

1 MORGAN, LEWIS & BOCKIUS LLP
2 Anne Marie Estevez (*pro hac vice*)
3 600 Brickell Avenue, Suite 1600
4 Miami, FL 33131
5 T: (305) 415-3000
6 F: (305) 415-3001
7 annemarie.estevez@morganlewis.com

MORGAN, LEWIS & BOCKIUS LLP
Ethel J. Johnson (*pro hac vice*)
1000 Louisiana street, suite 400
Houston, TX 77002-5005
T: (713) 890-5000
F: (713) 890-5001
ethel.johnson@morganlewis.com

5 Stephanie Schuster (*pro hac vice*)
6 Patrick A. Harvey (*pro hac vice*)
7 1111 Pennsylvania Avenue NW
8 Washington, DC 20004
9 T: (202) 739-3000
10 F: (202) 739-3001
11 stephanie.schuster@morganlewis.com
12 patrick.harvey@morganlewis.com

Kathy H. Gao (CA Bar No. 259019)
300 South Grand Avenue, 22nd Floor
Los Angeles, CA 90071
T: (213) 612-2500
F: (213) 612-2501
kathy.gao@morganlewis.com

Attorneys for Defendants

FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

14 SCOTT CRAWFORD

15 Plaintiff,

16 v.

17 UBER TECHNOLOGIES, INC. *et al.*,

18 Defendants.

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

**UBER’S PROPOSED FINDINGS OF
FACT AND CONCLUSIONS OF LAW**

20 STEPHAN NAMISNAK, *et al.*,

21 Plaintiffs,

22 v.

23 UBER TECHNOLOGIES, INC. *et al.*,

24 Defendants.

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

**UBER’S PROPOSED FINDINGS OF
FACT AND CONCLUSIONS OF LAW**

25
26
27
28

FINDINGS OF FACT

I. BACKGROUND

A. The Parties

1. Plaintiff Scott Crawford lives in Jackson, Mississippi. He is an individual with a disability.

2. Plaintiffs Stephan Namisnak and Francis Falls live in New Orleans, Louisiana. They are individuals with disabilities.

3. Defendant Uber Technologies, Inc. (“Uber”) is a corporation organized under the laws of the State of Delaware, with its principal place of business in San Francisco, California.

4. Defendant Rasier, LLC (“Rasier”) is a subsidiary of Uber. Unless the distinction is necessary, the two defendants are referred to collectively as “Uber” in these findings of facts and conclusions of law.

B. Plaintiffs’ Claims

5. Plaintiff Scott Crawford’s operative pleading is his Second Amended Complaint, filed on October 20, 2021. *Crawford*, ECF No. 218. Defendants filed their answer on November 3, 2021. *Crawford*, ECF No. 219.

6. Plaintiffs Stephan Namisnak and Francis Falls’s operative pleading is their Third Amended Complaint, filed on October 20, 2021. *Namisnak*, ECF No. 181. Defendants filed their answer on November 3, 2021. *Namisnak*, ECF No. 182.

7. Plaintiffs asserted a variety of causes of action under Title III of the Americans with Disabilities Act, 42 U.S.C. §§ 12181–12189. As explained below, prior rulings by this Court have narrowed the issues to be tried.

1. The Court’s Prior Rulings

8. The Court granted summary judgment to Plaintiffs on the issue of whether they have Article III standing to pursue their claim under 42 U.S.C. § 12184(b)(2)(A). *Crawford*, ECF No. 197; *Namisnak*, ECF No. 160 at 3–6.

1 9. Defendants are covered entities under 42 U.S.C. § 12184(a). *Crawford*, ECF
2 No. 197; *Namisnak*, ECF No. 160 at 7–11.

3 10. Plaintiffs’ theory of liability under 42 U.S.C. § 12184(b)(5) fails as a matter of law.
4 *Crawford* ECF No 197; *Namisnak*, ECF No. 160 at 11–12.

5 11. Plaintiff Scott Crawford’s claims under the California Disabled Persons Act and
6 California Unfair Competition Law fail as a matter of law. *Crawford*, ECF No. 80 at 8–10

7 12. Plaintiffs Stephan Namisnak and Francis Falls’s claims under 42 U.S.C. § 12182
8 fail as a matter of law. *Namisnak*, ECF No. 84 at 5–10.

9 13. Plaintiffs Stephan Namisnak and Francis Falls’s claims that Defendants have not
10 provided auxiliary aids and services under 42 U.S.C. § 12184(b)(2)(B) fail as a matter of law.
11 *Namisnak*, ECF No. 102 at 8–11.

12 14. Plaintiffs Stephan Namisnak and Francis Falls’s claims that Defendants have not
13 removed barriers under 42 U.S.C. § 12184(b)(2)(C) fail as a matter of law. *Namisnak*, ECF No. 102
14 at 11–12.

15 **2. Plaintiffs’ Requested Relief.**

16 15. Plaintiffs have made the following prayer for relief in the Final Pretrial Statement:

17 a. That this Court declare that Defendants’ policies, procedures, and services in
18 New Orleans, LA and Jackson, MS have been provided in a discriminatory
19 manner in violation of 42 U.S.C. § 12184.

20 b. That this Court declare that Defendants violated 42 U.S.C. § 12184(b)(2) by
21 failing to provide Plaintiffs with a reasonable modification.

22 c. That this Court declare that Defendants violated 42 U.S.C. § 12184(b)(1) by
23 screening out WAVs from its fleet.

24 d. That this Court Order injunctive relief to require Defendants to bring their
25 application and transportation services into compliance and remain in
26 compliance with the requirements of the ADA. To that end, Plaintiffs pray that
27 Uber be ordered to provide UberWAV in New Orleans and Jackson, and/or
28 eliminate the ban on vans and after-market modifications, and minimum seating

1 requirements, that prevent drivers of WAVs from participating in Uber's
2 transportation services in New Orleans and Jackson.

3 e. That this Court supervise the injunctive relief entered and ensure that Uber
4 complies with the requested injunctive relief within a reasonable period of time,
5 to be determined by this Court.

6 f. That this Court award reasonable attorneys' fees and costs (including expert
7 fees) and other expenses of suit.

8 g. That this Court award such other and further relief as it deems necessary, just,
9 proper, and appropriate.

10 h. Should Plaintiffs prevail in establishing Defendants' liability, it is Plaintiffs'
11 position that the parties will provide briefing to the Court about proposed
12 specific language for the injunction that will issue. Plaintiffs expect that the
13 injunction would require Uber to provide UberWAV in New Orleans and
14 Jackson in a fashion comparable to its service in the cities where UberWAV is
15 currently operated, as Plaintiffs prayed for in their Complaints. Plaintiffs will
16 suggest that the Court's injunction provide specific metrics for Uber to attain by
17 certain points in time, but not that the Court order Defendants to use any
18 particular methodology or financing structure to achieve those metrics. Plaintiffs
19 will suggest to the Court that 49 CFR § 37.105 provides a potential source of
20 metrics to use in specifying what Defendants must achieve. Plaintiffs will further
21 request that the Court specify a system of monitoring and reporting to ensure
22 compliance with the Court's order.

23 *Crawford*, ECF No. 230, *Namisnak*, ECF No. 190 ("Final Pretrial Statement") at § B.I.

24 **3. Surviving Issues**

25 16. Following the Court's prior rulings, Plaintiffs' surviving claims are for alleged
26 violations of 42 U.S.C. § 12184(b)(1) and 42 U.S.C. § 12184(b)(2)(A).

27 17. Section 12184(b)(1) prohibits "the imposition or application by a [covered] entity ...
28 of eligibility criteria that screen out or tend to screen out an individual with a disability or any class

1 of individuals with disabilities from fully enjoying the specified public transportation services
2 provided by the entity, unless such criteria can be shown to be necessary for the provision of the
3 services being offered.”

4 18. Section 12184(b)(2)(A), by way of cross-reference to 42 U.S.C.
5 § 12182(b)(2)(A)(ii), prohibits a covered entity from failing to “make reasonable modifications in
6 policies, practices, or procedures, when such modifications are necessary to afford such goods,
7 services, facilities, privileges, advantages, or accommodations to individuals with disabilities,
8 unless the entity can demonstrate that making such modifications would fundamentally alter the
9 nature of such goods, services, facilities, privileges, advantages, or accommodations.”

10 19. The issues that remain to be resolved at trial are (i) whether Plaintiffs’ demand that
11 Defendants “provide UberWAV in New Orleans and Jackson” seeks a reasonable modification of
12 Defendants’ policies, practices, or procedures; (ii) whether Plaintiffs’ demand that Defendants
13 “provide UberWAV in New Orleans and Jackson” seeks a fundamental alteration of Defendants’
14 businesses or the services they provide; (iii) whether Defendants have imposed vehicle
15 requirements for drivers that are eligibility criteria that screen out or tend to screen out persons with
16 disabilities; and (iv) whether Uber’s vehicle requirements are necessary.

17 **II. Wheelchair-Accessible Vehicles**

18 20. Wheelchair-accessible vehicles, or “WAVs,” are typically minivans with a
19 motorized ramp or lift and space to place and secure a heavy motorized wheelchair. All of the
20 WAVs that are driven by people with active Uber driver accounts are minivans with a motorized
21 ramp or lift.

22 21. The overwhelming majority of individuals who own a vehicle do not own a WAV.

23 22. WAVs are much more expensive to purchase than traditional automobiles. A new
24 WAV can cost anywhere from \$40,000 to \$100,000.

25 23. Certain minivans can also be converted into a WAV after-market. The cost of such
26 conversions can range from \$15,000–\$30,000 each.

27 24. WAVs require higher operating and maintenance costs, higher fuel costs because of
28 poor fuel efficiency, and the payment of higher liability insurance premiums.

1 **III. Uber’s Rideshare Business And The WAV Option**

2 25. Uber develops and markets smartphone applications, including the Uber Driver App
3 and the Uber Rider App for the ridesharing market (together, the “Uber Apps”).

4 26. In its publicly available U.S. Terms of Use, Uber defines its business as follows:

5 Uber provides a personalized multipurpose digital marketplace platform (“Uber
6 Marketplace Platform”) that enables you to conveniently find, request, or receive
7 transportation, logistics and/or delivery services from third-party providers that
8 meet your needs and interests. These Terms of Use (“Terms”) govern your access
9 or use, from within the United States and its territories and possessions, of the Uber
10 Marketplace Platform and any related content or services (collectively, the
11 “Services,” as more fully defined below in Section 3) made available in the United
12 States and its territories and possessions by Uber Technologies, Inc. and its
13 subsidiaries, representatives, affiliates, officers and directors (collectively, “Uber”).

14 27. Transportation providers use the Uber Driver App to seek rideshare requests from
15 riders who use the Uber Rider App, and they earn money by completing trips on the platform—the
16 rider price less any service fee drivers pay to Uber.

17 28. Transportation providers obtain a license to use the Uber Driver App by registering
18 for an Uber Driver account.

19 29. Defendant Rasier, LLC licenses the Uber Driver App to transportation providers in
20 New Orleans, Louisiana and Jackson, Mississippi.

21 30. The Uber Apps include different ride request options that vary from city to city.

22 31. The marketplaces facilitated by the Uber Apps are open; drivers can enter the
23 marketplaces and make themselves available at any time by opening their Uber Driver App and
24 clicking a button to “go online.”

25 32. Riders can likewise enter the marketplace at any time by opening their Rider App
26 and creating a ride request.

27 33. Each individual rider and driver makes his or her own decisions about when to enter
28 the marketplace, and thus the number of riders requesting rides in any time and place, and the
number of drivers available to receive requests at any time and place, is determined by the collective

1 decisions of riders and drivers. For this reason, there is no guarantee that any rider will get his or
2 her ride request accepted, nor is there any guarantee that any driver will receive a ride request.

3 34. Drivers decide what vehicle they wish to use when they access the ridesharing
4 marketplaces. When a driver goes through the process to gain access to the platform, he or she can
5 onboard one or more vehicles to use when online. Each driver controls and decides which vehicles
6 he or she wants to onboard and, if a driver has more than one vehicle associated with his or her
7 account, which vehicle to drive at any given moment.

8 35. In 2017, Uber launched a pilot WAV platform program. In certain cities, Uber
9 enabled a request option called “uberWAV” in the Uber Apps that permits riders to create ride
10 requests that are only sent to a driver with a WAV, if any. In these cities, Uber also allowed drivers
11 who had WAVs to receive requests that were specifically for a WAV. Today, this option is simply
12 called “WAV.”

13 36. The Uber Apps currently include a “WAV” option in New York, NY, Chicago, IL,
14 Los Angeles, CA, Washington, DC, San Francisco, CA, Boston, MA, Philadelphia, PA, Houston,
15 TX, Austin, TX, Portland, OR, and Phoenix, AZ.

16 37. The Uber Apps in New Orleans, LA and Jackson, MS currently do not include a
17 “WAV” request option.

18 38. Uber’s ridesharing business works best in large cities that are heavily and densely
19 populated.

20 39. Large cities that are both heavily and densely populated are more likely to have more
21 riders who are interested in requesting rides from drivers. When more riders want rides, drivers
22 can complete more rides and make more money. When drivers make more money by completing
23 more trips, more individuals are incentivized to sign up as drivers. With more drivers, riders’
24 experiences improve as the marketplace as a whole becomes more reliable.

25 40. On the other hand, if there are too few drivers compared to riders, riders will have
26 to wait longer for a ride or might not be able to obtain a ride at all. If riders cannot reliably obtain
27 a ride, they may be dissatisfied and leave Uber’s platform and seek transportation elsewhere,
28

1 including by requesting a ride from one of Uber's competitors, such as Lyft. It is easy for riders to
2 switch between competitors' platforms or obtain transportation some other way.

3 41. Likewise, if there are too many drivers as compared to riders, drivers will not be
4 able to complete as many rides. This too could lead to dissatisfaction and drivers leaving the Uber
5 platform. It is easy for drivers to switch between competitors' platforms.

6 42. In short, densely and heavily populated areas are most likely to support a well-
7 balanced ridesharing marketplace where riders' demand for rides and the supply of available drivers
8 are both sufficiently high and can find equilibrium.

9 43. In each of the cities where Uber includes a "WAV" request option in the Uber Apps,
10 with the exception of Washington, D.C., either state or local regulations require or otherwise
11 support Uber and its competitors to ensure some level of availability of WAV service. *See* NYC
12 TLC Rules § 59B-17; 53 Pa. Stat. and Cons. Stat. Ann. § 57A11; Chi. Muni Code § 9-115-140;
13 Mass. Gen. Laws Ann. ch. 159A 1/2, § 3(c)(vi); Phoenix Muni. Code § 4-68.B-7; Tex. Occ. Code
14 Ann. § 2402.113; Portland City Code § 16.40.290; Cal. Pub. Util. Code § 5440.5.

15 44. Plaintiffs have not downloaded the Uber Rider App.

16 45. Plaintiffs assert they are deterred from downloading and using the Uber Rider App
17 because there is no "WAV" option in the App in their hometowns. Plaintiffs state that they will
18 continue to be deterred from downloading and using the Uber Rider App until WAV is offered in
19 their cities and is highly reliable (in terms of being able to get a WAV ride when requested) and
20 offers service that is "equivalent" or "mostly equivalent" (in terms of wait times and other metrics)
21 to UberX.

22 **IV. Supporting A WAV Marketplace Is Expensive And Administratively Difficult In**
23 **Large Cities That Are Densely And Heavily Populated.**

24 46. Uber has substantial experience with attempting to support viable WAV
25 marketplaces. For at least four years, Uber has experimented with a variety of techniques or
26 methods to support a WAV marketplace.
27
28

1 47. Uber tailors the techniques it uses to support a WAV marketplace to a variety of
2 circumstances. In some jurisdictions, Uber relies on a combination of techniques at once to support
3 a WAV marketplace.

4 48. Uber's actual experience with these techniques shows that supporting a WAV
5 marketplace is administratively and financially burdensome, even in the most heavily and densely
6 populated cities where ridesharing is most efficient.

7 **A. Uber Has Tried A Variety Of Techniques To Support WAV Marketplaces.**

8 49. Uber's non-WAV marketplaces have succeeded in large part because drivers can
9 utilize a vehicle they already own and which they may also use when they are not providing
10 ridesharing services. There is a ready supply of drivers interested in participating in the non-WAV
11 marketplaces, so Uber does not need to provide substantial financial support to encourage those
12 marketplaces.

13 50. A WAV marketplace, however, cannot be viable on its own. It is not enough for
14 Uber to merely "turn on" the WAV request option.

15 51. For a WAV marketplace to be viable and reliable, there must be sufficient numbers
16 of WAV riders and drivers in the area. The reality is few drivers own WAVs, much less desire to
17 use them to sell rides. Plaintiffs themselves do not know anyone who wants to onboard a WAV.

18 52. Further compressing supply is the limited demand for WAV rides. The population
19 of potential riders who need and are willing and able to pay for WAV rides is small, and therefore
20 the demand for WAV rides is very low. Individuals who require motorized wheelchairs require a
21 WAV for transportation. Non-motorized wheelchairs can be folded and stored in the trunk of a
22 standard sedan.

23 53. Attracting a meaningful supply of WAV drivers to the Uber platform is the greatest
24 challenge to supporting a viable and reliable WAV ridesharing marketplace.

25 54. Uber's efforts to support a WAV marketplace fall into five broad categories:
26 (i) engaging in marketing and community outreach efforts to encourage riders to make WAV
27 requests through the Uber Rider App and encourage individuals with a WAV, or a desire to acquire
28 one, to offer rides via the WAV option in the Uber Driver App; (ii) offering financial incentives to

1 encourage drivers to accept WAV ride requests using the Uber Driver App; (iii) paying money to
2 operators of commercial vehicle fleets for driving their WAVs on the platform; (iv) partnering with
3 car leasing and rental companies who lease or rent WAVs to current and potential drivers who use
4 the Uber Driver App; (v) encouraging local taxi drivers who drive WAV taxis to accept WAV ride
5 requests via the Uber Driver App.

6 **1. Marketing and community outreach**

7 55. In jurisdictions where Uber supports a WAV marketplace, Uber has publicized the
8 WAV option to both riders and drivers. In addition to generally advertising the option on its website
9 and mentioning the option in its nationally televised advertising—including during the 2020
10 Olympics—Uber has attempted targeted advertising to individuals who may need WAV
11 transportation. For instance, Uber posted in-app communications to riders who had recently taken
12 a trip from one of Chicago’s largest hospitals informing them about the WAV option and where to
13 find it in the app. By itself, however, marketing and community outreach has had little impact on
14 either the supply of drivers of WAV or riders’ demand for WAV trips.

15 **2. Monetary incentives for drivers**

16 56. For its standard options like UberX, Uber has offered a variety of monetary
17 incentives to encourage drivers to both sign up to use and to continue to regularly use the Uber
18 Driver App to seek and accept ride requests.

19 57. Uber has offered similar and higher incentives in efforts to increase the supply of
20 WAV drivers using the Uber Driver App.

21 58. Uber has offered incentives that fall into two broad categories: (i) “Keep the Uber
22 Service Fee” and (ii) trip-based incentives.

23 59. Under the “Keep the Uber Service Fee” incentive, Uber did not collect a service fee
24 for WAV trips. In other words, under this incentive, Uber earned zero revenue per WAV trip and
25 provided all of its technology and services for free to individuals who drove a WAV.

26 60. The trip-based incentives are offered to drivers who complete WAV trips using the
27 platform. For example, one incentive may offer a driver a fixed payment if he or she completes a
28 certain number of WAV trips (regardless of whether the rider has a motorized wheelchair) or a

1 fixed payment for trips that were with a rider using a motorized wheelchair (which Uber would
2 infer if the ride was requested using the WAV option). Such WAV-specific incentives are offered
3 to drivers on top of any other incentives Uber offers to drivers generally (whether or not they have
4 WAVs).

5 61. Managing monetary incentives is operationally difficult for Uber. They require
6 dedicated resources and management. In Uber's experience, if the offered incentives remain the
7 same for long periods of time, they cease to entice new drivers. Accordingly, to make the incentives
8 work, Uber personnel regularly develop and adjust the incentives offered in each jurisdiction and
9 work to notify drivers of them.

10 62. By themselves, monetary incentives did not meaningfully increase the supply of
11 drivers with WAVs on the Uber Driver App platform. Incentives ultimately proved ineffective at
12 improving the reliability of the WAV marketplaces.

13 **3. Partnerships with WAV taxi drivers**

14 63. In a few jurisdictions, Uber has partnered with local taxi companies to make
15 wheelchair-accessible taxicabs available for request on the platform. This model exists only in
16 jurisdictions where there is a sufficient supply of wheelchair accessible taxicabs.

17 64. The ADA generally does not require taxi companies to have any WAV. *See, e.g.,*
18 47 C.F.R. § 37.29.

19 65. Through local regulation or ordinance, some jurisdictions require taxi companies to
20 have WAVs and often provide taxi companies support for providing WAV taxi service. But most
21 jurisdictions do not require WAV taxis, and therefore, few taxi drivers or taxi companies have a
22 sufficient or meaningful fleet of WAVs.

23 66. The Taxi WAV model only works in jurisdictions where there is an existing and
24 substantial supply of WAV taxis.

25 67. Even in jurisdictions where there are enough taxi WAV taxis, many taxi drivers
26 remain reluctant to use the Uber Driver App platform.

27 **4. Partnerships with vehicle rental or leasing companies**

28 68. Uber has also partnered with rental and leasing companies.

1 69. Early on in the WAV pilot, Uber Technologies, Inc. leveraged its relationship with
2 a subsidiary, Xchange Leasing, LLC, to help support WAV marketplaces. Xchange Leasing
3 acquired and leased vehicles to individuals interested in selling rides on the Uber platform.

4 70. In 2017, Uber contracted with Xchange Leasing to make WAVs available for lease
5 to transportation providers. Under that agreement, Xchange Leasing bought WAVs and leased
6 them. Uber agreed to pay Xchange Leasing \$7,000 per WAV that Xchange Leasing leased to third
7 party drivers. Xchange Leasing purchased about 130 WAVs and leased them to transportation
8 providers, most of whom sold rides in the Philadelphia area. Under this arrangement, Uber did not
9 acquire WAVs or any other vehicle.

10 71. While Uber was initially optimistic, this program ultimately failed and cannot be
11 replicated. Xchange Leasing suffered substantial losses, and in January 2018, Xchange Leasing's
12 portfolio was sold to Fair, a company unaffiliated with Uber, and Xchange Leasing ceased
13 operating.

14 72. For shorter-term rentals, Uber recently developed a two-city pilot program with
15 Avis wherein Avis rents WAVs to transportation providers.

16 73. The Avis pilot is still in its infancy. The pilot launched in Washington, D.C. and
17 Boston in December 2020 and May 2021, respectively.

18 74. Under the Avis pilot model: (i) Avis acquires WAVs to rent out to individuals; (ii)
19 Uber made a substantial upfront payment to Avis because Avis otherwise would not acquire WAVs
20 to rent out to drivers at prices that would make sense to both drivers and Avis; (iii) Uber offers
21 drivers significant incentives for renting WAVs and using them to provide rides on the Uber Driver
22 App platform.

23 **5. Partnerships with commercial fleet operators**

24 75. Uber has entered into agreements with commercial fleet operators in certain cities
25 to increase the supply of WAVs. Under these agreements, the fleet operator's own employees drive
26 WAVs, owned by the fleet operator, and use the Uber Driver App to receive ride requests, often
27 requests for both WAV trips and UberX trips, but sometimes only UberX trips. In addition to the
28

1 money the fleet operator earns from providing rides on the Uber Driver App, Uber pays the operator
2 additional sums for making its WAVs and employee-drivers available on the Uber Apps.

3 76. Initially, Uber entered into agreements with smaller, more local fleet operators who
4 had WAVs. These initial partnerships were very expensive for Uber, did not materially improve
5 the reliability of the WAV marketplace, and were not possible to scale. These smaller fleet
6 operators were unable to provide more than a few WAVs and drivers and were frequently beset
7 with operational and reliability issues.

8 77. In 2017 and 2018, Uber searched for a sophisticated multi-city or national
9 commercial fleet operator able to provide large-scale supply and perform with operational
10 competence.

11 78. MV Transportation, Inc. (“MV”), a company with a fleet of vehicles and employee
12 drivers in multiple cities, emerged as one of a very small set of entities that might fit the bill. MV
13 is the largest privately-owned passenger transportation contracting services company in the United
14 States.

15 79. In 2018, Uber publicly announced a partnership with MV, under which MV would
16 bring a fleet of drivers and hundreds of WAVs to the Uber platform in several cities.

17 80. Uber was optimistic and hopeful that the MV partnership would be a scalable
18 solution to supporting WAV marketplaces. But Uber’s actual experience with the MV partnership
19 proved that even a partnership with such a sophisticated and established WAV transportation
20 provider did not result in reliable or sustainable WAV marketplaces.

21 81. Under Uber’s agreement with MV, employees of MV download the Uber Driver
22 App, create Uber Driver accounts, and, using WAVs owned or leased by MV, log on to the Uber
23 Driver App as available to provide WAV rides and/or UberX rides. In addition to the money MV
24 made from providing rides on the Uber marketplace, Uber agreed to pay additional sums to MV,
25 subject to certain performance metrics, to ensure MV’s overall compensation was the equivalent of
26 guaranteed hourly rates for each hour an MV driver and MV vehicle were available on the Uber
27 platform.

1 82. Under this arrangement, in 2019, Uber paid MV more than \$ [REDACTED] to make its
2 WAVs and drivers available on the Uber Driver App in just seven cities—San Francisco, New York
3 City, Boston, Chicago, Washington, D.C., Los Angeles, and Philadelphia. In 2020, Uber paid more
4 than \$ [REDACTED] to MV for the partnership in those same cities.

5 83. Despite the significant expense to Uber, MV has struggled to provide the number of
6 WAV supply hours (the number of hours a WAV vehicle is “online” and available to receive
7 requests) requested by Uber in nearly every city where the partnership has remained active.

8 84. MV has repeatedly demanded substantial price increases in nearly every city as a
9 condition to continuing the partnership.

10 85. MV has not expressed an interest in expanding the partnership to other cities.

11 86. Uber also continues to partner with smaller fleet operators in certain cities. Given
12 the smaller size and more local focus of these fleet operators, Uber does not have the option to
13 readily expand these partnerships to other cities. These operators lack a base of operations in other
14 cities and thus would have to build out local infrastructure in new cities, which increases the prices
15 they would demand to be paid by Uber.

16 87. Uber’s partnerships with commercial fleet operators—in which Uber guarantees
17 payments regardless of the number or rides completed on the platform—are a significant deviation
18 from Uber’s business model, under which Drivers earn what they earn based on the number of trip
19 requests they receive and complete, if any.

20 **B. Uber Spends [REDACTED] Supporting Each WAV Trip.**

21 88. Uber spends a lot of money supporting WAV marketplaces, which it does not recoup
22 and therefore loses. For some WAV rides, Uber does not even try to bring in any revenue—*e.g.*,
23 where Uber waives its service fee as an incentive for drivers to provide WAV rides.

24 89. Exclusive of government funding, Uber spent more than \$ [REDACTED] in 2019
25 supporting WAV marketplaces in just twelve cities: San Francisco, Austin, New York City, Boston,
26 Chicago, Washington, D.C., Los Angeles, Toronto, Philadelphia, Phoenix, Portland, and Houston.

27 90. The “per WAV trip” cost below represents the amount of additional money Uber
28 pays to drivers and other partners (*e.g.*, rental companies, fleet operators, or taxi companies) to

1 support the WAV option. This calculation does not account for the limited subsidies that some
 2 state or local governments make available to Uber for supporting WAV (and no such subsidies
 3 would be available to Uber in Jackson, Mississippi or New Orleans, Louisiana).

4 91. In 2019, Uber’s “per WAV trip” costs were as follows:

Jurisdiction	Per WAV Trip Cost
San Francisco	\$ [REDACTED]
Austin	\$ [REDACTED]
New York City	\$ [REDACTED]
Boston	\$ [REDACTED]
Chicago	\$ [REDACTED]
Washington, D.C.	\$ [REDACTED]
Los Angeles	\$ [REDACTED]
Philadelphia	\$ [REDACTED]
Phoenix	\$ [REDACTED]
Portland	\$ [REDACTED]
Houston	\$ [REDACTED]

14 92. In 2020, Uber continued to invest in supporting WAV marketplaces for the same 12
 15 cities. Exclusive of government funding, Uber spent at least \$ [REDACTED] on these efforts in 2020.

16 93. Uber’s “per WAV trip” costs increased in 2020:

Jurisdiction	Per WAV Trip Cost
San Francisco	\$ [REDACTED]
Austin	\$ [REDACTED]
New York City	\$ [REDACTED]
Boston	\$ [REDACTED]
Chicago	\$ [REDACTED]
Washington, D.C.	\$ [REDACTED]
Los Angeles	\$ [REDACTED]
Philadelphia	\$ [REDACTED]
Phoenix	\$ [REDACTED]
Portland	\$ [REDACTED]
Houston	\$ [REDACTED]

26 94. These “per WAV trip” costs do not reflect the full amount Uber spends to support
 27 WAV rides for riders who need a WAV. As noted above, the “per WAV trip” cost reflects only
 28

1 the amount of money Uber pays to drivers (monetary incentives) and the various entities it partners
2 with to support WAV marketplaces.

3 95. The “per WAV trip” cost does not account for marketing costs or overhead
4 associated with supporting the marketplace, such as insurance, legal and regulatory costs, and the
5 costs of employees who manage Uber’s efforts to support WAV.

6 96. In addition, the “per WAV trip” cost is calculated based on rides requested in the
7 “WAV” option in the Uber Rider App, regardless of whether the requesting rider actually requires
8 a WAV for transportation. Sometimes riders who do not need WAVs request rides using the WAV
9 option, especially during busy times. (During busy times, the rider price for other types of rides
10 “surge” higher, but the rider price for WAV rides remains static.) Some percentage of “WAV”
11 trips are taken by individuals who do not need WAVs, so the calculation of Uber’s per WAV ride
12 for persons who actually need them is even higher.

13 97. These subsidies to each ride dwarf what Uber receives in revenue for any trip. The
14 rider on a WAV trip pays the same price for a WAV ride as she would pay for an UberX ride. The
15 average rider price per WAV trip in 2019 was \$██████, and \$██████ in 2020.

16 98. These figures are not Uber’s revenue from each trip. Uber’s revenue is limited to a
17 small service fee charged to the driver that Uber usually, but not always, collects from the driver.
18 The total service fees collected on WAV trips is negligible.

19 **C. Despite Uber’s Substantial Investment, WAV Remains Significantly Less**
20 **Reliable Than Other Uber Marketplaces.**

21 99. In every city where Uber has invested in a WAV marketplace, average wait times
22 are longer for WAV trips than for UberX trips and other types of trips.

23 100. In every city where Uber has invested in a WAV marketplace, WAV trip requests
24 also are accepted and completed by transportation providers at lower rates when compared to other
25 types of trip requests. In other words, a significantly lower percentage of WAV requests result in
26 a driver choosing to accept and complete the trip.

1 **V. Launching A WAV Option May Not Even Be Feasible in New Orleans or Jackson.**

2 101. There is no evidence in the record that New Orleans, Louisiana or Jackson,
3 Mississippi is comparable to any of the cities where Uber currently offers the WAV option.

4 102. As shown in the table below, the pilot cities where Uber currently supports WAV
5 marketplaces are more heavily and more densely populated than New Orleans and Jackson:

6 City	Population	Population/Square Mile
7 New York City	8,336,817	27,012.4
8 Los Angeles	3,979,576	8,092
9 Chicago	2,693,976	11,841.8
10 Houston	2,320,268	3,501.5
11 Phoenix	1,680,992	2,797.8
12 Philadelphia	1,584,064	11,379.5
13 Austin	978,906	2,653.2
14 San Francisco	851,549	17,179.2
15 Washington, D.C.	705,749	9,856.5
16 Boston	692,600	12,792.7
17 Portland	654,741	4,375.3
18 New Orleans	390,144	2,029
19 Jackson	160,628	1,562.5

20 103. Given the population size and density differences, launching WAV in New Orleans
21 or Jackson would be less likely to succeed than in other cities.

22 104. Were it feasible for Uber to support a WAV marketplace in New Orleans or Jackson,
23 that marketplace would have limited reliability, and Uber would consequentially have to spend
24 more to support each WAV ride than it currently spends per WAV ride in other jurisdictions.

25 105. Uber would likely have to spend at least [REDACTED] subsidizing each
26 individual WAV trip if it attempted to support a WAV marketplace in New Orleans or Jackson.
27
28

1 106. Plaintiffs have identified a presentation an Uber employee prepared in 2017
2 suggesting that Uber could “fully fund” UberWAV with a 3-4 cent accessibility fee. Plaintiffs have
3 not shown that the four-year old projection by an unknown employee was accurate then or accurate
4 now.

5 **VI. Uber’s Vehicle Requirements Have Not Deterred Drivers With WAVs From Creating
6 Driver Accounts.¹**

7 107. Two of the most popular request options on the Uber platform in New Orleans and
8 Jackson are UberX (affordable rides in standard vehicles) and UberXL (rides in larger vehicles that
9 can seat a greater number of riders).

10 108. In New Orleans and Jackson, Uber’s generally applicable vehicle requirements
11 require a minimum of five seats (including the driver) for the UberX marketplace and a minimum
12 of seven seats (including the driver) for the UberXL marketplace. The larger minimum seat
13 requirement for UberXL is a defining feature of UberXL marketplace.

14 109. The generally applicable vehicle requirements for UberX and UberXL also prohibit
15 “vans, box trucks, or similar vehicles” and vehicles with “aftermarket seating modifications, such
16 as installed seats, seat belts, or BedRyder systems.” BedRyder systems, which were featured on
17 the television show Shark Tank, add passenger seats to the uncovered bed of a pickup truck.

18 110. The prohibition on “vans” does not prohibit minivans. Uber’s website includes a
19 list of vehicles that satisfy the generally applicable vehicle requirements, and that list identifies
20 many minivans as “eligible vehicles” for UberX and UberXL—like the Toyota Sienna, the Chrysler
21 Pacifica, the Kia Carnival, the Honda Odyssey, and the Dodge Caravan. Many minivans are driven
22 by drivers on the Uber platform and are used by drivers to complete trips in Jackson and New
23 Orleans.

24
25 ¹ Uber filed a Motion for Partial Summary Judgment on Plaintiffs’ claim under 42 U.S.C.
26 § 12184(b)(1). *Crawford*, ECF No. 227; *Namisnak*, ECF No. 187. These proposed findings of
27 facts and conclusions of law were due before the Court could resolve that motion. While it contends
28 a trial is not necessary to resolve this claim, Uber includes proposed findings of facts and
conclusions of law related to Plaintiffs’ claim under 42 U.S.C. § 12184(b)(1) to avoid any
implication of waiver of any defense at trial. Uber reserves all rights to supplement these proposed
findings of facts and conclusions of law after the Court resolves the motion for summary judgment.

1 111. Uber determines whether a vehicle meets its vehicle requirements. Uber does not
2 regard its generally applicable vehicle requirements as prohibiting WAVs from the UberX or
3 UberXL marketplace.

4 112. The same generally applicable vehicle requirements apply in cities where the WAV
5 option is available, including Chicago, Washington, D.C., and Philadelphia. Many drivers in each
6 city use WAVs on the platform.

7 113. Plaintiffs do not intend to sign up to sell WAV rides using Uber’s platform. Because
8 of his disability, each Plaintiff is unable to operate a vehicle.

9 114. Plaintiffs were not deterred from using the Uber Driver App.

10 115. Plaintiffs have not downloaded the Uber Driver App.

11 116. The record does not reflect any evidence of any person that wanted to sell WAV
12 rides on the UberX or UberXL marketplaces but was prohibited or deterred from doing so by the
13 generally applicable vehicle requirements.

14 **CONCLUSIONS OF LAW**

15
16 **I. Defendants Are Entitled To Judgment In Their Favor As To Plaintiffs’ Claims Under
17 42 U.S.C. § 12184(b)(2)(A).**

18 1. Plaintiffs have alleged that Uber has violated 42 U.S.C. § 12184(b)(2)(A) by failing
19 to make a reasonable modification requested by the Plaintiffs.

20 2. Section 12184(b)(2)(A), by way of cross-reference to 42 U.S.C.
21 § 12182(b)(2)(A)(ii), prohibits a covered entity from failing to “make reasonable modifications in
22 policies, practices, or procedures, when such modifications are necessary to afford such goods,
23 services, facilities, privileges, advantages, or accommodations to individuals with disabilities,
24 unless the entity can demonstrate that making such modifications would fundamentally alter the
25 nature of such goods, services, facilities, privileges, advantages, or accommodations.”

26 3. Although the contours of the demand have changed throughout this litigation,
27 Plaintiffs’ final demand is that Uber “provide UberWAV in New Orleans and Jackson.” Final
28 Pretrial Statement § B.I.4.

1 4. Plaintiffs have refused and disclaimed any intention to provide additional detail or
2 information about what modifications Uber would have to implement to comply with their demand.
3 Instead, Plaintiffs have suggested that, after trial, they would “provide briefing to the Court about
4 proposed specific language for the injunction that will issue.” Final Pretrial Statement § B.I.8.²
5 Plaintiffs include a variety of metrics they “suggest” or “expect” to be included in any injunction,
6 but do not make a concrete demand for any particular benchmarks to be included in the injunction.
7 Indeed, although they disclaimed their demand for equivalent service at summary judgment,
8 Plaintiffs contend that a regulation which defines “equivalent service” will guide the metrics they
9 intend to later ask to be the outcome:

10 Plaintiffs expect that the injunction would require Uber to provide UberWAV in
11 New Orleans and Jackson in a fashion comparable to its service in the cities
12 where UberWAV is currently operated, as Plaintiffs prayed for in their Complaints.
13 Plaintiffs will suggest that the Court’s injunction provide specific metrics for Uber
14 to attain by certain points in time, but not that the Court order Defendants to use any
15 particular methodology or financing structure to achieve those metrics. Plaintiffs
16 will suggest to the Court that 49 CFR § 37.105 provides a potential source of metrics
17 to use in specifying what Defendants must achieve.

18 *Id.*

19 5. Plaintiffs’ tactics place the Court in a bind because the “reasonableness” of any
20 modification depends on its costs and effectiveness. Thus, bifurcation of liability and remedy
21 cannot work in this case. Liability and remedy cannot be separated in an ADA “reasonable
22 modification” case. Adding conditions or metrics to the requested modification may change the
23 reasonableness of the requested modification. The Court will not hold another trial analyzing the
24 reasonableness of a different modification requesting different standards after this one. Plaintiffs
25 get only one bite at the apple.

26 ² Plaintiffs’ proposal in the Pretrial Order to bifurcate trial into two phases—one focused on
27 liability and another focused on remedy (the specifics of the injunction)—is contrary to Plaintiffs’
28 own belief that “[b]ifurcation or a separate trial of specific issues is not feasible or desired.” Final
Pretrial Statement § K.

1 6. Accordingly, the Court analyzes the legal validity of Plaintiffs’ stated proposed
2 modification in the Final Pretrial Statement—for Uber to “provide UberWAV in New Orleans and
3 Jackson.”

4 7. Judgment should be entered in Uber’s favor as to Plaintiffs’ reasonable modification
5 under Section 12184(b)(2)(A) for at least three reasons.

6 8. *First*, Title III of the ADA does not require covered entities to provide, ensure, or
7 guarantee WAV service.³ This construction is supposed by the statute’s plain language, canons of
8 statutory construction, regulations (and guidance regarding those regulations) issued by the
9 Department of Transportation, decisions from the Second and Tenth Circuits, and the legislative
10 history of Section 12184.

11 9. *Second*, Plaintiffs have not requested a sufficiently concrete modification—a
12 necessary predicate for a “reasonable modification” claim and for the Court to be able to assess the
13 “reasonableness” of the proposed modification and enter an injunction that could comply Rule 65’s
14 specificity and breadth requirements.

15 10. *Third*, to the extent the Court can evaluate it, Plaintiffs fail to show that the proposed
16 modification is “reasonable.” The evidence at trial showed that Uber would likely have to spend
17 ██████████ subsidizing each individual WAV ride and spend ██████████ annually
18 to support a robust and reliable WAV marketplace in Jackson, Mississippi and New Orleans,
19 Louisiana. The evidence further shows that “providing UberWAV” is New Orleans and Jackson
20 would likely be more administratively difficult and expensive for Uber than it is in the current cities
21 where Uber has a WAV option available on the Uber Apps. In addition, the evidence shows that
22 despite such an investment, a WAV marketplace in Jackson or New Orleans is unlikely to be
23 reliable, much less the high reliability and mostly equivalent service Plaintiffs claim are necessary
24

25 ³ Uber recognizes that the Court denied its motion for summary judgment as to whether
26 Title III of the ADA requires an entity to provide or guarantee WAV service. To preserve that issue
27 for appeal, Uber includes argument on that issue here. *See Ortiz v. Jordan*, 562 U.S. 180, 183–84
28 (2011); *Williams v. Gaye*, 895 F.3d 1106, 1122 (9th Cir. 2018) (recognizing that *Ortiz* may have
called into question the Ninth Circuit’s exception for preservation of “purely legal” issues denied
at summary judgment, but declining to decide the issue).

1 for them to cease being deterred from using the Uber Rider App. Modifications that would require
 2 such significant and disproportionate costs, especially when unlikely to be viable or effective, are
 3 not “reasonable” for purposes of Title III as the ADA requires.

4 **A. Title III Of The ADA Does Not Require Covered Entities To Guarantee WAV**
 5 **Service.**

6 11. Section 12184(b)(3) also explains why Section 12184 as a whole does not require
 7 WAV service at all. This provision, which specifically addresses WAVs, makes clear that
 8 providing transportation in “automobiles” that are inaccessible to passengers in wheelchairs (*i.e.*,
 9 that are not WAVs), is *not* discrimination. 42 U.S.C. § 12184(b)(3). Indeed, Section 12184(b)(3)
 10 and (b)(5) together identify the only circumstances where the statute mandates WAV service: when
 11 a covered entity purchases or leases a new van to provide specified public transportation. As a
 12 result of these provisions, the Department of Transportation and courts have interpreted
 13 Section 12184 as *not* requiring covered entities to purchase or lease *any* WAVs.

14 12. DOT, to which Congress delegated authority to promulgate regulations to
 15 implement Section 12184, *see* 42 U.S.C. § 12186(a)(1), has issued regulations crystalizing the
 16 implication Sections 12184(b)(3) has on Section 12184 generally: “[p]roviders of taxi service are
 17 not required to purchase or lease accessible automobiles,” or “to purchase vehicles other than
 18 automobiles in order to have a number of accessible vehicles in [their] fleet[s].” 49 C.F.R.
 19 § 37.29(b);⁴ *see* 49 C.F.R. § Pt. 37, App. D (“Under the ADA no private entity is required to
 20 purchase an accessible automobile.”). And, in explaining the regulation, DOT opined that “if a taxi
 21 company acquires only automobiles, it need never obtain an accessible vehicle.” *Transp. for*
 22 *Individuals with Disabilities*, 56 Fed. Reg. 45584-01, 45590 (Sept. 6, 1991).

23 13. DOT’s reasonable interpretations of Section 12184 and of its own regulations are
 24 due deference. *See Chevron, Inc. v. NRDC*, 467 U.S. 837, 844 (1984); *Auer v. Robbins*, 519 U.S.
 25 452, 461 (1991). No court has rejected the validity or reasonableness of the agency’s
 26 interpretations. To the contrary, courts have agreed that a for-hire vehicle service may maintain a

27 _____
 28 ⁴ DOT has explained that for purposes of this regulation, “taxi service” means any for-hire
 vehicle service. 49 C.F.R. § Pt. 37, App. D.

1 “fleet consisting entirely of non-accessible vehicles [and] be in accord with the ADA.” *Toomer v.*
2 *City Cab*, 443 F.3d 1191, 1195 (10th Cir. 2006) (emphasis added) (citing 42 U.S.C. § 12184(b)(3));
3 *Noel v. NYC TLC*, 687 F.3d 63, 73–74 (2d Cir. 2012) (“[T]he ADA, as a whole, does not require
4 the ... taxi industry to provide accessible taxis.”) (emphasis added). This Court has fully agreed:
5 “an entity may maintain a fleet of exclusively non-accessible vehicles without violating the ADA.”
6 *Crawford*, ECF No. 80 at 8.

7 14. Plaintiffs posit that the above authorities are wrong or that there is a significant
8 caveat to the above authorities, such that for example, the Tenth Circuit in *Toomer* really meant a
9 for-hire vehicle service may maintain a “fleet consisting entirely of non-accessible vehicles [and]
10 be in accord with the ADA” *unless the plaintiff asks for WAV service*. This position has no support
11 in the case law, and no court has ever compelled an entity under Section 12184 to “provide” WAV
12 service.

13 15. Section 12184’s specific provisions relating to WAVs and WAV service
14 (subsections (b)(3) and (b)(5)) trump the statute’s general provisions (subsection (b)(2)). This
15 construction follows from the “well established canon of statutory interpretation” that “the specific
16 governs the general.” *RadLAX Gateway Hotel v. Amalgamated Bank*, 566 U.S. 639, 645 (2012).
17 When “a general permission or prohibition is contradicted by a specific prohibition or
18 permission, ... the specific provision is construed as an exception to the general one.” *Id.* The
19 “general language of a statutory provision, although broad enough to include it, will not be held to
20 apply to a matter specifically dealt with in another part of the same enactment.” *Id.* at 646. This
21 specific/general canon eliminates contradictions and superfluities. *Id.* at 645–46. While not “an
22 absolute rule,” the canon provides “a strong indication of statutory meaning, especially when, as
23 here, the two provisions are interrelated and closely positioned, both in fact being parts of the same
24 statutory scheme.” *United States v. Corrales-Vazquez*, 931 F.3d 944, 950–51 (9th Cir. 2019).
25 Applying the specific/general canon, subsection (b)(2)’s general requirement that covered entities
26 make “reasonable modifications” yields to the specific provisions of subsections (b)(3) and (b)(5)
27 when it comes to WAV-related requirements.

1 16. Had Congress intended to compel private entities that do not purchase or lease new
 2 vans to provide WAV service, it would not have done so by drafting specific WAV provisions
 3 (subsections (b)(3) and (b)(5)) that do not require WAV service and, instead, rely on a general
 4 provision that says nothing about WAVs (subsection (b)(2)) to nevertheless compel WAV service.
 5 This is clear based on what Congress required under in Title II of the ADA and the language it
 6 used. Title II expressly and affirmatively requires public entities to provide WAV service by
 7 defining the failure to do so as “discrimination”: “It shall be considered discrimination ... for a
 8 public entity which operates a fixed route system ... to fail to provide ... paratransit and other
 9 special transportation services to individuals with disabilities, including individuals who use
 10 wheelchairs.” 42 U.S.C. § 12143(a). Title II shows that Congress knows how to mandate WAV
 11 service, but Congress did not do so in Section 12184. *See* 42 U.S.C. § 12184(b).

12 17. It is a well-settled rule of statutory interpretation that textual differences in related
 13 or parallel statutes—especially statutes enacted by the same Congress and the same Act—are
 14 meaningful and must be respected. *Wisc. Cent. Ltd. v. United States*, 138 S. Ct. 2067, 2071–72
 15 (2018). “[W]here Congress includes particular language in one section of a statute but omits it in
 16 another section of the same Act, it is generally presumed that Congress acts intentionally and
 17 purposely in the disparate inclusion or exclusion.” *Russello v. United States*, 464 U.S. 16, 23
 18 (1983); *see also Jama v. I.C.E.*, 543 U.S. 335, 341 (2005) (“We do not lightly assume that Congress
 19 has omitted from its adopted text requirements that it nonetheless intends to apply, and our
 20 reluctance is even greater when Congress has shown elsewhere in the same statute that it knows
 21 how to make such a requirement manifest.”). Thus, that Congress specifically included in Title II
 22 an express requirement for covered entities to provide equivalent service confirms that Congress’s
 23 decision to omit such a requirement from Section 12184, in the same Act, was intentional.⁵

24
 25 ⁵ Congress has explained that it treated public and private entities differently with regard to
 26 accessible transportation in the ADA because private entities “do not receive the high levels of
 27 federal subsidies that publicly provided services do,” and so the requirements applicable to private
 28 entities “vary according to the size and type of vehicle, as well as according to the type of system
 on which the vehicle operates.” H. Rep. No. 101-485(I), 101st Cong., 2d Sess., 1990 WL
 10079987, at *2 (May 14, 1990).

1 18. This interpretation of Section 12184 also avoids absurd results. *See United States*
2 *v. Thompson*, 728 F.3d 1011, 1018 (9th Cir. 2013). It would be incongruous for Section 12184 to
3 both require covered entities to guarantee WAV service and, simultaneously, not require them to
4 acquire WAVs. There is no indication in the statute’s text, the regulations, or legislative history,
5 nor in any case law, that Congress intended to require covered entities to do what Plaintiffs request
6 here, which is to make the defendant cause other entities to provide WAV service (and thus acquire
7 WAVs) on behalf of the defendant, even though they are not required to provide such service
8 directly, except in one narrow circumstance expressly contemplated by the statute: raise equivalent
9 service as a defense to the acquisition of a new inaccessible van.

10 19. In fact, the opposite is true. Legislative history confirms that Congress intended the
11 specific provisions in subsections (b)(3) and (b)(5) to govern the general provisions of
12 subsection (b)(2):

13 [Section] 304(b)(2) lists further examples of discrimination, including: a failure such
14 entity to make reasonable modifications consistent with those required under section
15 302(b)(2)(A)(ii); a failure to provide auxiliary aids and services consistent with the
16 requirements of section 302(b)(2)(A)(iii); and a failure to remove barriers consistent
17 with the requirements of section 302(b)(2)(A)(iv), (v), and (vi).

18 *The examples of discrimination contained in section 304(b) are intended to address*
19 *situations that are not covered in the specific vehicle and system requirements for*
20 *private entities primarily engaged in the business of transporting people included*
21 *in sections 304(b)(3), 304(b)(4), 304(b)(5) and 306. The general rule contained in*
22 *paragraph (a) and the examples of discrimination contained in paragraph (b) are*
23 *not intended to override the specific requirements contained in the sections*
24 *referenced in the previous sentence. For example, an individual with a disability*
25 *could not make a successful claim under section 304(a) that he or she had been*
26 *discriminated against in the full and equal enjoyment of public transportation*
27 *services on the grounds that an over-the-road bus was not wheelchair lift-equipped,*
28 *if a lift was not required under 304(b)(4) or 306(a)(2).*

23 H. Rep. No. 101-485(I), 101st Cong., 2d Sess., 1990 WL 10079987, at *16 (May 14, 1990)
24 (emphasis added).

25 20. Like Congress, DOT has interpreted Section 12184 as not requiring covered entities
26 to provide WAV service at all. Not only did DOT issue regulations and guidance stating that
27 covered entities need not acquire accessible vehicles themselves; DOT specifically considered, and
28

1 specifically rejected, a rule requiring taxi companies to at least “have access to accessible vehicles
2 (either in its own fleet *or through arrangements with other entities*.” *Transp. for Individuals with*
3 *Disabilities*, 56 Fed. Reg. 45584-01, 45590, 1991 WL 171006 (Sept. 6, 1991) (emphasis added).
4 Such a rule was inappropriate, DOT explained, because of “the absence of specific statutory
5 language requiring a mix of accessible vehicles in taxi fleets.” *Id.* Thus, DOT has made clear that
6 covered entities need not acquire their own accessible vehicles or otherwise provide access to
7 accessible vehicles (save in the limited circumstance, not present here, where a covered entity
8 chooses to purchase or lease new vans for specified public transportation, *see* 42 U.S.C.
9 § 12184(b)(3), (b)(5)).

10 21. In sum, the rules of statutory construction show, unambiguously, that neither the
11 specific prohibitions in Section 12184(b)(3) and (b)(5) nor the general prohibition in (b)(2) require
12 the provision of WAV service absent the purchase or lease of a new van. And were the statute
13 ambiguous on this point, DOT regulations and guidance (entitled to deference), as well as
14 legislative history resolve that ambiguity. Thus, Plaintiffs’ claim that Uber is obligated to provide
15 or make others provide WAV service as a “reasonable modification” under Section 12184(b)(2)
16 fails as a matter of law.

17 **B. Plaintiffs Have Not Demanded A Sufficiently Concrete Modification To Enable**
18 **The Court To Determine The “Reasonableness” Of The Demand Or Enter An**
19 **Injunction That Would Comply With Rule 65.**

20 22. Plaintiffs seek an injunction requiring Uber to “provide UberWAV in New Orleans
21 and Jackson.” Final Pretrial Statement § B.I.4. This demand fails as a matter of law for three
22 reasons. *First*, Section 12184(b)(2)(A) requires a fact-based inquiry into whether the modification
23 is “reasonable,” and a sufficiently concrete proposal is necessary to conduct that inquiry. *Second*,
24 an injunction requiring Uber to “provide UberWAV in New Orleans and Jackson” would not
25 comply with Rule 65’s requirement that any injunction “describe in reasonable detail ... the act or
26 acts restrained or required.” Fed. R. Civ. P.65(d)(1)(C). *Finally*, the demanded modification is
27
28

1 overly broad because it unnecessarily provides relief to an uncertified class when more narrow
2 relief could redress Plaintiffs' injuries.⁶

3 **1. Plaintiffs' demand is not concrete enough for the Court to determine**
4 **its reasonableness.**

5 23. Following a bench trial in a recent case involving Uber's competitor, Lyft, raising
6 very similar issues relating to WAV transportation, Judge Alsup held that plaintiffs demanding a
7 "reasonable modification" under 42 U.S.C. § 12184(b)(2)(A), like Plaintiffs here, "are required to
8 propose a concrete modification rather than merely propose that the district court order a defendant
9 to undertake an iterative trial-and-error process to try to find a proposed modification." *Indep.*
10 *Living Resource Ctr. v. Lyft, Inc.*, 2021 WL 3910719, at *10 (N.D. Cal. Sept. 21, 2021).

11 24. As Judge Alsup explained, a "proposal must have enough meat on its bones to allow
12 a fact finder to rate it as 'reasonable' (or not), as the statute requires." *Id.* The proposed
13 modification must not only be "concrete and specific" but should also be "straightforward and
14 simple." *Id.*

15 25. Judge Alsup's reasoning is well-grounded. As another federal district court recently
16 explained, a reasonable modification must be "a specific solution which would rectify the plaintiff's
17 grievances." *Bailey v. Bd. of Comm'rs*, 484 F. Supp. 3d 346, 432 (E.D. La. 2020). Federal courts

18 ⁶ Whether Plaintiffs have made a sufficiently concrete demand is an issue distinct from the
19 issue the Court reached at summary judgment regarding the adequacy of Plaintiffs' pre-trial
20 demand. The Court denied Uber's motion for summary judgment about whether Plaintiffs' then-
21 demand constituted a demand to a "policy, practice or procedure" by rejecting Uber's argument
22 that Plaintiffs are demanding Uber to provide "different goods or services." *Crawford*, ECF
23 No. 197; *Namisnak*, ECF No. 160 at 16–17.

24 In all events, because Plaintiffs have abandoned the demands in their complaints (for
25 equivalent service and at least 60 WAVs "on the road," *Crawford*, ECF No. 129-7; *Namisnak*, ECF
26 No. 86-5)) in favor of a limited demand that Uber "provide WAV service" in New Orleans and
27 Jackson, Final Pretrial Statement § B; *see id.* at 19 (statement supersedes the complaints)—the
28 Court can and should revisit that distinct issue. Section 12184(b)(2)(A) is concerned with *existing*
business policies, practices, or procedures and with the provision of individualized exceptions—
"modifications" to them. *See, e.g., McGary v. City of Portland*, 386 F.3d 1259, 1266–67 (9th Cir.
2004) ("[T]he crux of a reasonable accommodation claim is a facially neutral requirement that is
consistently enforced."). But Plaintiffs have requested an order compelling Uber to offer a *new*
service—UberWAV—in New Orleans and Jackson. Title III does not require covered entities to
provide new goods or services. *Weyer v. Twentieth Century Fox Film Corp.*, 198 F.3d 1104, 1115
(9th Cir. 2000); *see also Crawford*, ECF No. 195-09; *Namisnak*, ECF No. 159-09 at 18–19.

1 have only required defendants to make modifications when the proposal was concrete and simple.
 2 *See, e.g., PGA Tour, Inc. v. Martin*, 532 U.S. 661, 690, (2001) (affirming injunction for waiver
 3 permitting professional golfer to use golf cart); *Fortyune v. Am. Multi-Cinema, Inc.*, 364 F.3d 1075,
 4 1082 (9th Cir. 2004) (affirming injunction requiring movie theater to amend its policy to ensure a
 5 companion seat is available for an individual with a disability who requires a companion); *Doud v.*
 6 *Yellow Cab Co.*, 2014 WL 4302552, at *9 (D. Nev. 2014) (entering preliminary injunction requiring
 7 taxicab company to no longer refuse plaintiffs’ requests to travel in typical cab when their
 8 motorized scooters fit in the trunk of a standard taxi). “No federal court has ever held that an
 9 iterative, experimental, or trial-and-error proposal constituted a reasonable modification to a policy,
 10 practice, or procedure under Title III.” *Lyft*, 2021 WL 3910719, at *9–10 (collecting cases).

11 26. The Department of Justice’s guidance about “policies, practices, and procedures,”
 12 and “modifications” to them, provide further support for the notion that modification requests be
 13 both concrete and simple.⁷ As DOJ explains: (i) where a parking facility has a “rule barring all
 14 vans or all vans with raised roofs,” that facility may need to “modify” that rule “if an individual
 15 who uses a wheelchair-accessible van wishes to park in that facility; (ii) “[a] department store may
 16 need to modify a policy of only permitting one person at a time in a dressing room, if an individual
 17 with [a cognitive impairment] needs and requests assistance in dressing from a companion”; and
 18 (iii) “a hotel may need to adopt a policy of keeping an accessible room unoccupied until an
 19 individual with disability arrives at the hotel, assuming the individual has properly reserved the
 20 room.” 28 C.F.R. § Pt. 36, App. C.

21 27. Plaintiffs’ demand for Uber to “provide UberWAV in New Orleans and Jackson” is
 22 neither concrete nor simple. Plaintiffs do not offer “a specific solution which would rectify [their]
 23 grievances.” *Bailey*, 484 F. Supp. 3d at 432. To the contrary, Plaintiffs affirmatively disclaim any
 24 request for an injunction that would require “Defendants to use any particular methodology or
 25 financing structure to achieve [to-be-suggested] metrics.” Final Pretrial Statement § B.I.8.

26
 27 ⁷ The DOJ’s regulations and guidance for reasonable modification claims for public
 28 accommodations are adopted by the Department of Transportation for reasonable modification
 claims under 42 U.S.C. § 12184(b)(2)(A). 49 C.F.R. § 37.5(f).

1 28. Plaintiffs’ requested modification is even less concrete than the modification the
2 *Lyft* plaintiffs demanded, which Judge Alsup found lacking. The *Lyft* plaintiffs suggested metrics
3 before trial, requesting an injunction requiring Lyft to meet specific “wait time benchmarks” tied
4 to metrics proposed by a California regulator (the *Lyft* case concerned WAV service in certain
5 California cities). *Lyft*, 2021 WL 3910719, at *11. Judge Alsup rightly rejected this demand as a
6 “performance standard” that “begs the question of how it could be done.” *Lyft*, 2021 WL 3910719,
7 at *11.

8 29. Here, Plaintiffs have avoided demanding even a “performance standard.” They
9 have, however, said they would suggest “metrics” for an injunction only after the Court rules on
10 liability. Not only would suggested metrics not make the requested demand sufficiently concrete
11 or simple, but any post-trial effort to clarify their demand comes too late. At the time of trial (and
12 still today), there was nothing concrete about Plaintiffs’ demand for this Court to evaluate for
13 reasonableness.

14 30. The absence of a concrete proposal is “dispositive” of Plaintiffs’ claim. *Id.* “No
15 federal court has ever held that an iterative, experimental, or trial-and-error proposal constituted a
16 reasonable modification to a policy, practice, or procedure under Title III.” *Lyft*, 2021 WL
17 3910719, at *9–10 (collecting cases). This Court will not be the first.

18 **2. Plaintiffs’ requested injunction cannot comply with the specificity**
19 **requirements of rule 65(d).**

20 31. Rule 65 requires an injunction to, among other things, “state its terms specifically”
21 and “describe in reasonable detail ... the act or acts restrained or required.” Fed. R. Civ. P. 65(d)(1).
22 These are not “mere technical requirements.” *Schmidt v. Lessard*, 414 U.S. 473, 476 (1974). They
23 are designed “to prevent uncertainty and confusion on part of those faced with injunctive orders.
24 *Id.*

25 32. “The benchmark for clarity and fair notice is not lawyers and judges, who are
26 schooled in the nuances of the law.” *Del Webb Communities, Inc. v. Partington*, 652 F.3d 1145,
27 1150 (9th Cir. 2011). The “ordinary person” must be “able to ascertain from the [injunction order]

1 itself exactly what conduct is proscribed.” *Columbia Pictures Indus. v. Fung*, 710 F.3d 1020, 1047–
2 48 (9th Cir. 2013).

3 33. An injunction requiring Uber to “provide UberWAV” would not include the
4 necessary specificity for Uber to understand what conduct was proscribed. *See Kennedy v.*
5 *Shubhango Inc*, 2021 WL 4494606, at *4 (C.D. Ill. Sept. 30, 2021) (rejecting entry of default
6 judgment when plaintiff “offer[ed] little indication as to what Defendant must do to comply” with
7 a proposed injunction). Such an injunction would leave countless questions open making it
8 impossible for Uber to determine whether it was in compliance. Below are just a few issues that
9 would create uncertainty and confusion if the Court were to enter such an injunction:

- 10 • Can Uber “turn on” the WAV option in the Uber Rider App without taking any actions
11 to cause drivers with WAVs to be available on that platform?
- 12 • Does a driver with a WAV need to be online and available to accept a request 24 hours
13 a day, 7 days a week, 365 days a year?
- 14 • Is the obligation to “provide UberWAV” limited to the city limits of New Orleans or
15 Jackson, or do they extend to the surrounding parishes or counties? If so, how far?
- 16 • What wait time and reliability standards, if any, must be achieved? Are those standards
17 measured and/or reported hourly? Weekly? Monthly? Annually?
- 18 • What must Uber do to meet those standards? How must Uber go about seeing to it that
19 third parties collectively achieve those standards?
- 20 • Must Uber report and certify data regarding the performance standards? If so, how must
21 Uber go about reporting and certifying those standards?
- 22 • How are these performance standards measured? For instance, are wait times measured
23 from the time a rider makes a ride request or from the time a Driver accepts the ride
24 request?
- 25 • What jurisdictions are used to serve as the benchmarking jurisdictions for determining
26 performance standards? Should jurisdictions like Phoenix, which require
27 Transportation Network Companies to have available on their platforms a WAV, but
28

1 only on trips from the airport, be treated differently? *See* Phoenix Muni. Code
2 §4-68.B-7.

3 34. The Court declines to enter such a vague injunction, which would put Uber at risk
4 of a contempt citation, “on a decree too vague to be understood.” *Schmidt*, 414 U.S. at 476.

5 **3. Plaintiffs’ requested injunction is overly broad.**

6 35. It is well-established that injunctive relief should be “no more burdensome to the
7 defendant than necessary to provide complete relief to the plaintiffs before the court.” *E. Bay*
8 *Sanctuary Covenant v. Biden*, 993 F.3d 640, 680 (9th Cir. 2021). Although there is not a “general
9 requirement that an injunction affect only the parties in the suit, *Bresgal v. Brock*, 843 F.2d 1163,
10 1169–1170 (9th Cir. 1987), injunctions that extend relief beyond the parties are “exceptional.” *City*
11 *& Cty. of San Francisco v. Trump*, 897 F.3d 1225, 1244 (9th Cir. 2018).

12 36. Plaintiffs never pleaded this case as a putative class action or moved to certify a
13 class under Rule 23. Nor have Plaintiffs demonstrated that this is an “exceptional case” that
14 warrants relief beyond that necessary to redress the injuries of the named parties.

15 37. The relief Plaintiffs want—their own ability to request a WAV ride using the Uber
16 Rider App and obtain it—does not require the class-wide relief they seek for all of New Orleans
17 and Jackson (and, perhaps, beyond). Instead, Plaintiffs could have demanded narrower relief
18 individual to them (*e.g.*, a driver with a WAV available only to them on the Uber platform) but
19 instead opted for apparent class-wide relief requiring Uber to “provide UberWAV in New Orleans
20 and Jackson.” Because Plaintiffs could receive less burdensome relief from Uber without seeking
21 class-wide relief, the injunction is not “narrowly tailored to remedy the specific harm shown.” *E.*
22 *Bay Sanctuary Covenant v. Barr*, 934 F.3d 1026, 1029 (9th Cir. 2019).

23 38. Plaintiffs attempt to analogize their request for relief to an order requiring a
24 restaurant to install an entrance ramp, which would benefit persons other than the plaintiff who
25 sued for it. That analogy is unpersuasive. Such a ramp is necessary and narrowly tailored to remedy
26 the specific harm to a plaintiff who sues over its absence, and while the installation of a ramp may
27 very well benefit others, those benefits are merely incidental to the relief tailored to the plaintiff’s
28 injury. Here, by contrast, Plaintiffs seek to compel conduct by Uber that is far more than necessary

1 to remedy their specific alleged harm. Plaintiffs' claim here is more akin to a single plaintiff
 2 seeking to compel the construction of wheelchair ramps at one restaurant he would go to, but also
 3 all other restaurants that may be under common ownership even if the plaintiff has no intention of
 4 ever visiting them, because other individuals not before the court may go to those other restaurants.
 5 Such relief would be overbroad in that hypothetical case for the same reasons it is overbroad here.

6 **C. Plaintiffs' Demanded "Modification" Is Not Reasonable, And Therefore, Uber**
 7 **Did Not Engage In Discrimination By Declining To Provide It.**

8 39. Plaintiffs must prove by a preponderance of the evidence that it is "reasonable" for
 9 Uber to meet their demand "to provide UberWAV" in New Orleans and Jackson. 42 U.S.C.
 10 § 12184(b)(2)(A); *see* 42 U.S.C. § 12182(b)(2)(A)(ii); *Lopez v. Catalina Channel Express, Inc.*,
 11 974 F.3d 1030, 1036 (9th Cir. 2020). Even assuming Plaintiffs' demand is an actual "modification"
 12 concrete enough to complete that inquiry, Plaintiffs failed to carry that burden of proof at trial. In
 13 the ADA, "reasonable" is a term of limitation. *McGary*, 286 F.3d at 1270. The ADA does not
 14 require covered entities "to make any and all accommodations"; it requires only those
 15 "accommodations that are reasonable." *Baughman v. Walt Disney World Co.*, 685 F.3d 1131, 1135
 16 (9th Cir. 2012). "A modification is not reasonable if it imposes 'undue financial and administrative
 17 burdens.'" *Fortyune v. Am. Multi-Cinema, Inc.*, 364 F.3d 1075, 1083 (9th Cir. 2004) (quoting *Sch.*
 18 *Bd. of Nassau Cty. v. Arline*, 480 U.S. 273, 288 n.17 (1987)). Reasonableness turns on, among
 19 other things, "the effectiveness of the modification in light of the nature of the disability in question
 20 and the cost to the organization that would implement it." *Id.*; *see Baughman*, 685 F.3d at 1135
 21 (other relevant factors include "disruption of [the defendant's] business and safety").
 22 Reasonableness is also grounded in what other courts or agencies have required. As the Fifth
 23 Circuit put it, Plaintiffs must show that their proposed modification "is reasonable in the general
 24 sense, that is, reasonable in the run of cases." *Johnson v. Gambrinus Co./Spoetzl Brewery*, 116
 25 F.3d 1052, 1059 (5th Cir. 1997); *see also Lyft*, 2021 WL 3910719, at *11 (presuming the "run of
 26 cases" standard applies to reasonable modification cases).

27 40. Key to the reasonableness inquiry is whether the cost is "disproportionate to the
 28 benefit." *Vande Zande v. State of Wis. Dep't of Admin.*, 44 F.3d 538, 542 (7th Cir. 1995) (Posner,

1 J.). Or as Judge Alsup put it, a “vast bottom line does not transform exorbitant modifications into
2 reasonable ones.” *Lyft*, 2021 WL 3910719, at *16. In short, a modification that comes with burdens
3 that are disproportionate to the benefit is not reasonable. *Vande Zande*, 44 F.3d 538, 542 (7th Cir.
4 1995).

5 41. This Court agrees with Judge Alsup that an analysis of Uber’s “cost per WAV ride”
6 provides the best insight into whether the proposed modification here is burdensome in a way that
7 is proportionate to the benefit and, therefore, reasonable.

8 42. Uber historically incurs losses of [REDACTED] on each individual WAV ride
9 in jurisdictions where it supports a WAV marketplace. *See* Findings of Fact (“FoF”) ¶¶ 90–93.
10 This Court further finds that supporting a WAV marketplace in New Orleans or Jackson would be
11 more difficult and more expensive than in the large, densely populated cities where Uber currently
12 supports a WAV option. *Id.* at ¶¶ 101–105.

13 43. Requiring Uber to subsidize the rides of individuals with disabilities to the tune of
14 at least a hundred dollars per ride—and it is usually more—reflects disproportionate burdens.

15 44. Nor is the absolute cost of Plaintiffs’ demand on Uber reasonable. Uber has spent
16 [REDACTED] a year supporting WAV marketplaces. *Id.* at ¶¶ 89, 92. The evidence at
17 trial established that the costs of supporting WAV in New Orleans or Jackson would be much too
18 burdensome to be reasonable.

19 45. In those instances where a modification was found “reasonable,” the modifications
20 have not required the defendants to make *any* expenditures. The PGA did not need to spend a cent
21 to permit Casey Martin to use a golf cart instead of walking in certain golf tournaments. *See Martin*,
22 532 U.S. at 682 (explaining that the PGA did not even dispute the modification was “reasonable”).
23 AMC did not have to incur any direct costs to “ensure[] companion seating will be made available
24 to the individuals for whom they are designed: the companions of wheelchair-bound patrons,” the
25 injunction the Ninth Circuit approved in *Fortyune*. *Fortyune*, 364 F.3d at 1084. It likewise cost
26 nothing for the taxi company in *Doud* to provide rides in the standard cabs it already operated to
27 persons whose motorized scooters would fit in the trunk. *Doud*, 2014 WL 4302552, at *9.

1 46. Likewise, none of the examples provided by DOJ requires a covered entity to make
2 any direct outlays to make the “reasonable” modification. *See* 28 C.F.R., Pt. 36, App. C. Permitting
3 the occasional van into a parking facility, the occasional extra patron in a dressing room, or saving
4 the accessible room for an individual with a disability with an existing reservation, does not require
5 the covered entity to spend any money up front. *See id.*

6 47. To the extent a modification that requires an entity to spend any money can be
7 “reasonable” at all, caselaw shows that “reasonable” costs are limited to those that are unusually
8 affordable or de minimis. *See, e.g., Anderson v. Franklin Inst.*, 185 F. Supp. 3d 628 (E.D. Pa. 2016)
9 (modification requiring Philadelphia science museum to permit free admission to IMAX Theater
10 and special exhibitions for “government-funded personal care attendants” of individuals with
11 disabilities because it does not represent a genuine “opportunity cost” and an “occasional \$1 loss”
12 is not an “unreasonable cost or an undue financial burden”).

13 48. Plaintiffs have failed to show their proposed modification is reasonable in the run
14 of cases. No court has ever held “reasonable” a modification that would directly cost the defendant
15 hundreds of thousands of dollars, much less millions of dollars, a year.

16 49. Plaintiffs’ sole response does not focus on the run of cases. Instead, Plaintiffs point
17 to certain presentations Uber employees prepared in 2017. In one such presentation, an Uber
18 employee suggested that Uber could “fully fund” UberWAV with a 3–4 cent accessibility fee—
19 that is, with a \$0.03–\$0.04 increase in the price charged to all riders who use the Uber Rider App.

20 50. Plaintiffs have not shown that this four-year old projection by an unknown employee
21 was even accurate at the time—let alone an accurate estimate of the accessibility fee today. Nor
22 did Plaintiffs make any showing that Uber could unilaterally charge an accessibility fee without
23 losing business to its competitors.

24 51. More fundamentally, a modification carrying a financial burden so substantial as to
25 require the defendant to increase prices across the board is not “moderate,” “de minimis,” or
26 “inexpensive.” A modification requiring a price increase to pay for it lies so far outside the mine
27 run of cases that it cannot be reasonable.

1 52. While Plaintiffs have speculated there may be other methods to support a WAV
2 marketplace in New Orleans or Jackson, they have not produced sufficient evidence that those
3 methods are feasible or would be effective in New Orleans or Jackson.

4 53. Finally, in determining reasonableness, the Court declines to take a myopic
5 approach that examines only the estimated costs for providing UberWAV in New Orleans and
6 Jackson. *See, e.g., D.L. ex rel. A.L. v. Walt Disney Parks & Resorts, Inc.*, 469 F. Supp. 3d 1280,
7 1313–14 (M.D. Fla. 2020) (rejecting argument that reasonableness of a demand for an individual
8 modification can be viewed in isolation when other individuals with disabilities will make the same
9 demand). The Court is cognizant that a holding that would be reasonable for Uber to “provide
10 UberWAV” in New Orleans and Jackson would likely mean it would be reasonable for Uber to
11 “provide UberWAV” in many cities across the country. As a result, even if it were reasonable to
12 require Uber to spend such significant sums in New Orleans or Jackson every year—and to be clear,
13 the Court holds that it is not—then the potential cumulative costs of having to provide UberWAV
14 in cities across the country would make Plaintiffs’ demand unreasonable.

15 **II. Defendants Are Entitled To Judgment In Their Favor On Plaintiffs’ Claim Under 42**
16 **U.S.C. § 12184(b)(1).**

17 **A. Plaintiffs Lack Any Evidence To Support Their New Claim.**

18 54. Plaintiffs’ theory of liability under 42 U.S.C. § 12184(b)(1) is that Uber’s generally
19 applicable vehicle requirements “screen out most WAVs” from the UberX and UberXL ridesharing
20 marketplaces. Crawford SAC ¶ 146; Namisnak TAC ¶ 153. Specifically, Plaintiffs challenge the
21 vehicle requirements prohibiting “vans” and “after-market seating modifications” and requiring a
22 minimum number of seats (4 for UberX and 7 for UberXL). Crawford SAC ¶¶ 142–43, 146;
23 Namisnak TAC ¶¶ 148–49, 153. Plaintiffs’ “screen out” theory, however, is unsupported by any
24 actual evidence. On the contrary, the uncontroverted evidence at trial shows that Uber’s generally
25 applicable vehicle requirements do not, in fact, prohibit WAVs.

26 55. Plaintiffs failed to offer any evidence of any would-be WAV driver who was
27 prohibited, or dissuaded, by the challenged vehicle requirements from using a WAV to sell UberX
28 or UberXL rides.

1 56. Plaintiffs offer only speculation that drivers with WAVs would, upon reading the
2 challenged vehicle requirements, be deterred from signing up to provide UberX or UberXL rides.
3 That speculation is not evidence, and, therefore, insufficient to satisfy Plaintiffs’ burden of proof.

4 57. The actual evidence in the record disproves Plaintiffs’ speculation. Uber does not
5 have a “no WAV” rule. Plaintiffs’ theory that rules prohibiting “vans” and vehicles with “after-
6 market seating modifications” implicitly screen out WAVs rests on the false premises that “most
7 WAVs are vans that have been altered through after-market modifications.” Crawford SAC ¶ 145;
8 Namisnak TAC ¶ 152.

9 58. *First*, most WAVs are *minivans*, and Uber does not regard minivans as “vans”
10 prohibited by the rule, as its list of eligible vehicles shows. Uber’s distinction between “vans” and
11 “minivans” is consistent with federal law. *See, e.g.*, 23 C.F.R. § 1340.3 (distinguishing between
12 “passenger car, pickup truck, *van*, *minivan* or sport utility vehicle) (emphasis added); 49 C.F.R. §
13 523.2 (“Van means a vehicle with a body that fully encloses the driver and a cargo carrying or work
14 performing compartment. The distance from the leading edge of the windshield to the foremost
15 body section of vans is typically shorter than that of pickup trucks and sport utility vehicles.”);
16 40 C.F.R. § 86.1803-01 (“Van means a light-duty truck or complete heavy-duty vehicle having an
17 integral enclosure, fully enclosing the driver compartment and load carrying device, and having no
18 body sections protruding more than 30 inches ahead of the leading edge of the windshield.”).

19 59. *Second*, Uber’s prohibition against “after-market seating modifications” is a
20 prohibition against vehicles with passenger seats *added* aftermarket, as each example in the full
21 requirement shows: “No aftermarket seating modifications, such as *installed seats*, *seat belts*, or
22 *BedRyder Systems*.” *Cf. Beecham v. United States*, 511 U.S. 368, 371 (1994) (“That several items
23 in a list share an attribute counsels in favor of interpreting the other items as possessing that attribute
24 as well.”); *Hall St. Assocs. v. Mattel, Inc.*, 552 U.S. 576, 586 (2008) (“[W]hen a statute sets out a
25 series of specific items ending with a general term, that general term is confined to covering subjects
26 comparable to the specifics it follows.”). While some WAVs may have after-market modifications
27 to make space for a wheelchair, there is no evidence of these modifications involving the addition
28

1 of seats. Moreover, WAVs can be purchased new, without requiring any after-market
2 modifications.

3 60. Plaintiffs failed to adduce any evidence relating to their theory that the minimum
4 seating requirements for UberX and UberXL screen out WAVs. These minimum requirements are
5 essential, defining features of the UberX and UberXL ridesharing marketplaces. (Riders expect an
6 UberX ride to be offered in a vehicle that can seat at least four riders, and they expect an UberXL
7 ride to be offered in a vehicle that can seat at least six rides.).

8 61. Finally, further confirmation that the UberX and UberXL vehicle requirements
9 Plaintiffs complain of do not restrict WAVs is that the exact same vehicle requirements apply in
10 cities where there is a WAV-specific option, like Washington, D.C., Philadelphia, and Chicago.

11 **B. Plaintiffs Lack Constitutional And Statutory Standing To Assert Their New**
12 **Claim.**

13 62. Aside from their failure of proof, Plaintiffs cannot link the challenged vehicle
14 requirements to their purported injury and, therefore, cannot prove at trial either the “fairly
15 traceable” causation necessary for Article III standing, *see Lujan v. Defs. of Wildlife*, 504 U.S. 555,
16 560 (1992), or the more-demanding proximate causation necessary for statutory standing, *see*
17 *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 132 (2014); *Canyon Cty. v.*
18 *Syngenta Seeds, Inc.*, 519 F.3d 969, 975 (9th Cir. 2008). The causal chain is necessarily attenuated
19 here. The statute prohibits eligibility criteria that “screen out ... individuals with disabilities,” not
20 criteria that screen out particular types of vehicles. 42 U.S.C. § 12184(b)(1). Plaintiffs do not claim
21 that the vehicle requirements have screened them out from eligibility: Plaintiffs are unable to drive.
22 That negates statutory standing, which requires a “direct relationship between the injury asserted
23 and the injurious conduct alleged.” *Bank of Am. Corp. v. City of Miami*, 137 S. Ct. 1296, 1306
24 (2017); *see City of Oakland v. Wells Fargo & Co.*, 14 F.4th 1030, 1036 (9th Cir. 2021) (en banc).
25 Statutory standing generally fails where, as here, the alleged “harm is purely derivative of
26 misfortunes visited upon a third person by the defendant’s acts.” *Lexmark*, 572 U.S. at 133.
27
28

1 63. Indeed, Plaintiffs’ claimed injury is deterrence from using the Uber Rider App
2 because they are unable to use it to make WAV ride requests reliably and with equivalent or near
3 equivalent service.

4 64. There is no link between Plaintiffs’ claimed deterrence and the challenged vehicle
5 requirements for UberX and UberXL. Plaintiffs want a WAV-specific option, not the highly
6 unlikely chance that an UberX or UberXL trip will randomly be provided by a driver who has a
7 WAV. Plaintiffs have admitted from the inception of these lawsuits that it is the absence of the
8 specific “WAV” option that has caused their alleged injuries:

9 As a result of Uber’s refusal to make UberWAV available, persons with disabilities
10 in Jackson have no ability to call a wheelchair accessible vehicle or specially trained
11 driver through the Uber app. *Even if there are drivers on the road who have such
12 a vehicle or training, there is no way for Jackson users with a disability to find a
13 trained driver or accessible vehicle through the app. For this reason, Dr. Crawford
14 is excluded from Uber’s services.*

13 Crawford SAC ¶ 6 (emphasis added); Namisnak TAC ¶ 9 (same for Namisnak, Falls, and New
14 Orleans).

15 65. That admission shows Plaintiffs’ deterrence is not even “fairly traceable” to the
16 challenged requirements for UberX and UberXL vehicles, so Plaintiffs lack Article III standing.

17 66. Indeed, as Plaintiffs’ concession necessarily recognizes, the vehicle requirements
18 for UberX and UberXL are not what matters for riders’ ability to obtain WAV rides. What matters
19 is the supply of WAVs. Uber likely would enable the WAV request option if there were sufficient
20 supply, but Uber demonstrated that there is not sufficient supply, in even the most heavily and
21 densely populated cities, unless Uber subsidizes that supply at significant cost.

22 **III. Plaintiffs Are Not Entitled To Declaratory Relief.**

23 67. Plaintiffs also request a variety of declarations that Uber has violated the law,
24 including declarations that “Defendants’ policies, procedures, and services in New Orleans, LA
25 and Jackson, MS *have been* provided in a discriminatory manner in violation of 42 U.S.C. § 12184,”
26 Final Pretrial Statement § B.I.1 (emphasis added); that “Defendants *violated* 42 U.S.C. §
27 12184(b)(2) by failing to provide Plaintiffs with a reasonable modification,” *id.* § B.I.2 (emphasis
28

1 added); and that “Defendants *violated* 42 U.S.C. § 12184(b)(1) by screening out WAVs from its
2 fleet.” *Id.* § B.I.3 (emphasis added).

3 68. For the reasons discussed above, Defendants are entitled to judgment as to all of
4 Plaintiffs’ claims brought under 42 U.S.C. § 12184. Because Plaintiffs have not demonstrated any
5 violation of the Americans with Disabilities Act by Defendants, they are not entitled to any relief,
6 including declaratory relief.

7 69. Plaintiffs’ request for declaratory relief fails for the additional reason that it is
8 impermissibly retroactive. “[A] declaratory judgment merely adjudicating past violations of federal
9 law—as opposed to continuing or future violations of federal law—is not an appropriate exercise
10 of federal jurisdiction.” *Bayer v. Neiman Marcus Grp.*, 861 F.3d 853, 868 (9th Cir. 2017).

11 **CONCLUSION**

12 For the foregoing reasons, Plaintiffs have not carried their burden to prove that Uber
13 discriminated against individuals with disabilities in violation of Title III of the ADA. Plaintiffs
14 have therefore failed to establish any entitlement to relief. Judgment will be entered solely in favor
15 of Uber.