184(b)(2), discrimination is defined to include a covered  
8 entity’s failure to make reasonable modifications.<sup>48</sup>

9           54.     That section provides that “discrimination includes . . . the failure of such entity to  
10 make reasonable modifications consistent with those required under section 12182(b)(2)(A)(ii) of  
11 this title.”

12           55.     The subsection referenced there, 42 U.S.C. 12182(b)(2)(A)(ii), provides that  
13 discrimination includes:  
14

15                   a failure to make reasonable modifications in policies, practices, or procedures,  
16 when such modifications are necessary to afford such goods, services, facilities,  
17 privileges, advantages, or accommodations to individuals with disabilities, unless  
18 the entity can demonstrate that making such modifications would fundamentally  
19 alter the nature of such goods, services, facilities, privileges, advantages, or  
20 accommodations.

21           56.     Whether a proposed modification is reasonable involves a “fact-specific, case-by-  
22 case inquiry that considers, among other factors, the effectiveness of the modification in light of  
23 the nature of the disability in question and the cost to the organization that would implement it.”<sup>49</sup>  
24

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<sup>47</sup> Dkt. 197 at 10-11.

<sup>48</sup> 42 U.S.C. § 12184(b)(2)(A).

<sup>49</sup> *Fortyune v. Am. Multi-Cinema Inc.*, 364 F.3d 1075, 1083 (9th Cir. 2004).

1 57. An accommodation is not reasonable if it imposes undue financial or administrative  
2 burden.<sup>50</sup>

3 58. The burden is on the plaintiff to demonstrate that a modification is reasonable. Once  
4 the plaintiff has done so, the burden shifts to the defendant to demonstrate the modification is  
5 unreasonable in the sense that it would fundamentally alter the nature of such goods, services,  
6 facilities, privileges, advantages, or accommodation.<sup>51</sup>

7 59. A “modification” can be a change to an existing business practice.<sup>52</sup>

8 60. In this case, the Court already determined that requiring Uber to provide UberWAV  
9 service in Plaintiffs’ cities is at least a potential reasonable modification under the ADA. Dkt. 197  
10 at 13, quoting Dkt. 80 (“Uber could very well be required to provide WAV service through some  
11 mechanism in order to comply with the anti-discrimination provisions of Section 12184(b)(2).”).  
12

13 **B. Findings of Fact Related to Reasonable Modification Claim**

14 *i. Plaintiffs’ Requests for Reasonable Modification.*

15 61. In a series of letters, Plaintiffs asked Uber to provide WAV service akin to the  
16 service provided in other cities.<sup>53</sup>

17 62. In the letters, Plaintiffs clearly communicated a desire to use Uber to request and  
18 obtain a ride in an accessible vehicle.<sup>54</sup>

19 63. Specifically, on September 22, 2018, Mr. Falls and Mr. Namisnak, through their  
20 counsel, made a written “Request for Reasonable Modification / Reasonable Accommodation” to  
21 Uber.<sup>55</sup>  
22  
23

24 <sup>50</sup> *Id.*

<sup>51</sup> *Zukle v. Regents of Univ. of California*, 166 F.3d 1041, 1048 (9th Cir. 1999); 42 U.S.C. 12182(b)(2)(a)(ii).

<sup>52</sup> *Wright v. Giuliani*, 230 F.3d 543, 548 (2d Cir. 2000).

<sup>53</sup> Dkt. 197 at 16.

<sup>54</sup> *Id.*

<sup>55</sup> *See* Ex. PT-27, (Request for Reasonable Accommodation, Sep. 22, 2018) at 00796.



1           64. In this correspondence, Plaintiffs explained that they were individuals with  
2 mobility-related disabilities, that they use motorized wheelchairs, and that they would like to use  
3 Uber’s services in New Orleans, Louisiana.<sup>56</sup> Plaintiffs explained that the UberWAV function is  
4 not available in New Orleans, but is available in other locations.<sup>57</sup>

5           65. By and through their letter, Plaintiffs requested that Uber “utilize its resources,  
6 internal knowledge, and business know-how to change its operational policies and provide WAV  
7 service in New Orleans, Louisiana and its surrounding areas.”<sup>58</sup>

8           66. Plaintiffs explained that they expected that Uber would ensure that a fleet of 30-60  
9 WAVs are available in New Orleans.<sup>59</sup>

10           67. Plaintiffs further explained that they cannot tell Uber “how it must change its  
11 internal business practices and operations to provide WAV service[,]” but Plaintiffs explained they  
12 were confident “that Uber can use its resources and problem-solving abilities to bring itself into  
13 compliance with the law without further delay.”<sup>60</sup>

14           68. More than a year after sending the request, on November 13, 2019, Uber denied  
15 Plaintiffs’ requested reasonable modification.<sup>61</sup>

16           69. In denying Plaintiffs’ requested modification, Uber claimed that it “does not  
17 provide vehicle service of any sort[.]”<sup>62</sup> Instead of making Plaintiffs’ requested modifications, the  
18 response letter referred them to five alternative WAV service providers in the New Orleans area.<sup>63</sup>

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24 <sup>56</sup> See *id.* at 00796-97.

<sup>57</sup> See *id.* at 00797-98.

<sup>58</sup> See *id.* at 00798.

<sup>59</sup> See *id.* at 00798-99.

<sup>60</sup> See Ex. PT-27, (Request for Accommodation) at 00799.

<sup>61</sup> See Ex. PT-29, (Letter from Uber’s Counsel) at 00801.

<sup>62</sup> See *id.* at 00803.

<sup>63</sup> See *id.* at 00802-03.

1           70. Likewise, for Dr. Crawford, on October 4, 2018, counsel made a written “Request  
2 for Reasonable Modification / Reasonable Accommodation” to Uber that was almost identical to  
3 the request in the New Orleans case.<sup>64</sup>

4           71. More than a year after sending the request, on May 1, 2020, Uber denied  
5 Dr. Crawford’s requested reasonable modification.<sup>65</sup>

6           72. At trial, Plaintiffs put on evidence of five ways by which Uber could “utilize its  
7 resources, internal knowledge, and business know-how to change its operational policies and  
8 provide WAV service,” as requested in their initial letter: (i) by removing restrictions and creating  
9 an incentive system, (ii) by pursuing a partnership with a third-party commercial operator, (iii) by  
10 establishing a leasing or rental program, such as reinstating the leasing model Uber previously  
11 tried and abandoned; (iv) establishing a dispatch system; or (v) using some combination of the  
12 above methodologies.  
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14           ii. Uber Could Make UberWAV Available by Removing Restrictions and Creating an  
15 Incentive Program.

16           73. Incentive programs are among the tools that Uber uses to create its transportation  
17 service.

18           74. In its registration statement filed with the SEC, Uber explains that it provides an  
19 efficient alternative to personal vehicle ownership and public transportation because it “can choose  
20 to use incentives, such as promotions for [d]rivers and consumers, to attract platform users on both  
21 sides of our network and increase engagement[.]”<sup>66</sup>  
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<sup>64</sup> See Ex. PT-42, (Request for Accommodation) at 002541-2544.

<sup>65</sup> See Ex. PT-28, at 002547.

<sup>66</sup> Dkt. 197 at fn. 10, citing Ex. PT-1 at 001380.

1 75. In some US cities where UberWAV is currently available, Uber has offered drivers  
2 incentives to drive WAVs and provide such a service “on the Uber platform.”<sup>67</sup>

3 76. Such incentives include a sign-up bonus or a reduction in the fee that drivers pay to  
4 Uber. For example, in Philadelphia, Uber offered a flat per-trip incentive for completing a WAV  
5 trip.<sup>68</sup>

6 77. On a per-trip basis, under which the total cost was divided by the total number of  
7 rides in Philadelphia, the estimated cost of running this incentive program was 8 cents per trip.<sup>69</sup>

8 78. In Portland and Chicago, Uber provided a flat per trip subsidy for WAV rides.<sup>70</sup>

9 79. Likewise, Uber personnel created a slide deck dated June 10, 2020, where the  
10 company admitted that “Uber could offer WAV renters a service fee reduction from 25 percent to  
11 1 percent in order to improve driver earnings and WAV rental attractiveness.”<sup>71</sup>

12 80. On page 25 of the slide deck, an Uber employee documented that the average driver  
13 of WAVs would earn equivalent to that of a sedan and, for the purpose of emphasis, the author  
14 noted in bold, red font that “Top 25% would earn 10% more in WAV!”<sup>72</sup>

15 81. One way Uber could provide UberWAV in New Orleans and Jackson is through  
16 incentive programs, as it does in other U.S. cities.

17 82. Uber’s corporate representative admitted that this proposal has not been adopted in  
18 New Orleans.<sup>73</sup>

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24 <sup>67</sup> Patel Dep. on Nov. 20 at 70:24-71:8; 71:23-72:6.

<sup>68</sup> *Id.* at 89:23-90:18.

<sup>69</sup> *Id.* at 91:4-93:13.

<sup>70</sup> See Ex. PT-33 (Feb. 2019 Accessibility Review) at 00008099.

<sup>71</sup> Patel Dep. on Nov. 20 at 111:17-112:22; see also Ex. PT-34, (June 2020 Vehicles Xfn Meeting) at 00005548.

<sup>72</sup> Ex. PT-34, Uber00005548.

<sup>73</sup> Patel Dep. on Nov. 20 at 112:24-113:5.

1 83. Uber has not sent a message to existing drivers offering any sort of promotion or  
2 incentive related to WAVs.<sup>74</sup>

3 84. Uber never actually tried to provide WAV incentives in New Orleans.<sup>75</sup>

4 85. In New Orleans and Jackson, Uber has not “turned on” the UberWAV function on  
5 its application. Uber confirmed that it can do “anything it wants” with its app<sup>76</sup> and, thus, Uber  
6 could turn on the UberWAV function. Without the function turned on, however, individuals who  
7 have a WAV cannot offer UberWAV trips.  
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9 86. As described more fully in Section V, *infra*, Uber actively advertises that vans and  
10 similar vehicles, vehicles with fewer than five seats, and vehicles with after-market seating  
11 modifications are expressly prohibited in New Orleans and Jackson.<sup>77</sup>

12 87. Uber’s 30(b)(6) witness testified that if a “vehicle does not meet Uber’s  
13 requirements it’s not allowed to participate in Uber’s products,”<sup>78</sup> and that Uber knows of “no  
14 exceptions.”<sup>79</sup>  
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16 88. According to Uber’s witness Niraj Patel, “WAVs are typically minivans that have  
17 been modified to have a motorized ramp and modified seating allowing for the placement and  
18 securement of a heavy motorized wheelchair.”<sup>80</sup>

19 89. Thus, Uber’s explicit policy prohibits WAVs from registering, and therefore  
20 artificially suppresses the supply of WAVs that might exist on its platform.  
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23 <sup>74</sup> *Id.* at 181:7-182:5.

24 <sup>75</sup> *Id.* at 178:23-179:19.

<sup>76</sup> *Id.* at 63:13-64:4.

<sup>77</sup> *Infra*, at Section V.

<sup>78</sup> Dkt. 148-5 (30(b)(6) Dep. of Robert Rupp) at 24:20-23. *See also id.* at 51:2-6 (“Q. Okay. And Uber actually uses these requirements. If a vehicle doesn't meet these requirements, they are not allowed to drive for Uber's products, correct? A. That's correct.”)

<sup>79</sup> *Id.* at 24:24-25 (“Q. No exceptions? A. Not to my knowledge.”)

<sup>80</sup> Dkt. 227-2 at ¶ 7.

1           90.     The WAV-banning criteria have the effect of making it harder for Uber to set up  
 2 UberWAV in New Orleans if it wanted to. When discussing the purported difficulty with adding  
 3 UberWAV in New Orleans, Uber’s corporate representative pointed to an email chain from 2017.<sup>81</sup>

4           91.     In this email chain, an Uber employee states that Uber’s efforts to locate “both third  
 5 party partners and some form of organic supply have proven challenging in the past.”<sup>82</sup>

6           92.     In this same email chain, however, an Uber employee outlined that Uber had  
 7 identified, in New Orleans, “~5 PTP drivers who own WAVs[.]”<sup>83</sup>

8           93.     The Uber employee further conceded that Uber originally slated New Orleans to be  
 9 part of a Phase 1 launch of UberWAV, but Uber dropped New Orleans because “[f]inding a local  
 10 partner would take too much leg work as seen by the ~6 months of work required in Toronto to  
 11 sign a deal.”<sup>84</sup>

12           94.     During his corporate deposition, Uber’s representative did not identify any  
 13 subsequent investigatory efforts by Uber in 2018 or 2019 specifically related to the supply of  
 14 WAVs in New Orleans.<sup>85</sup>

15           95.     Thus, Uber could introduce UberWAV in New Orleans and Jackson by (1)  
 16 removing its WAV-banning criteria; and (2) using its incentive programs, such as sign-up bonuses  
 17 and reduced commission.  
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 23 <sup>81</sup> Patel Dep. on Nov. 20, based on *errata*, at 180:4 (“What I am aware of was an email bearing  
 24 bates UBER00005077...”).

<sup>82</sup> See Exhibit PT-35, at 00005077.

<sup>83</sup> See Exhibit PT-35, at 00005080 (the acronym PTP is believed to stand for “peer to peer” or  
 “partner third parties.” Either way, however, it appears that Uber located at least five drivers with  
 WAVs).

<sup>84</sup> See Exhibit PT-35, at 00005079.

<sup>85</sup> Patel Dep. on Nov. 20 at 114:13-115:18 (explaining that he was aware of two evaluations that  
 were performed, one by the “local team” and a second evaluation in 2018-2019 where Uber  
 considered “the commercial operator format”).

1 *iii. Uber Could Make UberWAV Available Through a Partnership with a Commercial*  
2 *Operator Such as MV Transportation.*

3 96. In some cities, Uber makes UberWAV available by contracting with the third-party  
4 owners of WAVs, often through a company called MV Transportation.<sup>86</sup>

5 97. In partnering with MV Transportation, Uber “explore[d] whether a partnership with  
6 a commercial operator could result in bringing WAV supply to the platform in a way that made  
7 the service available to riders reliably.”<sup>87</sup>

8 98. Uber reached an agreement with MV Transportation and service was provided in  
9 seven locations: New York, Los Angeles, San Francisco, Boston, Washington, D.C., Philadelphia,  
10 and Chicago.<sup>88</sup>

11 99. The program was a success: in 2019 it provided 290,000 WAV trips to 53,000  
12 unique WAV riders.<sup>89</sup>

13 100. In regard to UberWAV, Uber concluded that it had “[d]eveloped a standardized  
14 approach to our fleet partnerships to optimize drivers performance and scale our ability to manage  
15 fleets[.]”<sup>90</sup>

16 101. In April of 2018, New Orleans was on a short list of cities where Uber would  
17 expand MV Transit’s provision of WAV service.<sup>91</sup>  
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24 <sup>86</sup> See Ex. PT-8 at 00019378.

<sup>87</sup> Patel Dep. on Nov. 20 at 148:20-149:4.

<sup>88</sup> See Ex. PT-8 at 00019378.

<sup>89</sup> See PT-7, (Jan 2020 Uber Accessibility Review) at 00012522.

<sup>90</sup> See *id.* at 00012523.

<sup>91</sup> See Ex. PT-30 at 0000858-59 (Email dated April 9, 2018 from Kimberly Harvish at Uber to MV Transit employees which states that New Orleans was slated for June/July of 2018).

1           102. Following an in-person meeting, MV Transportation offered to provide Uber with  
2 pricing for seven to ten vehicles for New Orleans.<sup>92</sup> Ultimately, however, Uber decided not to  
3 move forward with the MV Transportation option in New Orleans.

4           103. Uber’s explanation at its deposition was cost – that “the amount that they need to  
5 provide service to make it work for their business doesn’t work for Uber’s business.”<sup>93</sup>

6           104. Uber’s position is that, because of the price increases asked for by MV  
7 Transportation, “Uber is not able to invest in any sort of expansion at this time.”<sup>94</sup>

8           105. Thus, Uber claims that it declined to expand the MV Transportation option to New  
9 Orleans “because of the current state or status of the way the economics check out for both  
10 companies.”<sup>95</sup>

11           106. But as described below, Uber has a range of options that would offset the cost of  
12 UberWAV. Accordingly, Uber could provide UberWAV in New Orleans and Jackson by means  
13 of a third-party partnership like MV Transportation.  
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16 *iv. Uber Could Make UberWAV Available Through a Rental or Leasing Program.*

17           107. Another model that Uber used in the past to provide WAV was through its auto-  
18 leasing subsidiary, Xchange Leasing.<sup>96</sup>

19           108. According to Uber, Through Xchange Leasing, Uber “bought vehicles and then  
20 leased them to Uber’s driver partners.”<sup>97</sup>

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<sup>92</sup> See Ex. PT-31 at 0000789-80.

<sup>93</sup> Patel Dep. on Nov. 20 at 158:17-159:8.

<sup>94</sup> *Id.* at 159:9-160:11.

<sup>95</sup> *Id.* at 158:17-159:8.

<sup>96</sup> *Id.* at 73:11-20; *see also*, Exhibit 63, p. 14330.

<sup>97</sup> *Id.* at 76:23 to 77:4.

1 109. Uber’s Xchange Leasing fleet consisted of approximately 30,000 vehicles and  
2 was worth approximately \$400 million.<sup>98</sup>

3 110. Under that model, Xchange Leasing would pay an auto manufacturer \$43,000.00  
4 and the auto manufacturer would provide a vehicle to Xchange Leasing.<sup>99</sup>

5 111. Uber would lease the WAV to a driver, and subsidize part of the lease.<sup>100</sup> Uber  
6 employees worked up promotions to get the target number of WAVs “on the road” through  
7 Xchange Leasing.<sup>101</sup>

8 112. This arrangement was visually documented, in a 2017 slide deck, where Uber  
9 employees created a chart that summarized how the Xchange Leasing program worked in  
10 Chicago.<sup>102</sup>

11 113. Uber employees identified that the 2017 launch of UberWAV in Philadelphia in  
12 association with Xchange Leasing was “a great example of XCL and Uber working together to  
13 celebrate cities and provide a great service and value to our customers (XCL’s and Uber’s).”<sup>103</sup>

14 114. And shortly before this lawsuit was filed, a “proposal was approved and the plan  
15 is to add an additional 800 WAV vehicles in 2017 and up to approximately 1,000 vehicles by  
16 midyear of 2018 through a combination of flexible leasing through a third party and [Xchange  
17 Leasing].”<sup>104</sup>

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23 <sup>98</sup> *Id.* at 79:17-80:2.

24 <sup>99</sup> *Id.* at 74:11-25; 75:14-24.

<sup>100</sup> *Id.* at 75:6-13.

<sup>101</sup> *See, e.g.*, Ex. PT-36 at 0000490 (“As mentioned in our Uchat, the city team would like to run a promo with the Xchange Leasing LS team. We have a goal to hit 70 WAV Vehicles on the road by June 30th and we need the ACL team’s assistance.”).

<sup>102</sup> *See* Ex. PT-32 at 00014329.

<sup>103</sup> Ex. PT-46, Uber0000273.

<sup>104</sup> Ex. PT-37 at 00005274.



1           115. Specifically with regard to Louisiana, Uber estimated that the state had a  
2 “wheelchair bound market size roughly 53,000,” including 14,000 in the New Orleans  
3 metropolitan area alone.<sup>105</sup>

4           116. But Uber testified that this “did not come to pass” because by “2017, it had  
5 become clear that Xchange Leasing was losing a substantial amount of money on each lease that  
6 it originated. And so the decision was made by Uber to wind down the business of Xchange  
7 Leasing before this expansion was realized.”<sup>106</sup> Uber sold Xchange Leasing.<sup>107</sup>

8           117. There is no reason Uber could not revisit the Xchange Leasing model, with  
9 potential losses set-off by an accessibility fee. (As described *infra*, Uber determined that a 3-4  
10 cent accessibility fee would fully fund UberWAV.)

11           118. Major investments of this kind are not foreign to Uber. For example, Uber  
12 recently announced that it was “committing more than \$800 million in resources to help  
13 hundreds of thousands of drivers in the US, Canada, and Europe transition to battery EVs by  
14 2025.”<sup>108</sup>

15           119. If Uber can help its drivers transition to electric vehicles, it can also help some of  
16 its drivers transition to accessible vehicles – as required by Federal Civil Rights Law.

17           120. And even after Uber shut down Xchange Leasing, it has continued using the  
18 leasing model. In some cities, Uber has recently contracted with Avis under the following  
19 arrangement: (i) Uber makes an upfront payment to Avis to incentivize Avis to purchase WAVs;  
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<sup>105</sup> Ex. PT-39 at 00019312.

<sup>106</sup> Rupp Dep. at 81:15-82:10.

<sup>107</sup> Rupp depo., 78:24-79:6.

<sup>108</sup> See Ex. PT-24 at 002759 (statement of Uber CEO).

1 (ii) Avis acquires WAVs to rent out to individuals; (iii) Uber offers drivers significant incentives  
2 for renting WAVs and using them to provide rides on the Uber Driver App platform.<sup>109</sup>

3 121. Through this solution, Uber would just follow through with its own internally-  
4 approved proposal to add ~1,000 WAVS through a combination of flexible leasing and Xchange  
5 Leasing.<sup>110</sup>

6 vi. Uber Could Implement a Dispatch Program to Make UberWAV Available by Pooling  
7 WAV Resources with Other Transportation Companies

8 122. When obligated to develop a solution to provide accessibility in New York, Uber  
9 led the development of a framework to accommodate wheelchair users.<sup>111</sup>

10 123. That framework was called the “dispatch” model, and allowed for the provision of  
11 WAV rides by sharing WAV resources across various transportation companies.

12 124. Under that model, riders needing a WAV ride could reach out to any of a range of  
13 transportation companies, including Uber, Lyft, Via, Black Car companies, taxi companies, and  
14 limousine companies.<sup>112</sup>

15 125. Those companies would then connect the riders to a central dispatch that would  
16 provide the rider with a WAV ride, using the pooled WAV resources of the various companies  
17 participating.<sup>113</sup>

18 126. Uber estimated that by pooling resources in this way in New York, it would save  
19 approximately \$300 million.<sup>114</sup>

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<sup>109</sup> Dkt. 236 at ¶¶ 73-74.

<sup>110</sup> See Ex. PT-37 at 00005276 (email from Paige Tsai dated November 28, 2016).

<sup>111</sup> See Section IV (x) (“Plaintiffs’ Expert Evidence Establishes that the Provision of UberWAV is Reasonable; Uber Has No Experts”), *infra*.

<sup>112</sup> See PT-43 at UBER00008909, UBER00008911.

<sup>113</sup> *Id.*

<sup>114</sup> PT-43 at UBER00008907.

1 127. Uber then negotiated for, and agreed to, settlement terms under which it was  
2 obligated to provide WAV service, using this dispatch model as a method to make the settlement  
3 terms viable.<sup>115</sup>

4 128. Uber performed very well under the dispatch framework in New York City.<sup>116</sup>

5 129. In a slide discussing whether Uber should proceed with the Central Dispatch  
6 proposal, Uber noted that “Uber possess the combined technical and operational expertise to both  
7 build and manage” the central dispatch.<sup>117</sup>

8 130. In implementing the dispatch model, Uber explicitly noted that it could be scaled  
9 to other markets. It explained that a positive of the dispatch model was: “Scalability: Provides a  
10 scalable way to operationalize WAV in other markets in a contribution neutral / positive way (if  
11 we are able to unlock accessibility funds)”<sup>118</sup>

12 131. However, since September 22, 2018, Uber has not taken any steps to establish a  
13 dispatch model in New Orleans or Jackson.<sup>119</sup>

14 132. In fact, according to Mr. Patel, Uber has not subsequently brought up the idea of a  
15 system like that in any other context.<sup>120</sup>

16 133. Given that Uber was able to voluntarily develop and implement a dispatch  
17 solution in New York, was able to achieve massive cost savings, and performed well under said  
18 program, it is reasonable that Uber could accomplish the same feat in New Orleans and Jackson  
19 using it self-admitted “technical and operational expertise.”  
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<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> PT-43, at Uber00008916.

<sup>118</sup> *Id.*, at Uber00008912.

<sup>119</sup> Patel depo 1, 185:20-186:9.

<sup>120</sup> *Id.*, 185:20-186:9.

134. This conclusion is bolstered by the fact that Uber conceded that the central dispatch model was a “scalable” method for Uber to provide WAV in other markets. Despite this, Uber never investigated whether to provide UberWAV in New Orleans or Jackson via a dispatch model.

135. Even if the full dispatch system were not implemented in New Orleans or Jackson, the fundamental idea behind it – that Uber can provide WAVs more efficiently by sharing WAV resources with other transportation companies – could be implemented in those cities.

vii. Uber Could Finance UberWAV Through a 3-4 Cent Fee.

136. Uber’s primary complaint about each of these UberWAV models is cost. But Uber’s internal analyses showed a way that UberWAV could be funded *without* Uber paying out of pocket. According to Uber, an “Accessibility Fee” of only **3-4 cents** per trip levied on all riders could “**fully fund**” the WAV program.<sup>121</sup>

Attorney Client Privileged and Confidential Information

### Potential WAV Funding Solutions

There are opportunities to fully fund the WAV program through Accessibility Fees or Accessibility Funds.

1	2	3	4
100% Uber Funded	Subsidize with 'Accessibility Fee'	Gain Access to Accessibility Funds	No WAV Program
<ul style="list-style-type: none"> <li>- Invest in uberWAV program to build brand goodwill and minimize regulatory and legal risk exposure</li> </ul>	<ul style="list-style-type: none"> <li>- Fund program costs through an Uber-collected per trip 'Accessibility Fee'</li> <li>- Given program cost estimates and current trip counts, an "Accessibility Fee" of <b>\$0.03 - \$0.04 per trip</b> would <u>fully fund</u> the program</li> <li>- Actual execution needs to be assessed with Legal</li> </ul>	<ul style="list-style-type: none"> <li>- Many local governments / agencies administer Accessibility Funds to support accessible transportation programs</li> <li>- In some cities, we already contribute to gov't-run Accessibility Funds in the form of a regs mandated per trip fee. In Chicago thus far, riders utilizing the Uber App have contributed enough money into the Fund to subsidize the entire existing fleet of WAV Taxis (and we do not see any of these funds)</li> </ul>	<ul style="list-style-type: none"> <li>- Do nothing and bear associated risks</li> </ul>

<sup>121</sup> See Ex. PT-32 (UberWAV Program Overview, June 2017) at 00014333 (emphasis original).

1 **Fig. 1.** Uber identified options to “fully fund” the WAV program, or alternatively  
2 “do nothing and bear associate risks.”<sup>122</sup> Uber chose option four.

3 137. When asked whether Uber has investigated the usage of an accessibility fee in  
4 combination with MV transportation in New Orleans, Uber’s corporate representative admitted it  
5 had not even **considered** it, explaining that “That’s not something that we have gone seriously  
6 down the route of considering such that we certainly wouldn’t have gotten to the point where we  
7 evaluated an accessibility fee and MV Transit in a specific city all at once.”<sup>123</sup>

8 138. Exhibit PT-7 is a slide deck dated January 22, 2020, created by Uber employees,  
9 and is captioned “Accessibility Monthly Business Review.”<sup>124</sup>

10 139. On page 19 of this slide deck, Uber admitted that it was being charged a \$.10 per  
11 trip fee in King County, Seattle and the Uber employees discussed how they were seeking to  
12 submit comments “regarding a proposed rule to provide reimbursement to WAV drivers and  
13 owners.”<sup>125</sup>

14 140. When asked on direct examination as to whether Uber pulled out of King County,  
15 Seattle and was unable to operate in that jurisdiction due to a \$.10 per trip accessibility fee,  
16 Mr. Patel had no recollection of Uber having pulled out of the King County, Seattle market or that  
17 its business was materially impacted in that jurisdiction.<sup>126</sup>

18 141. In Chicago, for example, Uber admitted that “[i]n some cities, we already contribute  
19 to gov’t-run Accessibility Funds in the form of a regs mandated per trip fee. In Chicago thus far,  
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<sup>122</sup> Ex. PT-32 at 00014333; *see also*, Ex. PT-43 at 00008921 (“In some cities (e.g., Chicago), we already contribute to a gov’t-run Accessibility Funds the form of a regs mandated per trip fee” and noting Uber’s collection of \$4.4 million in accessibility fees in Chicago in 2016).

<sup>123</sup> Patel Dep. on Nov. 20 at 168:3-17.

<sup>124</sup> Ex. PT-7 at Uber00012519.

<sup>125</sup> Ex. PT-7 at Uber00012543.

<sup>126</sup> Based on anticipated testimony of Mr. Patel.

1 riders utilizing the Uber App have continued paying enough into the Fund to subsidize the entire  
 2 existing fleet of WAV taxis (and we do not see any of these funds)”<sup>127</sup>

3 142. On the same slide, Uber noted that in Chicago the total accessibility fees in 2016  
 4 were \$4.4 million.<sup>128</sup>

5 143. When asked on direct examination as to whether Uber pulled out of Chicago  
 6 because of the accessibility fee, Uber conceded that it had not pulled out of that market.<sup>129</sup>

7 144. Uber presented no evidence that the accessibility fee in Chicago caused it to  
 8 withdraw from that market.  
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10 145. Uber frequently rolls out other kinds of fees on users, raising hundreds of millions  
 11 of dollars per year.<sup>130</sup>

12 146. Uber takes in \$50 billion in revenue a year.<sup>131</sup> Uber could pay for UberWAV using  
 13 this revenue. Alternatively, Uber could levy and collect a designated “accessibility fee.”

14 147. Uber recently announced that it was “committing more than \$800 million in  
 15 resources to help hundreds of thousands of drivers in the US, Canada, and Europe transition to  
 16 battery EVs by 2025.”  
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18 148. To that end, Uber charges a 50 cent per trip fee when a rider is in a hybrid or electric  
 19 vehicle.<sup>132</sup>  
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 23 <sup>127</sup> PT-32, Uber00014333.

24 <sup>128</sup> PT-32, Uber00014333.

<sup>129</sup> Based on anticipated testimony of Mr. Patel.

<sup>130</sup> Ex. PT-2 (Uber SEC Filing) at 001641 (“During the first quarter of 2020, the Company began charging end-users a fee for services in certain markets. . . . In the first quarter of 2020, the Company recognized total revenue of \$137 million associated with these fees charged to end-users.”)

<sup>131</sup> Ex. PT-1 (Uber SEC Filing) at 001325.

<sup>132</sup> See Ex. PT-24 at 002760 (“In the US and Canada, hybrid and EV drivers will receive an extra \$0.50 directly from the rider on every Uber Green trip completed.”).

1 149. If Uber can charge a 50 cent per trip fee for use of an electric vehicle, Uber can  
2 certainly charge 3-4 cents per trip to comply with the ADA.

3 *viii. Uber Could Use Combination of the Above Methods and Existing Supply to Make*  
4 *UberWAV Available.*

5 150. Plaintiffs' expert, Dr. Cooper, explained in his report that the supply of WAVs  
6 changes and develops over time and that a relationship exists "between nascent demand,  
7 suppressed demand and developing supply."<sup>133</sup>

8 151. As a result, Uber could implement UberWAV via a combination of the above  
9 approaches, perhaps changing over time as the organic driver-owned WAV supply increases in  
10 New Orleans and Jackson.

11 152. Uber might start by directly contracting with MV Transportation or another supplier  
12 to provide WAV rides. In parallel, Uber could remove its WAV-banning criteria and begin its  
13 incentive programs, such as sign-up bonuses and reduced commission.  
14

15 153. Uber could provide these incentives to the "~5 PTP drivers who own WAVs,"<sup>134</sup> in  
16 New Orleans along with the unknown number of prospective drivers who were either unaware of  
17 the opportunity to work as an Uber driver or were actively deterred by Uber's vehicle requirements  
18 barring WAVs.

19 154. Uber could also incentivize the supply of driver-owned WAVs by providing them  
20 through a program like Xchange Leasing.  
21

22 155. As the driver-owned supply of WAVs grows, Uber could likely scale back the third-  
23 party provision through MV Transportation.  
24

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<sup>133</sup> Anticipated testimony of Dr. Cooper (Cooper report), p. 11; *id.* at p. 30 (reliance on just one method "would under-estimate the potential supply available to the company.").

<sup>134</sup> See Exhibit PT-35 (Dkt. 148-25) at 00005080.

1 156. Five initial WAV drivers may not be perfect, but the ADA does not demand  
2 perfection.<sup>135</sup>

3 v. Accessibility is fundamentally consistent with the nature of Uber's business, not a  
4 fundamental alteration.

5 157. According to internal Uber documentation, UberWAV was identified an  
6 "Opportunity" for Uber to "[f]urther deliver on our mission to provide access to reliable  
7 transportation to *everyone*, everywhere."<sup>136</sup>

8 158. In another internal Uber powerpoint, Uber noted that "[a]ccessibility is core to our  
9 business" and that "[i]f the Uber platform is not accessible to people with disabilities, then we are  
10 failing at our most basic task."<sup>137</sup>

11 159. Indeed, in a slide about the various lawsuits concerning Uber, the Uber employees  
12 conceded that "[i]gnoring accessibility comes at reputational costs," where this text was situated  
13 against an image of a despondent man in a wheelchair behind the word "Uber."<sup>138</sup> See Fig. 2:  
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<sup>135</sup> The "regulations implementing the ADA do not contemplate perfect service." *Midgett v. Tri-County Metro. Transp. Dist. of Or.*, 254 F.3d 846, 849 (9th Cir. 2001).

<sup>136</sup> See Ex. PT-32 at 00014326 (emphasis original).

<sup>137</sup> See Ex. PT-38 (Accessibility at Uber) at 00014646.

<sup>138</sup> See Ex. PT-38 at 00014667.



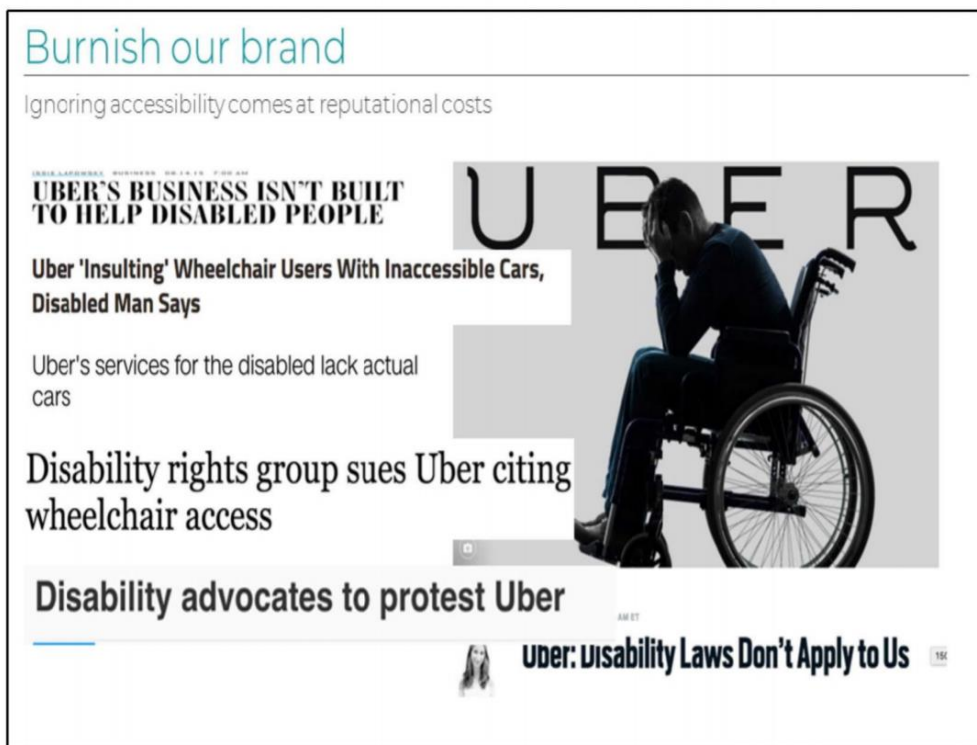


Fig. 2: “Ignoring accessibility comes at reputational cost.”

160. While the takeaway from this slide needs no explanation, an Uber employee wrote it anyways: **“We should be offering an accessible service[.]”**<sup>139</sup>

161. Uber has also identified that providing UberWAV helps Uber avoid potential expenditures of \$180 million/year in training costs.<sup>140</sup>

162. And Uber has documented substantial long-term benefits from UberWAV, describing it as an “opportunity,” and conceding that the value of “a reliable WAV program far outweigh[s] the investment.”<sup>141</sup>

<sup>139</sup> *Id.*, emphasis added.

<sup>140</sup> See Ex. PT-32 (Dkt. 149-22) at 00014326.

<sup>141</sup> See PT-32 at 00014326 and 00014328.

1           163. In a segment on “Why we need to invest in accessibility,” Uber employees admitted  
2 and conceded that “[i]gnoring accessibility will come at steep reputational, regulatory and legal  
3 costs”<sup>142</sup>

4           164. An email chain with subject line WC UberWAV Strike Team was dated January  
5 12, 2017 and was produced by Uber in discovery.<sup>143</sup>

6           165. In this chain, a Ms. Julia Jacobson sent a communication on August 5, stating  
7 “Policy Team ACCESS recommendations: ... \* We recommend the following changes to Uber’s  
8 accessibility products: ... \* WAV: fixed percentage of gross booking dedicated to WAV in cities  
9 completing 100K trips / week”<sup>144</sup>

10           166. Uber also noted that “WAV engenders goodwill, helps develop allies, and extends  
11 our reach”<sup>145</sup>

12  
13 x. Plaintiffs’ Expert Evidence Establishes that the Provision of UberWAV is Reasonable;  
14 Uber Has No Experts.

15           167. Plaintiffs proffered the testimony of two expert witnesses; Dr. James Cooper and  
16 Meera Joshi. Defendants did not proffer any expert witness testimony.

17           168. Dr. James M. Cooper is a transportation professional specialized in ground  
18 transport, taxi and for hire vehicle analysis, accessible and social transportation, operation and  
19 policy development. He is presently the Director of Transport Research Partners, and for more  
20 than a decade was the Head of Taxi Studies at Edinburgh Napier University.

21           169. Dr. Cooper, Plaintiffs’ expert, determined that Uber has demonstrated both  
22 generic and city-specific exercises to recruit WAV drivers and that the company also appears  
23

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<sup>142</sup> Ex. PT-38, Uber00014669.

<sup>143</sup> PT-88, Uber00000591.

<sup>144</sup> PT-88, Uber00000593.

<sup>145</sup> PT-38, Uber00014648

1 willing to promote alternatives to individual drivers owning their own WAVs through its lease  
2 relationships and promoted rental and lease partners.

3 170. According to Dr. Cooper, there are multiple ways through which an entity can  
4 provide WAV service—including compulsory provision, persuasive provision, collaborative  
5 provision, or intervention.

6 171. He explained:

7  
8 Options in supply include the engagement of drivers already owning or able to  
9 rent/lease WAVs to supply trips on a trip-by-trip basis, mirroring the most common  
10 approach to UberX; to contract individual trips to a local taxi or commercial WAV  
11 operator, including the provision of both vehicle and driver on a trip-by-trip basis;  
12 or to engage taxi or commercial WAV supply with driver in a contract basis for an  
13 defined period (wet lease).

14 Other options also exist through the development of strategic partnerships,  
15 including the collaborative provision of agency transit (as a partnership), or other  
16 trip types including NEMT, such as UberHEALTH, alongside UberWAV, both of  
17 which contribute vehicles to a local WAV fleet.

18 172. According to Dr. Cooper, all of the infrastructure and potential supply exist such  
19 that it would be reasonable for Uber to provide UberWAV in both New Orleans and Jackson.

20 173. Specifically, he pointed out that Uber’s internal estimates indicated that only 7-10  
21 WAV vehicles would be needed in New Orleans for the delivery of UberWAV service.

22 174. He opined that “[g]iven the active supply of passenger transport services in both  
23 cities it may reasonably be suggested that the underlying infrastructure is both present and  
24 operational” that would form the basis for UberWAV.

175. He also opined that WAV supply could be assured through the use of partnership  
agreements with a city’s transit department, and in particular in partnerships for the provision of  
paratransit.

176. He pointed out that communications between Uber and the New Orleans  
Paratransit service provider Transdev, suggests that this may be an option for that city; and that a

1 number of Uber documents suggest a corporate view that partnering with transit agencies is a  
2 “makes a lot of sense.”

3 177. Ultimately, Dr. Cooper concluded that “the reasonable approach for Uber would  
4 indeed be to provide UberWAV in both cities.”

5 178. Plaintiff’s second expert, Meera Joshi is a transportation industry and regulation  
6 expert. She currently serves as the Deputy Administrator of the Federal Motor Carrier Safety  
7 Administration in the United States Department of Transportation.  
8

9 179. Prior to that, she was the Chair and CEO of the New York City Taxi and Limousine  
10 Commission (TLC), a 600-person agency that handled WAV regulation and implementation in  
11 New York City.<sup>146</sup> Until early 2020, she was a visiting scholar at the New York University Rudin  
12 Center for Transportation Policy.<sup>147</sup> And she has also served as the Deputy Executive Director of  
13 the New York City Civilian Complaint Review Board and as an Inspector General for the New  
14 York City Department of Investigation.  
15

16 180. In New York City, Ms. Meera Joshi became the chair and CEO of the New York  
17 Taxi and Limousine Commission in April 2014.<sup>148</sup>

18 181. Ms. Joshi is an expert in transportation and transportation related issues. Ms. Joshi  
19 has “intimate knowledge of a large sector of the industry and how it operates in New York and  
20 how it -- and it similarly operates across other large cities and across the world.”<sup>149</sup>  
21

22 182. Ms. Joshi sought to expand the provision of wheelchair accessible vehicle service  
23 for companies such as Uber and Lyft. Ms. Joshi sought to understand the landscape and then take  
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<sup>146</sup> Dkt. 152-1 at 5.

<sup>147</sup> *Id.* at 33.

<sup>148</sup> Joshi depo., 11:24-12:8.

<sup>149</sup> Joshi depo., 16:3-18.

1 corrective action where it needed to be taken.<sup>150</sup> When she first started, their understanding, and  
2 the TLC vehicle records, demonstrated that there were very few wheelchair accessible vehicles in  
3 the entire for-hire vehicle fleet.<sup>151</sup>

4 183. Ms. Joshi testified that her Commission “passed a rule requiring all for-hire vehicle  
5 providers to provide wheelchair accessible service in accordance with service standards.”<sup>152</sup> Under  
6 that rule, every for-hire vehicle company had to either meet a trip mandate (under which companies  
7 had four years to gradually increase WAV service until 25 percent of their trips are dispatched via  
8 WAVs), or a response time mandate (under which mandated WAV response times became shorter  
9 and shorter over a period of years).<sup>153</sup>

11 184. The ultimate goal of the rule was “to provide equivalent service. So someone who  
12 is requesting, say, Uber or Lyft and doesn't need a wheelchair is able to get it -- the response time  
13 and rates for that passenger are the same as someone who is requesting a wheelchair accessible  
14 vehicle.”<sup>154</sup>

16 185. In response to the Commission’s rule, Uber and several other companies filed a  
17 lawsuit. The parties settled, and the resulting settlement not only required Uber “to provide  
18 wheelchair accessible service, but it also had additional service requirements making a higher level  
19 of service, a higher level of transparency and adding another year of their obligation to provide  
20 service.”<sup>155</sup> From the time the new requirement went into effect and until the time of Ms. Joshi’s  
21 departure from the TLC, Uber was in compliance with the expanded WAV requirement.  
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<sup>150</sup> Joshi depo., 32:19-25.

<sup>151</sup> *Id.*, 33:1-7.

<sup>152</sup> *Id.*, 34:22-35:5.

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*, 35:6-36:8.

<sup>155</sup> *Id.*, 40:3:40:13.

1           186. From the time the new requirement went into effect and until the time of Ms. Joshi's  
2 departure from the TLC, Uber was in compliance with the expanded WAV requirement.<sup>156</sup>

3           187. Ms. Joshi recalled that companies like Uber "were actively increasing the number  
4 of accessible vehicles that they brought on and actively increasing the number of trips that they  
5 were providing to people that used wheelchairs."<sup>157</sup>

6           188. Ms. Joshi formed the "opinion that they could provide that service for people who  
7 needed wheelchair accessible vehicles. They had a history of -- not just Uber, but Lyft as well and  
8 Via of providing customized service for other needs, car seats, high-end vehicles, shared rides, and  
9 they're clearly sophisticated and had the means to provide wheelchair accessible service as well."  
10

11 <sup>158</sup>

12           189. Uber was able to meet its obligation under the settlement agreement to provide  
13 wheelchair accessible service in New York, and according to Ms. Joshi "I think even exceed some  
14 of the response times. So they -- my understanding is they performed very well under the new  
15 requirement."<sup>159</sup>

16  
17           190. In sum, Ms. Joshi provided expert testimony that Uber was extremely capable of in  
18 taking steps to meet a WAV mandate once it was set -- regardless of what Uber said was feasible  
19 or infeasible prior to the mandate.

20           191. Ms. Joshi's testimony is supported by Uber's actions in other cities. In each of the  
21 cities where Uber provides UberWAV, with the exception of Washington, D.C., either state or  
22 local regulations require or otherwise support Uber and its competitors to ensure some level of  
23 availability of WAV service. *See* NYC TLC Rules § 59B-17; 53 Pa. Stat. and Cons. Stat. Ann. §  
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<sup>156</sup> Joshi depo., 44:24-45:9.

<sup>157</sup> *Id.*, 44:24-45:9.

<sup>158</sup> *Id.*, 47:20-48:14.

<sup>159</sup> *Id.*, 52:1-18.

1 57A11; Chi. Muni Code § 9-115-140; Mass. Gen. Laws Ann. ch. 159A 1/2, § 3(c)(vi); Phoenix  
 2 Muni. Code § 4-68.B-7; Tex. Occ. Code Ann. § 2402.113; Portland City Code § 16.40.290; Cal.  
 3 Pub. Util. Code § 5440.5.<sup>160</sup>

4 192. Thus, where Uber is required by law to provide WAV service, it finds it feasible to  
 5 provide UberWAV to riders.

6 xi. *The Evidence Shows that Uber Has Not Provided UberWAV in New Orleans and Jackson*  
 7 *Due to Lack of Prioritization, Not Infeasibility.*

8 193. As early as June of 2017, Uber identified that leadership alignment was a necessary  
 9 precursor to expansion of UberWAV. Specifically, Uber stated in a June 2017 slide deck  
 10 “Leadership alignment across the organization is needed before proceeding with uberWAV  
 11 program expansion beyond Phase 1 cities.”<sup>161</sup>

12 194. In a slide deck on accessibility, from approximately May of 2017, Uber identified  
 13 several “challenges.” One of these challenges was “Lack of resources: while buy-in is growing, no  
 14 one is dedicated to accessibility on rider, driver, EATS, or web teams.”<sup>162</sup>

15 195. It was also noted that “Accessibility = afterthought: New features are not developed  
 16 with accessibility in mind”.<sup>163</sup>

17 196. In the same slide deck, the Uber employees identified that other companies do not  
 18 have the same issue because of various solutions, including: “Exe mandate: accessibility is **launch-**  
 19 **blocking** and **part of all RFC processes**”<sup>164</sup>  
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<sup>160</sup> Dkt. 236 at ¶ 43.

<sup>161</sup> Ex. PT-32, Uber00014323.

<sup>162</sup> PT-38, at Uber00014659.

<sup>163</sup> PT-38 at Uber00014659.

<sup>164</sup> PT-38, at Uber00014664 (emphasis original).

1           197. Adjacent to this solution was a quote attributed to Facebook that states “We do  
2 regression testing and **if accessibility isn’t working it’s a launch blocker.**”<sup>165</sup>

3           198. To summarize: Uber employees identified in 2017 that, at Uber, accessibility is  
4 equal to an afterthought, but that one solution employed by other companies is to make  
5 accessibility a “launch blocking” priority; *e.g.*, Uber would not launch its products in a new market  
6 unless they are accessible.

7           199. Later on, in the same 2017 slide deck, Uber employees recommended that a  
8 dedicated accessibility team with specific scope of work be established.<sup>166</sup>

9           200. The next year, in 2018, in another slide deck, Uber identified a “problem” as “We  
10 continue to receive criticism from riders, drivers, and prominent disability groups for having a  
11 slow and reactive approach to UberWAV product development, and accessibility issues more  
12 generally, as well as an unequal user experience”<sup>167</sup>

13           201. Uber asked the question: “What are key reasons for this?”<sup>168</sup>

14           202. Uber answered that with four explanations, one of which was “There is no  
15 dedicated accessibility program owners on rider & driver; few informal POCs within product /  
16 eng”  
17

18           203. Another key reason for the failure was “Inefficient internal process to collect,  
19 prioritize, and accessibility product feedback and issues from the community”<sup>169</sup>

20           204. Yet more than two years later, in a slide deck dated February 1 2019, entitled  
21 Accessibility Monthly Business Review, Uber employees noted that Uber leadership decided to  
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<sup>165</sup> PT-38, at Uber00014664 (emphasis original).

<sup>166</sup> PT-38, at Uber00014672

<sup>167</sup> Ex. PT-93, Uber00018866.

<sup>168</sup> *Id.*, Uber00018866.

<sup>169</sup> *Id.*, Uber00018866.



1 do the opposite of the repeated recommendations for the implementation of dedicated accessibility  
2 program ownership.

3 205. Specifically, under the slide Policy Update, Uber employees note that “\* Tech  
4 leadership denied request for dedicated accessibility headcount \* Regrouping to determine path  
5 forward in order to staff for accessibility”<sup>170</sup>

6 206. At the time of his deposition, on December 17, 2020, Mr. David Reich was Uber’s  
7 Director, Head of Transit and had held that position for approximately two years.<sup>171</sup>

8 207. Before that, Mr. Reich was Uber Head of Strategy for approximately one year.<sup>172</sup>

9 208. Therefore, Mr. Reich was Head of Transit from approximately December 2018 to  
10 December 2020, and was Uber’s Head of Strategy from approximately December 2017 to  
11 December 2018.

12 209. As Uber’s Head of Strategy, Mr. Reich’s responsibilities were as follows: “So I was  
13 working with the technology team at Uber to help the team allocate resources. Decided what  
14 projects the technology team would take on, what the strategy would be for how we approached  
15 the market, and how we chose which products to fund and which not to fund.”<sup>173</sup>

16 210. Despite being Uber’s Head of Strategy, and his influential role with regards to  
17 deciding what projects would be taken on, Mr. Reich was never “directly involved” with  
18 UberWAV.<sup>174</sup>

19 211. When asked whether he could recall having, at any point in the last three years,  
20 worked to see if UberWAV could be provided in New Orleans, Mr. Reich answered “no.”<sup>175</sup>

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<sup>170</sup> Ex. PT-33, Uber00008101.

<sup>171</sup> Reich depo., 7:21-8:2.

<sup>172</sup> *Id.*, 8:6-11.

<sup>173</sup> *Id.*, 9:1-12.

<sup>174</sup> *Id.*, 9:13-15.

<sup>175</sup> *Id.*, 31:16-19.

1           212. When asked whether he could recall having, at any point in the last three years,  
2 worked to see if UberWAV could be provided in Jackson, Mr. Reich answered “no.”<sup>176</sup>

3           213. The Court also received testimony from Mr. Brad Rosenthal. Mr. Rosenthal was  
4 Uber’s Director of Strategic Initiatives as of his February 12, 2021 deposition.<sup>177</sup>

5           214. He had held that position for approximately thirteen or fourteen months.<sup>178</sup>

6           215. Therefore, Mr. Rosenthal had been Uber’s Director of Strategic Initiatives since  
7 approximately December of 2019.

8           216. As the Director of Strategic Initiatives, Mr. Rosenthal explained that “I lead and  
9 work on projects that span different departments within the company. I also manage a team of  
10 operations folks within our Chief Legal Officer organization.”<sup>179</sup>

11           217. Mr. Rosenthal’s responsibilities include preparing presentations for Uber’s Board  
12 of Directors.<sup>180</sup>

13           218. Despite his high-level seniority, when asked whether Uber itself decides to turn on  
14 UberWAV Mr. Rosenthal admitted that “I’m not sure about Uber WAV[] and how it works.”<sup>181</sup>

15           219. In fact, Mr. Rosenthal has never been involved with UberWAV.<sup>182</sup>

16           220. These facts suggest that Uber’s failure to provide UberWAV in New Orleans and  
17 Jackson was an issue of not making it a priority, rather than it being infeasible.

18           221. This is bolstered by the Uber employees’ explanation that the failure to follow  
19 through on UberWAV in New Orleans was because it would take “too much leg work.”<sup>183</sup>

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<sup>176</sup> Reich depo., 31:20-21.

<sup>177</sup> Rosenthal depo., 7:13-15.

<sup>178</sup> *Id.*, 7:24-8:1.

<sup>179</sup> *Id.*, 11:16-21.

<sup>180</sup> *Id.*, 12:2-13.

<sup>181</sup> *Id.*, 44:4-12.

<sup>182</sup> *Id.*, 62:18-20.

<sup>183</sup> See Exhibit PT-35, at 00005079.

222. It is bolstered by the fact that Uber did not even consider the usage of an accessibility fee in combination with MV Transportation in New Orleans,<sup>184</sup> and did no investigation for Jackson at all.

**C. Conclusions of Law Related to Reasonable Modification Claim**

*i. Plaintiffs Are Qualified Individuals with Disabilities Under the ADA.*

223. The ADA defines “disability,” in relevant part, as “(A) a physical or mental impairment that substantially limits one or more major life activities of such individual[.]”<sup>185</sup>

224. Major life activities include “caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working”.<sup>186</sup>

225. Per a stipulation of the parties, Plaintiffs are qualified individuals with disabilities under the ADA.<sup>187</sup>

226. Here, Mr. Falls was rendered disabled on December 13, 2004 during a robbery in which he was “shot in the head, throw[n] off a bridge and hit by a train.”<sup>188</sup> He suffers from paralysis and is missing an arm.<sup>189</sup> Mr. Stephan Namisnak has muscular dystrophy,<sup>190</sup> and Dr. Crawford has multiple sclerosis.<sup>191</sup>

227. For all three Plaintiffs, their disabilities impact their ability to walk, stand, lift, and care for themselves.<sup>192</sup>

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<sup>184</sup> Patel Dep. on Nov. 20 at 168:3-17.

<sup>185</sup> 42 U.S.C. § 12102(1).

<sup>186</sup> *Id.* at (2) (emphasis added).

<sup>187</sup> Dkt. 190, pp. 20-21, Stipulation 5 (“Plaintiffs are qualified individuals with disabilities within the meaning of Title III of the Americans with Disabilities Act.”).

<sup>188</sup> Falls Dep. at 11:13-15, 27:9-12.

<sup>189</sup> *Id.* at 11:4, 27:11.

<sup>190</sup> Plaintiff Namisnak Dep. Vol. II at 14:14-15.

<sup>191</sup> Crawford Dep. at 13:9.

<sup>192</sup> *See* Namisnak Dep. at 14:16-18:5; *see* Falls Dep. at 11:9-11, 20:8-10 (Falls requires a caretaker to bathe and dress him, *etc.*).

1 228. The Plaintiffs’ conditions require them to use a motorized wheelchair for  
2 mobility.<sup>193</sup>

3 229. Plaintiffs are qualified individuals with disabilities.

4 *ii. Plaintiffs Requested Modification Under the ADA.*

5 230. The Court concludes that Plaintiffs requested a modification under Title III of the  
6 ADA.

7 231. On September 22, 2018, Mr. Falls and Mr. Namisnak, through their counsel, made  
8 a written request to Uber that it change its operational policies and provide WAV service in New  
9 Orleans, Louisiana and its surrounding areas.<sup>194</sup>

10 232. Uber did not provide the requested modification.

11 233. Likewise, on October 4, 2018, counsel for Dr. Crawford made a written “Request  
12 for Reasonable Modification / Reasonable Accommodation” to Uber pertaining to Jackson,  
13 Mississippi that was almost identical to the request in the New Orleans case.<sup>195</sup>

14 234. More than a year after sending the request, on May 1, 2020, Uber denied  
15 Dr. Crawford’s requested reasonable modification.<sup>196</sup>

16 235. A policy is “a definite course or method of action selected from among alternatives  
17 . . . .”<sup>197</sup> A practice is “the usual way of doing something[.]”<sup>198</sup> And a procedure is “a particular  
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24 <sup>193</sup> Namisnak Dep. at 14:16-22; Falls Dep. at 11:21-23; Crawford Dep. at 13:11-16.

<sup>194</sup> See Ex. PT-27, (Request for Reasonable Accommodation, Sep. 22, 2018)

<sup>195</sup> See Ex. PT-42, (Request for Accommodation) at 002541-2544.

<sup>196</sup> See Ex. PT-28, at 002547.

<sup>197</sup> “Policy.” Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/policy>. Accessed 26 Apr. 2021.

<sup>198</sup> “Practice.” Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/practice>. Accessed 26 Apr. 2021.

1 way of accomplishing something or of acting” or, alternatively, “a traditional or established way  
2 of doing things[.]”<sup>199</sup>

3 236. Uber’s decision not to provide UberWAV in New Orleans and Jackson—even  
4 though it provides UberWAV in other cities—is a course or method of action selected from among  
5 alternatives. It is a practice because it is Uber’s usual way of acting in New Orleans for the last  
6 seven years.<sup>200</sup> And it is a procedure because it is a particular way of acting or “a traditional or  
7 established way of doing things[.]”  
8

9 237. In essence, Plaintiffs are asking that Uber bring the UberWAV practices of other  
10 cities to New Orleans and Jackson. Uber’s refusal to provide UberWAV—in the face of Plaintiffs’  
11 explicit request—is a policy, procedure, or practice.

12 238. Whether Uber provides UberWAV as an modification to Plaintiffs is a “course or  
13 method of action selected from among alternatives,”<sup>201</sup> is a “usual way of acting,” or is a  
14 “traditional or established way of doing things.”  
15

16 239. Uber argues that Plaintiffs’ request would force it to provide different goods or  
17 services. Plaintiffs’ requested modification would not force Uber to provide “different goods or  
18 services.” UberX and UberWAV are the same service: For-hire transportation. Uber charges the  
19 same price for UberX and UberWAV.<sup>202</sup>

20 240. Far from being a different service, Uber employees confirmed that UberWAV is an  
21 “Opportunity” for Uber to “[f]urther deliver on our mission to provide access to reliable  
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24 <sup>199</sup> “Procedure.” Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/procedure>. Accessed 26 Apr. 2021.

<sup>200</sup> See Ex. PT-80, (post by Uber from September of 2014 announcing the arrival of Uber into New Orleans).

<sup>201</sup> Ex. PT-32 (Dkt. 149-22) at 00014333.

<sup>202</sup> Dkt. 156, Defendants’ Motion for Summary Judgment, p. 22 (“... and the rider price for WAV rides matches the price obtained in the UberX marketplaces...”).

1 transportation to *everyone*, everywhere.”<sup>203</sup> Another Uber powerpoint identified that that  
 2 “[a]ccessibility is core to our business” and that “[i]f the Uber platform is not accessible to people  
 3 with disabilities, then we are failing at our most basic task.”<sup>204</sup> Nor can UberWAV be a “different  
 4 line of business” for Uber considering that Uber provides UberWAV in numerous other cities.

5 241. In light of the evidence presented, and considering the law, the Court concludes  
 6 that Plaintiffs requested a modification to Uber’s policy, procedure, or practice.

7  
 8 *iii. The Modification Requested by Mr. Namisnak and Mr. Falls in New Orleans Was Reasonable.*

9 242. Plaintiffs Namisnak and Falls’ requested modification—for Uber to provide  
 10 UberWAV in New Orleans—was reasonable. That is true most obviously because it is already  
 11 something Uber does in other cities.<sup>205</sup> All Plaintiffs are asking Uber to do is to bring an already-  
 12 existing service to their city.

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 14 243. At its core, Plaintiffs are asking Uber to provide in New Orleans that which Uber  
 15 already provides in other cities: UberWAV service.

16 244. At trial, Plaintiffs put on evidence of five ways by which Uber could “utilize its  
 17 resources, internal knowledge, and business know-how to change its operational policies and  
 18 provide WAV service,” as requested in their initial letter: (i) by removing restrictions and creating  
 19 an incentive system, (ii) by pursuing a partnership with a third-party commercial operator, (iii) by  
 20 establishing a leasing or rental program, such as reinstating the leasing model Uber previously  
 21 tried and abandoned; (iv) establishing a dispatch system using shared WAV resources from a range  
 22 of transportation companies; or (v) using some combination of the above methodologies.  
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<sup>203</sup> See Ex. PT-32 (Dkt. 149-22) at 00014326 (emphasis original).

<sup>204</sup> See Ex. PT-38 (Dkt. 150-1) (Accessibility at Uber) at 00014646.

<sup>205</sup> See Ex. PT-8, at 00019378 (listing current cities as of April 2020).

1           245. When this Court evaluates “the effectiveness of the modification,” the “cost to  
2 implement it,” and the positive benefits to Uber and to users with disabilities, it is clear that  
3 UberWAV is a reasonable modification.

4           246. UberWAV is clearly effective, as is evidenced by the findings of Uber’s own study  
5 on UberWAV<sup>206</sup> and Uber’s internal employee communication.<sup>207</sup>

6           247. Uber employees admitted that UberWAV is an “Opportunity” for Uber to “[f]urther  
7 deliver on our mission to provide access to reliable transportation to *everyone*, everywhere.”<sup>208</sup>

8           248. Further, as is set forth above, Uber developed a “plan is to add an additional 800  
9 WAV vehicles in 2017 and up to approximately 1,000 vehicles by midyear of 2018 through a  
10 combination of flexible leasing through a third party and [Xchange Leasing].”<sup>209</sup>

11           249. Before this solution was fully implemented, Uber sold Xchange Leasing<sup>210</sup> and,  
12 thus, the project ended. However, the proposal had already been approved internally at Uber  
13 before the sale of Xchange Leasing.<sup>211</sup> This demonstrates that this solution is reasonable. Of  
14 course, this solution would require upfront expenditure of capital by Uber. Again, however, all of  
15 the expenditure could be offset by an accessibility fee.  
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23 <sup>206</sup> See Ex. PT-5 (Dkt. 148-7) at 6958, 6962, and 6963 (among other metrics, finding that in  
24 Philadelphia the average time to reserve service for UberWAV was 8 minutes vs. 10.6 minutes for  
taxis; UberWAV outperforms on safe driving; UberWAV outperforms on vehicle quality).

<sup>207</sup> See PT-7 (Dkt. 148-9) (Jan 2020 Uber Accessibility Review) at 00012523 (Uber concluding  
that it had “[d]eveloped a standardized approach to our fleet partnerships to optimize drivers  
performance and scale our ability to manage fleets[.]”).

<sup>208</sup> See Ex. PT-32 at 00014326 (emphasis original).

<sup>209</sup> Ex. PT-37 at 00005274.

<sup>210</sup> Rupp depo., 78:24-79:6.

<sup>211</sup> Ex. PT-37 at 00005274.

1           250. Asking Uber to follow through on its own plan, in an area that Uber says is  
2 “central” to its business and fulfills its mission, is reasonable and would not fundamentally alter  
3 the nature of the service provided by Uber.<sup>212</sup>

4           251. A modification need not be costless to be reasonable, but here UberWAV could be  
5 cost neutral, or even profitable.

6           252. The use of an accessibility fee to fund UberWAV was repeatedly recommended by  
7 Uber employees, as is documented by the powerpoint presentations and email chains by Uber  
8 employees offered into evidence by Plaintiffs.

9           253. Uber has determined that a 3-4 cent accessibility fee could “fully fund” UberWAV.  
10 Plaintiffs have proven that Uber has charged below market rates for its transportation. When the  
11 cost per ride is weighed against the revenue that could be generated through an accessibility fee  
12 and at-market fares, the total impact on Uber’s balance sheet would be zero. In fact, there is no  
13 law prohibiting Uber from setting the accessibility fee at a rate higher than the cost of providing  
14 UberWAV. That is to say: If a 3-4 cents accessibility fee would “fully fund” UberWAV, there is  
15 nothing stopping Uber from setting the accessibility fee at 10 cents and making a profit.

16           254. Uber has been obligated to collect service or accessibility fees in other context and  
17 there is no indication that those accessibility fees caused Uber to withdraw from those markets.  
18 Plaintiff presented evidence that Uber has collected accessibility fees in King County, Washington  
19 and in Chicago, Illinois with no adverse effect on Uber’s business.

20           255. Additionally, the reasonableness of using an accessibility fee to fund UberWAV is  
21 evidenced by the fact that Uber implements other fees on its users, such as Uber Green, which is  
22 intended to help Uber drivers transition to electric vehicles.  
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<sup>212</sup> *Fortyune v. Am. Multi-Cinema, Inc.*, 364 F.3d 1075, 1084 (9th Cir. 2004).



1           256. If Uber can help its drivers transition to electric vehicles, Uber can also help some  
2 of its drivers transition to accessible vehicles.

3           257. In fact, the evidence shows that Uber’s failure to provide UberWAV stem not from  
4 unreasonable cost or lack of technical feasibility, but from Uber’s failure to investigate the need,  
5 failure to put in the leg work, and from a failure of leadership.

6           258. As is set forth above, Mr. Patel conceded that Uber has never tried to use incentive  
7 systems in New Orleans and has never sent out communications to potential drivers.

8           259. Uber employees documented that there were five drivers with WAVs in New  
9 Orleans and Uber had New Orleans on a “short list” of cities to obtain WAV coverage through  
10 MV Transportation. In both instances, Uber failed to move forward.

11           260. In fact, an Uber employee wrote that the failure to follow through was because  
12 finding a local partner would take “too much leg work.”<sup>213</sup>

13           261. It is reasonable for Uber to take steps to remove restrictions, such as turning on the  
14 UberWAV function and removing its policy that prohibits vans and vehicles with after-market  
15 seating modifications from participating on its platform.

16           262. The reasonableness through which Uber could provide UberWAV is also evidenced  
17 by the testimony of Plaintiffs’ experts and, tellingly, by Uber’s failure to provide any rebutting  
18 expert testimony.

19           263. The Court concludes that Uber has failed to focus on accessibility, against the  
20 recommendations of its own employees.

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<sup>213</sup> See Exhibit PT-35, at 00005079.

1           264. In 2017 Uber determined that it had an accessibility problem, that at Uber  
2 “Accessibility = afterthought,” and that there was a need for a Leadership alignment. Additionally,  
3 it was noted that there was a need for a dedicated accessibility program or team.

4           265. This need for a renewed dedication to accessibility was identified again by Uber  
5 employees in 2018.

6           266. In 2019, however, Uber employees noted that tech leadership had denied their  
7 request for “dedicated accessibility headcount” and that they were having to regroup “to determine  
8 path forward in order to staff for accessibility[.]”  
9

10           267. In fact, leadership at Uber had a haphazard and patchwork knowledge of  
11 accessibility and UberWAV. Mr. Rosenthal, despite being a high-level employee, Uber Director  
12 of Strategic Initiatives, had no experience with UberWAV.

13           268. Mr. Reich, despite being Uber’s Head of Strategy, and his influential role with  
14 regards to deciding what projects Uber would take on, was never “directly involved” with  
15 UberWAV.<sup>214</sup>  
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17           269. Mr. Patel, the Uber employee most familiar with UberWAV to testify at trial,  
18 conceded that UberWAV was only a small portion of his job at Uber.

19           270. Likewise, Mr. Patel, and Uber more generally, failed to investigate usage of an  
20 accessibility fee as to New Orleans and Jackson. When asked whether Uber has investigated the  
21 usage of an accessibility fee in combination with MV transportation in New Orleans, Uber’s  
22 corporate representative admitted it had not even **considered** it, explaining that “That’s not  
23 something that we have gone seriously down the route of considering such that we certainly  
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<sup>214</sup> Reich depo., 9:13-15.

1 wouldn't have gotten to the point where we evaluated an accessibility fee and MV Transit in a  
2 specific city all at once.”<sup>215</sup>

3 271. The failure to even *consider* this option is galling given that internal Uber  
4 employees have documented that UberWAV offers significant potential financial benefit to Uber.

5 272. In sum, the Court concludes that Uber's failure to provide UberWAV was a result  
6 of Uber's treating accessibility as an afterthought, lack of employee follow through, failure to  
7 investigate reasonable methods known to the company, and failure to implement recommendations  
8 repeatedly advanced by company insiders. These failures were surely compounded by Uber's  
9 conceded lack of a dedicated accessibility team and by the failure of leadership to have meaningful  
10 interaction with, or knowledge of, UberWAV.

11 273. Plaintiffs have shown that when Uber focuses on providing accessibility, it is aptly  
12 up to the task. For example, in New York Uber fought against providing an accessible service. But  
13 Uber later reversed course and agreed to a settlement under which it was obligated to provide  
14 UberWAV. According to Meera Joshi, Uber was able to meet its obligation under the settlement  
15 agreement to provide wheelchair accessible service in New York, and “even exceed some of the  
16 response times.”  
17

18 274. By way of comparison, in a prison ADA case the court recently found that the  
19 entity's failure to follow its own, internal ADA directives and/or policies or failure of those  
20 policies to adequately remedy barriers to access was relevant to the overall determination of the  
21 method-of-administration claim.<sup>216</sup>  
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<sup>215</sup> Patel Dep. on Nov. 20 at 168:3-17.

<sup>216</sup> *Lewis v. Cain*, 15-CV-318, 2021 WL 1219988, at \*50 (M.D. La. Mar. 31, 2021) (citing *Holmes v. Godinez*, 311 F.R.D. 177, 219 (N.D. Ill. 2015) (discussed in context of a method-of-administration claim).

1           275. While the regulation at issue is different, the takeaway is the same: It is not  
2 unreasonable to order an entity to follow through with its own, internal plan to achieve ADA  
3 compliance.

4           276. Having developed and approved a reasonable means of providing accessibility,  
5 Uber cannot escape liability by selling off the internal unit that would have provided Plaintiffs'  
6 required modification.<sup>217</sup>

7           277. Under the ADA, a covered entity “may not ‘in the face of a request for  
8 accommodation, simply sit back passively, offer nothing, and then, in post-termination litigation,  
9 try to knock down every specific accommodation as too burdensome.’ ”<sup>218</sup>

10           278. Uber refers to *Indep. Living Res. Ctr. V. Lyft, Inc.* where Judge Alsup held in a case  
11 against Lyft that a per-WAV-trip costing hundreds of dollars was not reasonable.<sup>219</sup>

12           279. Here, Plaintiffs’ facts are critically different from the facts of *Independent Living*:  
13 (1) there is no indication that Lyft determined that an accessibility fee could “fully fund” the  
14 modification; (2) there is no indication that Lyft identified that providing WAV service was an  
15 “opportunity” to build positive brand sentiment with riders, drivers, and the community, that the  
16 benefits “far outweigh[ed] the investment,” and would help the entity avoid \$180 million/year in  
17 training costs; (3) there was no evidence that Lyft was screening-out WAVs, thus depressing the  
18 available supply of WAVs; and (4) the *Independent Living* plaintiffs did not put on evidence that  
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23 <sup>217</sup> Unlike many other businesses, Uber is uniquely situated to identify which services generate a  
24 high profit margin and which would merely be cost-neutral. One of the Congressional purposes of  
the ADA was to root out and eliminate “isolation and segregation” of individuals with disabilities.  
42 U.S.C. § 12101(a)(2). Uber’s failure to follow through with its approved plans to expand  
UberWAV is the antithesis of Congressional intent in passing the ADA because it further “isolates  
and segregates” individuals with disabilities.

<sup>218</sup> *Hodson v. Alpine Manor, Inc.*, 512 F.Supp.2d 373, 392 (W.D.Pa. 2007) (quoting *Taylor v. Phoenixville Sch. Dist.*, 184 F.3d 296, 312 (3d Cir. 1999)).

<sup>219</sup> Defendants’ Motion for Summary Judgment, p. 30 (citing *Indep. Living Res. Ctr. v. Lyft, Inc.*, 2020 WL 6462390 at \*4 (N.D. Cal. Nov. 3, 2020)).

1 Lyft was charging below market rates for its service and was giving tens of millions of rides away  
2 for free, skewing the revenue and cost data.

3 280. In the instant action, Plaintiffs have proven that UberWAV is effective, that there  
4 are various methods through which Uber could provide UberWAV, and that UberWAV could be  
5 cost neutral or profitable for Uber.

6 281. This Court concludes that it would be reasonable for Uber to provide UberWAV in  
7 New Orleans.  
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9 282. This Court determines that Plaintiffs have no obligation under Title III of the ADA  
10 to tell Uber “how to run its business.” In a physical barrier case over lack of a ramp, this Court  
11 would take evidence as to whether construction of the ramp is reasonable. If the Court were to  
12 determine that installation of a ramp was reasonable, it would Order that the facility owner has to  
13 install a ramp. The Court would not instruct the facility on what materials to use in constructing  
14 the ramp, what contractors to employ, or what engineers to utilize.  
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16 283. Ultimately, it would be up to the facility to comply with the Court’s Order to install  
17 a ramp. So too here. Plaintiffs do not ask this Court to micro-manage how Uber provides  
18 UberWAV and this Court has no obligation to run Uber’s business. This Court will Order that  
19 Uber is obligated to provide UberWAV in New Orleans to a level comparable to the service it has  
20 historically provided in other cities with UberWAV. Uber will have the discretion to implement  
21 that mandate by whatever means it chooses – whether by contracting with third parties, providing  
22 incentives to Uber drivers, or providing WAVs to drivers – or by some other method not described  
23 here.  
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*iv. The Modification Requested by Dr. Crawford in Jackson Was Reasonable.*

284. Uber has not performed any investigations specifically related to the provision of  
UberWAV in Jackson, Mississippi. While Uber employees engaged in an email discussion related

1 to the supply of WAVs in New Orleans, Uber is “not aware of anything similar that was done for  
2 Jackson.”<sup>220</sup>

3 285. In fact, Uber readily conceded that it has not performed any investigations  
4 specifically related to Jackson.<sup>221</sup>

5 286. Uber has not turned on UberWAV in Jackson to see if drivers sign up.<sup>222</sup>

6 287. Since 2018, Uber has not, at any point, advertised in Jackson that drivers could sign  
7 up for UberWAV and get an incentive such as a sign-up bonus, a waived trip fee, etc.<sup>223</sup>  
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9 288. Uber has not investigated providing UberWAV in Jackson in partnership with MV  
10 Transit.<sup>224</sup>

11 289. Uber has not enacted an accessibility fee in Jackson.<sup>225</sup>

12 290. Uber has several reasonable methods through which it could make UberWAV  
13 available in Jackson, but Uber failed to conduct any research in Jackson, Mississippi. It is well  
14 established that “the ADA imposes an obligation to investigate whether a requested  
15 accommodation is reasonable.”<sup>226</sup> Likewise, the Ninth Circuit has observed that “mere speculation  
16 that a suggested accommodation is not feasible falls short of the reasonable accommodation  
17 requirement; the Acts create a duty to gather sufficient information from the disabled individual  
18 and qualified experts as needed to determine what accommodations are necessary....”<sup>227</sup>  
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22 <sup>220</sup> Patel Dep. on Nov. 20 at 197:21-198:17.

23 <sup>221</sup> *Id.* at 193:14-194:6 (*see, e.g.*, “Q. Yes. What I mean by that is as I understand what we discuss  
24 ostensibly [sic] today is Uber has done high-level investigations, but what I am asking here is  
specifically related to Jackson, are you aware of any investigations specifically for Jackson, not  
the overall pilot, evaluation, etc.? A. No., I am not aware of any investigations of Jackson.”).

<sup>222</sup> *Id.* at 192:16-21.

<sup>223</sup> *Id.* at 192:22-193:4.

<sup>224</sup> *Id.* at 193:5-10.

<sup>225</sup> *Id.* at 108:4-20.

<sup>226</sup> *Duvall v. Cty. of Kitsap*, 260 F.3d 1124, 1136–37 (9th Cir. 2001), *as amended on denial of reh'g*  
(Oct. 11, 2001).

<sup>227</sup> *Wong v. Regents of the University of California*, 192 F.3d 807, 818 (9th Cir. 1999).

1           291. Given that Uber has provided UberWAV to other individuals with disabilities in  
2 the past, Plaintiffs have satisfied their burdens of production as to whether the modification was  
3 reasonable.<sup>228</sup> Uber abdicated its obligations under the ADA because it did not provide a needed  
4 and requested reasonable modification.

5           292. This Court concludes that it would be reasonable for Uber to provide UberWAV in  
6 Jackson.

7           293. This Court determines that Plaintiffs have no obligation under Title III of the ADA  
8 to tell Uber “how to run its business.” In a physical barrier case over lack of a ramp, this Court  
9 would take evidence as to whether construction of the ramp is reasonable. If the Court were to  
10 determine that installation of a ramp was reasonable, it would Order that the facility owner has to  
11 install a ramp. The Court would not instruct the facility on what materials to use in constructing  
12 the ramp, what contractors to employ, or what engineers to utilize.

13           294. Ultimately, it would be up to the facility to comply with the Court’s Order to install  
14 a ramp. So too here. Plaintiffs do not ask this Court to micro-manage how Uber provides  
15 UberWAV and this Court has no obligation to run Uber’s business. This Court will Order that  
16 Uber is obligated to provide UberWAV in Jackson to a level comparable to the service it has  
17 historically provided in other cities with UberWAV. Uber will have the discretion to implement  
18 that mandate by whatever means it chooses – whether by contracting with third parties, providing  
19 incentives to Uber drivers, or providing WAVs to drivers – or by some other method not described  
20 here.  
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<sup>228</sup> *Id.* at 820.

1 **V. PLAINTIFFS' CLAIM FOR IMPERMISSIBLE ELIGIBILITY CRITERIA**  
2 **("SCREENED-OUT") UNDER § 12182(b)(1)**

3 **A. Legal Standard**

4 295. Private entities that provide "specified transportation services" may not impose  
5 "eligibility criteria that screen out or tend to screen out an individual with a disability or any class  
6 of individuals with disabilities from fully enjoying the specified public transportation services  
7 provided by the entity." 42 U.S.C. § 12184(b)(1); 49 C.F.R. § 37.5(i)(1).

8 296. Once a plaintiff meets their prima facie burden of establishing that the defendant  
9 imposes or applies such discriminatory eligibility criteria, the defendant may offer as an  
10 affirmative defense that the criteria are "necessary for the provision of the services being offered."  
11 *Id.*; *Spector v. Norwegian Cruise Line Ltd.*, 545 U.S. 119, 129 (2005).

12 297. The eligibility criteria provision in 42 U.S.C. § 12184(b)(1) is identical to a  
13 provision codified at 42 U.S.C. § 12182(b)(2)(i) that prohibits the use of discriminatory eligibility  
14 criteria by places of public accommodation.

15 298. Courts interpreting this provision have held that it is satisfied by "policies or criteria  
16 that, while not creating a direct bar to individuals with disabilities, diminish an individual's chances  
17 of such participation." *Guckenberger v. Boston Univ.*, 974 F. Supp. 106, 134-135 (D. Mass. 1997)  
18 (internal quotations omitted).  
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20 299. The Department of Transportation has promulgated regulations requiring private  
21 entities covered by 42 U.S.C. § 12184(b)(1) to also follow the Department of Justice regulations  
22 interpreting Title III as to places of public accommodation, including the regulation on eligibility  
23 criteria found at 28 C.F.R. § 36.301. 49 C.F.R. § 37.5(f); *Pilling v. Bay Area Rapid Transit*, 881  
24 F. Supp. 2d 1152, 1162 (N.D. Cal. 2012).

300. The regulations make clear that eligibility criteria may not "screen out or tend to  
screen out an individual with a disability or any class of individuals with disabilities from fully



1 **and equally** enjoying any goods, services, facilities, privileges, advantages, or accommodations.”  
2 28 C.F.R. § 36.301(a) (emphasis added).

3 **B. Findings of Fact Related to Eligibility Criteria Claim**

4 301. For each city where Uber operates, Uber sets out certain requirements for the  
5 vehicles that can be used on its platform.<sup>229</sup>

6 302. If “the vehicle does not meet Uber’s requirements it’s not allowed to participate in  
7 Uber’s products.”<sup>230</sup> Uber knows of “no exceptions.”<sup>231</sup>

8 303. In New Orleans, for a vehicle to participate in UberX, Uber requires that the vehicle  
9 “must be a four-door vehicle, have five factory-installed seats, [and] air conditioning” and it  
10 explicitly prohibits “vans, box trucks, or similar vehicles, [and] aftermarket seating  
11 modifications.”<sup>232</sup>

12 304. If “a vehicle doesn’t meet these criteria, Uber will not allow it to participate in  
13 Uber’s UberX product.”<sup>233</sup>

14 305. Similarly, Uber’s New Orleans UberXL product requires “seven seats, and no  
15 aftermarket modifications, and no vans.”<sup>234</sup>

16 306. These requirements have been in place since the inception of this lawsuit.<sup>235</sup>

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23 <sup>229</sup> Rupp Dep. at 23:11-19.

24 <sup>230</sup> *Id.* at 24:20-23. *See also id.* at 51:2-6 (“Q. Okay. And Uber actually uses these requirements. If a vehicle doesn’t meet these requirements, they are not allowed to drive for Uber’s products, correct? A. That’s correct.”)

<sup>231</sup> *Id.* at 24:24-25 (“Q. No exceptions? A. Not to my knowledge.”)

<sup>232</sup> *Id.* at 28:23-29:7. Ex. FFF provides Uber’s requirements for New Orleans. Ex. GGG provides Uber’s requirements for Jackson, MS.

<sup>233</sup> *Id.* at 29:8-11.

<sup>234</sup> *Id.* at 29:16-20.

<sup>235</sup> *Id.* at 45:14-18 (New Orleans).

1 307. Most WAVs are vans or minivans that have been altered through after-market  
2 seating modifications to make them usable for persons with motorized wheelchairs.<sup>236</sup> The after-  
3 market seating modifications are typically the removal of seats, often bringing the total to fewer  
4 than five.

5 308. According to Uber’s witness Niraj Patel, “WAVs are typically minivans that have  
6 been modified to have a motorized ramp and modified seating allowing for the placement and  
7 securement of a heavy motorized wheelchair.”<sup>237</sup>

8 309. The “Help” section of Uber’s website says: “We do not accept stickers, pick-ups,  
9 vans, minivans and vans. We can not make any exceptions.”<sup>238</sup>

### 11 **C. Conclusions of Law Related to Eligibility Criteria Claim**

12 192. Uber’s requirement that vehicles must have “five factory-installed seats” to  
13 participate in UberX in New Orleans, Dkt. 227-1 at 45, is an eligibility criterion that screens out  
14 or tends to screen out people with disabilities who use electric wheelchairs from participating in  
15 Uber’s platform in New Orleans as either riders or drivers because most WAVs have fewer than  
16 five seats.

17 193. Uber’s prohibition on “vans, box trucks or similar vehicles” from participating in  
18 the UberX platform in New Orleans, Dkt. 227-1 at 45, is an eligibility criterion that screens out or  
19 tends to screen out people with disabilities who use electric wheelchairs from participating in  
20 Uber’s platform in New Orleans as either riders or drivers because most WAVs are vans or  
21 minivans, and Uber’s eligibility criteria do not distinguish between vans and minivans.

22 194. Uber’s prohibition on “vehicles with after-market seating modifications” from  
23 participating in the UberX platform in New Orleans, Dkt. 227-1 at 45, is an eligibility criterion  
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<sup>236</sup> *Id.* at 30:5-9 (“wheelchair accessible vehicles can be both vans . . . and in some cases minivans that have been retrofitted to include a ramp.”); Crawford Dep. at 14:11 (“Most [WAVs] are retrofitted.”)

<sup>237</sup> Dkt. 227-2 at ¶ 7.

<sup>238</sup> Dkt. 234-2 (Uber Website).

1 that screens out or tends to screen out people with disabilities who use electric wheelchairs from  
2 participating in Uber's platform in New Orleans as either riders or drivers because most WAVs  
3 have undergone after-market seating modifications to make space for large power wheelchairs.

4 195. Uber's requirement that vehicles must have "five factory-installed seats" to  
5 participate in UberX in Jackson, Dkt. 227-1 at 45, is an eligibility criterion that screens out or tends  
6 to screen out people with disabilities who use electric wheelchairs from participating in Uber's  
7 platform in Jackson as either riders or drivers because most WAVs have fewer than five seats.

8 196. Uber's prohibition on "vans, box trucks or similar vehicles" from participating in  
9 the UberX platform in Jackson, Dkt. 227-1 at 45, is an eligibility criterion that screens out or tends  
10 to screen out people with disabilities who use electric wheelchairs from participating in Uber's  
11 platform in Jackson as either riders or drivers because most WAVs are vans or minivans, and  
12 Uber's eligibility criteria do not distinguish between vans and minivans.

13 197. Uber's prohibition on "vehicles with after-market seating modifications" from  
14 participating in the UberX platform in Jackson, Dkt. 227-1 at 45, is an eligibility criterion that  
15 screens out or tends to screen out people with disabilities who use electric wheelchairs from  
16 participating in Uber's platform in Jackson as either riders or drivers because most WAVs have  
17 undergone after-market seating modifications to make space for large power wheelchairs.

18 198. Even though Uber's vehicle criteria do not pose an absolute bar to people with  
19 disabilities who use power wheelchairs from participating in Uber's services in New Orleans as  
20 riders, they diminish their chances of participating in those services by depressing the supply of  
21 WAVs on the Uber platform available to provide transportation to the New Orleans market, thus  
22 making it less likely that a person who requires a WAV in New Orleans would be able to obtain  
23 one through Uber.

24 199. Even though Uber's vehicle criteria do not pose an absolute bar to people with  
disabilities who use power wheelchairs from participating in Uber's services in Jackson as riders,  
they diminish their chances of participating in those services by depressing the supply of WAVs

1 on the Uber platform available to provide transportation to the Jackson market, thus making it less  
2 likely that a person who requires a WAV in Jackson would be able to obtain one through Uber.

3 200. And the criteria that tend to screen out WAVs are not “necessary for the provision  
4 of the services being offered.” At the summary judgment stage, Uber argued that the criteria do  
5 not screen out WAVs at all.<sup>239</sup> Uber conceded that it “could change its vehicle rules in New Orleans  
6 so that there was no debate that WAVs were allowed, by either expressly permitting WAVs or by  
7 removing the ban on seating modifications or vans.”<sup>240</sup> Accordingly, the WAV-screening-out  
8 criteria are not necessary for the provision of the services being offered.

## 9 VI. UBER’S AFFIRMATIVE DEFENSES

### 10 A. Legal Standard

11 201. “‘A pretrial order has the effect of amending the pleadings and controls the  
12 subsequent course of action of the litigation.’ The Ninth Circuit has frequently held that affirmative  
13 defenses are waived if not in the pretrial order. ‘[I]ssues not preserved in the pretrial order have  
14 been eliminated from the action,’ and a failure to preserve an issue in the pretrial order will prevent  
15 the party from raising it in the future. Moreover, ‘[t]he existence of references to [an] issue in the  
16 record of the case compiled before the pretrial orders is irrelevant. The very purpose of the pretrial  
17 order is to narrow the scope of the suit to those issues that are actually disputed and, thus, to  
18 eliminate other would-be issues that appear in other portions of the record of the case.’ ” *Bobo v.*  
19 *Clark Cty. Collection Serv., LLC*, No. 216CV02911APGCWH, 2018 WL 4778035, at \*1 (D. Nev.  
20 Oct. 3, 2018) (internal citations omitted).

21 202. Once Plaintiffs have met their burden of proving that Uber discriminated against  
22 them by failing to make a requested reasonable modification to its policies and procedures to  
23 accommodate their disabilities, Uber may seek to avoid liability by pleading and proving the  
24 affirmative defense that Plaintiffs’ requested modification would fundamentally alter the nature of

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<sup>239</sup> Dkt. 227 at 6.

<sup>240</sup> Dkt. 227-2 at ¶10.

1 the services it provides. *Lentini v. California Ctr. for the Arts, Escondido*, 370 F.3d 837, 845-46  
 2 (9th Cir. 2004); *Fortyune v. Am. Multi-Cinema, Inc.*, 364 F.3d 1075, 1082 (9th Cir. 2004).

3 203. Determining whether a modification is reasonable also entails considering whether  
 4 it would impose “an undue financial or administrative burden” on the defendant. *Fortyune*, 364  
 5 F.3d at 1083. The ADA regulations define “undue burden” to mean a “significant difficulty or  
 6 expense,” taking into account a range of factors relating to the cost of the action compared to the  
 7 financial resources of the public accommodation. 28 C.F.R. § 36.104 (enumerating factors to  
 8 consider in the undue burden analysis).

9 204. The Ninth Circuit has also held that the undue burden analysis under Title III of the  
 10 ADA is similar to the “undue hardship” analysis under § 504 of the Rehabilitation Act, *see*  
 11 *Fortyune*, 364 F.3d at 1083. Rehabilitation Act regulations similarly consider the overall financial  
 12 resources of the entity being asked to provide the accommodation in assessing whether it would  
 13 pose an undue burden. 35 C.F.R. § 84.12(c)(1).

14 **B. Findings of Fact Concerning Uber’s Affirmative Defenses**

15  
 16 205. In its 2020 annual report, for the year ending December 31, 2020, Uber admitted  
 17 that in certain markets is has lowered “fares or service fees” to “remain competitive” and to  
 18 “generate network scale and liquidity[.]”<sup>241</sup>

19 310. Uber’s decision to charge low fares is not new. A report Uber commissioned on  
 20 UberWAV in Philadelphia found that Uber’s rates were only half that charged by taxis.<sup>242</sup>  
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 22  
 23  
 24

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<sup>241</sup> Ex. PT-47, Uber 2020 Report, Uber00019898 (“To remain competitive in certain markets and generate network scale and liquidity, we have in the past lowered, and expect in the future to continue to lower, fares or service fees...”).

<sup>242</sup> Ex. PT-5 (Dkt. 148-7) at Uber00006957 (UberWAV \$3.45 per mile rate vs. \$7.56 taxi per mile rate).

1 311. In many cases, Uber gives rides away for free – sometimes numbering in the  
2 millions.<sup>243</sup>

3 312. To the extent UberWAV is unprofitable, the lack of profitability is a result of Uber’s  
4 decisions not to implement an accessibility fee, to charge below-market-rates, and to give  
5 transportation away for free. It is not caused by the UberWAV program.

6 313. When the relevant facts are considered in their totality, provision of UberWAV  
7 would be a reasonable modification in New Orleans and Jackson.  
8

9 314. At trial, Uber attempted to argue that provision of UberWAV in Plaintiffs’ cities  
10 would be an undue burden by providing cost data from 2020.

11 315. But Uber’s use of data from 2020 is highly flawed because of the outsized impact  
12 of COVID-19—a unique, once-in-a-century occurrence. Uber stated in its 2020 annual report that  
13 COVID-19 and attendant government orders, restrictions on travel, etc. “have, and may continue  
14 to have, an adverse impact on our business and operations, including, for example, reducing the  
15 demand for our Mobility offerings globally, and affecting travel behavior and demand.”<sup>244</sup>  
16

17 316. Additionally, Uber “announced and implemented several COVID-related  
18 initiatives during the first quarter of 2020, including a financial assistance program for Drivers, as  
19 well as a commitment to provide 10 million free rides and food deliveries to healthcare workers,  
20 seniors, and others in need.”<sup>245</sup>  
21  
22

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23  
24 <sup>243</sup> Ex. PT-47, at Uber00019894-95; see also, Ex. PT-49 (noting that Uber had provided 10 million free rides in 2020 and announcing that “Today, Uber is committing another 10 million free or discounted rides to help make sure that transportation is not a barrier to getting the vaccine.”); see also, Ex. PT-50 (confirming initial 10 million rides were free). Uber’s decision to give millions of rides away for free will obviously skew how profitable/unprofitable its for-hire transportation service is on a per-ride basis.

<sup>244</sup> Ex. PT-47, Uber 2020 Report, Uber00019894.

<sup>245</sup> *Id.* at Uber00019894-95.

1 317. In late 2020, Uber committed to providing another 10 million free rides to get  
 2 individuals to vaccination sites.<sup>246</sup> That is to say: In 2020, Uber’s revenues plummeted because of  
 3 reduced demand and Uber’s costs increased because it was giving tens of millions of rides away  
 4 for free.

5 318. However, the circumstances surrounding COVID-19 have improved significantly  
 6 since December 31, 2020 and the pandemic is coming to an end.<sup>247</sup>

7 319. On May 5, 2021 Uber’s CEO advised its shareholder that Uber has “begun to fire  
 8 on all cylinders.”<sup>248</sup> Indeed, Uber has “returned to growth with Q1 our best quarter ever; April,  
 9 our best month ever; and last week, our best week ever, in terms of gross bookings.”<sup>249</sup>

10 320. The reasonableness of Plaintiffs’ requested modification—which was requested in  
 11 2018, not 2020— should be judged based on pre-COVID data, not data pulled from a once-in-a-  
 12 century pandemic.  
 13

14 321. In 2019, Uber incurred a cost-per-WAV-ride that was much lower.<sup>250</sup>

15 322. UberWAV would not be an “undue financial burden” because Uber, itself, has  
 16 explained that the cost of UberWAV can be “fully funded” through an accessibility fee. Uber  
 17 estimated that it could fully fund UberWAV by charging a 3-4 cents per trip accessibility fee.<sup>251</sup>  
 18  
 19  
 20

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21  
 22 <sup>246</sup> See also, Ex. PT-49 (10 million free rides for vaccination effort).

23 <sup>247</sup> See Centers for Disease Control and Prevention, “Guidance for Fully Vaccinated People,”  
 24 <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html> (updates  
 as of May 13, 2021 stating “that fully vaccinated people no longer need to wear a mask or  
 physically distance in any setting, except where required by federal, state, local, tribal, or territorial  
 laws, rules, and regulations, including local business and workplace guidance”) (last accessed  
 2021/5/18).

<sup>248</sup> Ex. PT-51, (statement of Dara Khosrowshahi, Chief Executive Officer, during Uber’s Q1 2021  
 earning call on May 05, 2021).

<sup>249</sup> *Id.*

<sup>250</sup> Dkt. 156, Defendants’ Motion for Summary Judgment, p. 27; Dkt. 236 at ¶¶ 91-92.

<sup>251</sup> See Ex. PT-32 (2017 UberWAV Program Overview) at 00014333.

1           323. Uber further determined that “[p]roactively investing in a reliable WAV ridesharing  
2 program will build positive brand sentiment with riders, drivers, and the community...”<sup>252</sup>

3           324. Uber determined that “the regulatory and legal value of a reliable WAV program  
4 far outweigh the investment.”<sup>253</sup>

5           325. Further, the provision of UberWAV would “preempt” approximately \$180 million  
6 per year in “training costs.”<sup>254</sup>

7           326. Nor would charging an “accessibility fee” be an undue burden on Uber or  
8 fundamentally alter Uber’s business, for at least two reasons.  
9

10           327. First, Uber employees documented that UberWAV could be “fully funded” via an  
11 accessibility fee and these employees did not identify any negative repercussions to Uber of  
12 instituting such a fee.<sup>255</sup>

13           328. Second, Uber is actively charging other “fees,” such as a 50 cent per trip fee that is  
14 charged when a rider is in a hybrid or electric vehicle.<sup>256</sup>

15           329. If Uber can charge a 50 cent per trip fee for use of an electric vehicle, Uber can  
16 certainly charge 3-4 cents per trip to comply with the ADA.  
17

18           330. The ADA regulations define “undue burden” to mean a “significant difficulty or  
19 expense,” considering a range of factors relating to the cost of the action compared to the financial  
20 resources of the public accommodation.<sup>257</sup>  
21  
22

23 <sup>252</sup> See *id.* at 00014326.

24 <sup>253</sup> See *id.* at 00014328.

<sup>254</sup> See *id.* at 00014326.

<sup>255</sup> See, e.g., *id.* at 00014333. This is consistent with Uber’s other market research. In Philadelphia, Uber identified that the cost of running UberWAV incentives would amount to 8 cents per ride, when divided by all Philadelphia riders. See Patel Dep. on Nov. 20 at 91:4-93:13.

<sup>256</sup> See Ex. PT-24 at 002760 (“In the US and Canada, hybrid and EV drivers will receive an extra \$0.50 directly from the rider on every Uber Green trip completed.”).

<sup>257</sup> 28 C.F.R. § 36.104 (enumerating factors to consider in the undue burden analysis).



1 331. If UberWAV was “fully funded” through a user fee, Uber would incur little or no  
2 financial burden, much less a “significant expense.”

3 332. Uber never “seriously considered” the usage of an accessibility fee to fund  
4 UberWAV in New Orleans through MV Transit.<sup>258</sup>

5 333. In fact, as is evidenced by Ex. PT-32 (UberWAV Program Overview, June 2017),  
6 Uber weighed four different solutions to the WAV issue—including Uber “fully funding” a  
7 solution and an accessibility fee—and the fourth option listed on the slide was “Do nothing and  
8 bear the associated risk[.]”<sup>259</sup> See Fig 4.

9 334. Here, Uber did not make a reasoned choice that providing UberWAV in New  
10 Orleans or Jackson would be an undue burden; it simply decided to “[d]o nothing and bear  
11 associated risks.”<sup>260</sup>

### 12 **A. Conclusions of Law Related to Uber’s Affirmative Defenses**

13 335. In the Pretrial Order, under the Substance of the Action, where Uber was  
14 obligated to identify “the substance of the claims and defenses that remain to be decided,” Uber  
15 did not list or identify any affirmative defenses.<sup>261</sup>

16 336. Nowhere in the Pretrial Order does Uber state that it will be advancing the  
17 affirmative defenses of undue burden or fundamental alteration at trial.

18 337. The Court concludes that Uber has abandoned the affirmative defenses of undue  
19 burden and fundamental alteration by failing to include these affirmative defenses in the Pretrial  
20 Order.  
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<sup>258</sup> Patel Dep. on Nov. 20 at 168:3-17.

<sup>259</sup> Ex. PT-32 at 00014333.

<sup>260</sup> Ex. PT-32 (Dkt. 149-22) at 00014333.

<sup>261</sup> See Namisnak, Dkt. 190, pp. 5-6.

1 338. Even if the affirmative defenses were not abandoned, Uber has failed to prove its  
2 affirmative defenses by a preponderance of the evidence.

3 339. Considering the overall resources of Uber, the potential WAV funding options  
4 identified by Uber, the fact that Uber has successfully implemented UberWAV in other cities, and  
5 the other facts identified herein, the Court concludes that Plaintiffs' requested modifications are  
6 reasonable and would not present an undue financial or administrative burden to Uber, or a  
7 fundamental alteration of Uber's business.  
8

## 9 **VII. REMEDIES**

### 10 **A. Legal Standard**

11 340. An order granting an injunction under Rule 65 must "a) "state the reasons why it  
12 issued"; (b) "state its terms specifically"; and (c) "describe in reasonable detail--and not by  
13 referring to the complaint or other document--the act or acts restrained or required." Fed. R. Civ.  
14 Proc. 65(d)(1).  
15

16 341. The specificity requirements of Rule 65 are intended to "prevent uncertainty and  
17 confusion on the part of those faced with injunctive orders, and to avoid the possible founding of  
18 a contempt citation on a decree too vague to be understood." *Schmidt v. Lessard*, 414 U.S. 473,  
19 476, 94 S.Ct. 713, 38 L.Ed.2d 661 (1974).

20 342. The Ninth Circuit has specified that an injunction complies with Rule 65(d) even if  
21 it does not specify how the defendant is to achieve compliance. *Fortyune*, 364 F.3d at 1087 (district  
22 court's injunction requiring that companions be permitted to sit next to wheelchair users until ten  
23 minutes before the movie began met specificity requirements of Rule 65 even though it did not  
24 "provide AMC with explicit instructions on the appropriate means to accomplish this directive.")

### **B. Decision on Remedies**

1. A judgment shall be issued in favor of Plaintiffs as follows:

1 2. Judgment is granted on Plaintiffs’ 42 U.S.C. § 12184(b)(2) (“reasonable modification”)  
2 claim. A declaratory judgment shall issue holding that Uber violated 42 U.S.C. § 12184(b)(2)  
3 when Plaintiffs requested the reasonable modification that Uber provide UberWAV in their  
4 cities, and Uber refused.

5 3. Judgment is granted on Plaintiffs’ 42 U.S.C. § 12184(b)(1) (“screened-out”) claim. A  
6 declaratory judgment shall issue holding that Uber violated 42 U.S.C. § 12184(b)(1) when it  
7 employed eligibility criteria that screen out or tend to screen out a class of individuals with  
8 disabilities from fully enjoying Uber’s transportation services, and the criteria are not necessary  
9 for the provision of the services being offered.  
10

11 4. In addition to declaratory relief, Plaintiffs are entitled to an injunction against Uber’s  
12 conduct that violates 42 U.S.C. § 12184(b)(1) and (2).

13 5. Within two weeks of the issuance of this order, Uber is ordered to amend its vehicle  
14 eligibility criteria to specify that WAVs may participate in UberX.

15 6. Within six months of the issuance of this order, Uber is ordered to provide UberWAV  
16 service in New Orleans, LA, and Jackson, MS. Within nine months of the issuance of this order,  
17 that UberWAV service is to be comparable to UberWAV service in other cities where it is  
18 offered in the United States.  
19

20 7. Within two weeks of the issuance of this order, Plaintiffs shall submit to Defendants the  
21 proposed text of an injunction implementing the prior paragraph. That text shall detail standards  
22 for evaluating whether UberWAV service in New Orleans and Jackson is comparable to the  
23 other cities where it is offered in the United States. That text shall provide a process for  
24 monitoring and enforcement of Uber’s progress. The parties are ordered to meet and confer  
regarding that proposed injunction. Within one month of the issuance of this order, the Parties  
are to jointly submit to this Court a proposed injunction implementing the prior paragraph of this

1 order. If there are any points on which the parties disagree, the joint filing shall detail those  
2 points.

3 8. The Court finds that Plaintiffs are the prevailing party, and are entitled to reasonable  
4 attorney’s fees and costs. Within 45 days of the issuance of this order, Plaintiffs shall submit a  
5 fee and cost application to this Court.

6 By Plaintiffs, by and through their counsel,

7 /s/ William Most

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16  
17 **CERTIFICATE OF SERVICE**

18 I hereby certify that on December 30, 2021, a copy of the foregoing was filed  
19 electronically with the Clerk of Court via the CM/ECF system. Notice of this filing will be sent  
20 to all counsel of record by operation of the court’s electronic filing system.  
21

22 /s/ William Most  
23 William Most  
24