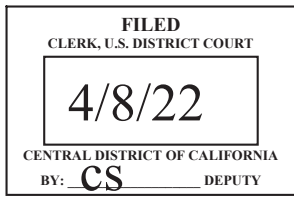


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Pro Se

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

URI MARCUS, YVONNE MARCUS,
AVROHOM GORDON, DEVORAH
GORDON & CINDY RUSSO,

Plaintiffs,

v.

CENTERS FOR DISEASE CONTROL &
PREVENTION, DEPARTMENT OF
HEALTH & HUMAN SERVICES,
TRANSPORTATION SECURITY
ADMINISTRATION, JULIE CARRIGAN,
ALASKA AIRLINES, ALLEGIANT AIR,
AMERICAN AIRLINES, DELTA AIR
LINES, FRONTIER AIRLINES,
HAWAIIAN AIRLINES, SOUTHWEST
AIRLINES, UNITED AIRLINES, YET-
TO-BE-NAMED EMPLOYEES OF THE 8
AIRLINES, STAT-MD, & MEDAIRE,

Defendants,

Case No.: CV22-2383-JWH(DFM)

COMPLAINT

I. STATEMENT OF THE CASE

1. Plaintiffs bring this lawsuit to vacate and permanently enjoin enforcement of the Federal Transportation Mask Mandate (“FTMM”) and the International Traveler Testing Requirement (“ITTR”) put into place by orders of the Centers for Disease Control &

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1 Prevention (“CDC”) – under the purported authority of its parent agency, the Department of
2 Health & Human Services (“HHS”) (collectively “the Federal Defendants”).

3 2. The *ultra vires* FTMM consists of: 1) Executive Order 13998, 86 Fed. Reg.
4 7,205 (Jan. 26, 2021); 2) Department of Homeland Security Determination 21-130 (Jan. 27,
5 2021); 3) CDC Order “Requirement for Persons to Wear Masks While on Conveyances & at
6 Transportation Hubs,” 86 Fed. Reg. 8,025 (Feb. 3, 2021); 4) Transportation Security
7 Administration Health Directives 1542-21-01D, 1544-21-02D, and 1582/84-21-01D (March
8 19, 2022); and 5) TSA Emergency Amendment 1546-21-01D (March 19, 2022).

9 3. Only the CDC order is challenged in this Complaint since it appears the
10 Courts of Appeals have jurisdiction over the TSA Health Directives and Emergency
11 Amendment, and the president’s executive order can be challenged by suing the agencies he
12 directed to carry it out.

13 4. The *ultra vires* ITTR is the CDC Order “Requirements for Negative Pre-
14 Departure COVID–19 Test Result or Documentation of Recovery from COVID–19 for All
15 Airline or Other Aircraft Passengers Arriving into the United States from Any Foreign
16 Country.” 86 Fed. Reg. 69,256 (Dec. 7, 2021).

17 5. We also seek to end the unlawful discrimination against the disabled such as
18 ourselves who can’t safely wear a mask because of a medical condition by eight airlines we
19 have flown on or have attempted to fly on during the COVID-19 pandemic: Alaska Airlines,
20 Allegiant Airlines, American Airlines, Delta Airlines, Frontier Airlines, Hawaiian Airlines,
21 Southwest Airlines, and United Airlines, (collectively “the Airline Defendants”).

22 6. Also charged are Numerous Yet-to-Be-Named Employees of the 8 Airlines
23 (the “Individual Defendants”), whose names will be learned during discovery.

24 7. The final defendants are STAT-MD and MedAire (the “Medical
25 Defendants”), two medical vendors who evaluate mask-exemption demands for most of the
26 Airline Defendants.

27 8. By mandating masks for all American travelers and requiring a negative
28 COVID-19 test before any airline passenger may board a flight to the United States, the
29 Federal Defendants have acted without statutory authorization or following the rulemaking

1 process required by the Administrative Procedure Act (“APA”). These policies also raise
2 serious constitutional concerns. Because of the FTMM, numerous state, local, and regional
3 transportation agencies are told to enforce a federal mandate that is in direct conflict with
4 the laws and policies of all 50 states that prohibit mask mandates or do not require face
5 coverings.

6 9. The Court should vacate worldwide¹ the FTMM and ITTR because they are
7 improper, illegal, and unconstitutional exercises of executive authority. The mask mandate
8 and testing requirement are procedurally defective because the Federal Defendants adopted
9 them without following the APA’s notice-and-comment requirements or considering the
10 impact on millions of disabled travelers such as ourselves. They also ignored countless
11 scientific and medical studies and articles showing that face masks are totally ineffective in
12 reducing corona virus spread but are harmful to human health in at least 68 ways. Congress
13 never intended for the Executive Branch to have the authority to promulgate these policies –
14 and even if it did, the FTMM and ITTR are unconstitutional. CDC and HHS may not
15 exercise their authority in a manner that is inconsistent with the administrative structure that
16 Congress enacted.

17 10. We have been restricted from flying by the Airline Defendants for more than
18 1½ years because of their enforcement of mask mandates that violate numerous provisions
19 of federal and international laws, plus breach their contracts and violate tort law and the
20 Constitution.

21 11. The evidence is indisputable that the Airline Defendants since Summer 2020
22 have illegally discriminated against flyers with disabilities by refusing to grant mask
23 exemptions and/or requiring such an onerous exemption process that makes it nearly
24 impossible for those of us medically unable to cover our face to obtain a waiver.

25 12. Even when granted exemptions, the Airline Defendants create a new class of
26 travelers relegated to travel only in seats located at the back of the aircraft, as if we are
27

28 ¹ The FTMM purports to apply aboard flights to and from the United States, even when the aircraft is outside
29 U.S. airspace. It likewise applies to ships calling on U.S. ports even when such vessels are in the open sea
thousands of miles from American shores, far outside U.S. jurisdiction.

1 lepers with confirmed communicable diseases who must be segregated from all others. This
2 despite the fact that they are further illegally mandating us to submit multiple negative
3 COVID-19 tests, which confirm that mask-exempt passengers are virus-free.

4 13. The Airline Defendants’ conduct, contributed to by the Medical Defendants,
5 results in the disabled who can’t safely wear masks essentially being banned from using the
6 nation’s commercial aviation system. We have avoided flying as much as possible because
7 we can’t obstruct our oxygen intake.

8 14. All defendants have illegally failed to give passengers – whether disabled or
9 not – our legally guaranteed option under the Food, Drug, & Cosmetic Act (“FDCA”) to
10 refuse to use a medical device (face mask) not approved by HHS’ Food & Drug
11 Administration (“FDA”) or allowed only under an Emergency Use Authorization (“EUA”).

12 15. In mandating masks for all passengers, the Airline Defendants have violated
13 the Rehabilitation Act (“RA”), Air Carrier Access Act (“ACAA”), international law,
14 California law, and their contracts with passengers – especially when it comes to illegally
15 discriminating against travelers with disabilities who can’t medically tolerate wearing a face
16 covering with first a complete ban and then arduous exemption requirements that aren’t
17 supported by law.

18 16. Making this matter worse is that the airlines’ regulatory agency, the
19 Department of Transportation (“DOT”), has given them guidance that actually supports
20 their illegal behavior. Ex. 101.² Therefore, we bring this suit to enforce the ACAA since the
21 administrative agency has neglected its statutory duty to do so.

22 17. Because the agency charged by Congress to enforce the rights of passengers
23 with disabilities has failed to protect us and countless numbers of others similarly situated,
24 our only recourse is a private suit in this Court to ensure the Airline Defendants cease and
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28 ² Exhibits are not all numbered sequentially, but are rather organized by topic: No leading number = exhibits
29 pertaining specifically to plaintiffs; 1XX = government documents; 2XX = mask and airplane-cabin studies and
articles; 3XX = discrimination and chaos in the sky; 4XX = airline policies and contracts; and 5XX = disability
and miscellaneous documents.

1 desist from their unlawful conduct. The ACAA should also be enforced via the RA,
2 conspiracy laws, and California’s Unruh Civil Rights Act.

3 18. The Airline Defendants have acted without statutory or regulatory authority
4 to demand that every passenger obstruct their breathing by wearing an unauthorized or EUA
5 medical device that covers their nose and mouth. The Airline Defendants have illegally
6 required face coverings for the last 20 months or so not only on board their property
7 (aircraft) but also in public areas of airports they do not own or control. They have all
8 claimed that masking is a “federal law” when Congress has never enacted any such statute.

9 19. The Court must stop the Airline Defendants from continuing to discriminate
10 against flyers with disabilities and force them to follow the RA, ACAA, Unruh Act, and
11 other laws because DOT has refused to do its job.

12
13 **II. PARTIES**

14
15 **A. Plaintiffs**

16 20. Uri and Yvonne Marcus, husband and wife, are U.S. citizens who reside at
17 Shmu’el Lupo 6/18, Jerusalem, Israel 9355006. They maintain both a residential address
18 and a business address in the United States. Their mailing address in the United States is
19 P.O. Box 126, Ojai, CA 92034. They are travelers subject to the FTMM, ITTR, and the
20 airlines’ mask policies.

21 21. In Israel, Mrs. Marcus is also known as “Adi Marcus” — her legal Hebrew
22 name on her Israeli passport — to her physicians, friends, family and government
23 authorities Ex. 1.

24 22. Plaintiffs Avrohom Gordon and Devorah Gordon, husband and wife, reside at
25 2251 State Route 222, New Richmond, OH 45157. They are travelers subject to the FTMM
26 and the airlines’ mask policies.

27 23. Plaintiff Cindy Russo resides at 22485 Breakwater Way, Santa Clarita, CA
28 91350. She is a traveler subject to the FTMM and the airlines’ mask policies.

29 **B. Defendants**

1 24. Defendant Centers for Disease Control & Prevention is an agency of HHS. It
2 is headquartered at 1600 Clifton Rd., Atlanta, GA 30329.

3 25. Defendant Department of Health & Human Services is a department of the
4 Executive Branch. It is headquartered at 200 Independence Ave., SW, Washington, DC
5 20201.

6 26. Defendant Transportation Security Administration (“TSA”) is an agency of
7 the Department of Homeland Security (“DHS”). It is headquartered at 6955 Springfield
8 Center Dr., Springfield, VA 20598.

9 27. Defendant Julie Carrigan is the acting division director of TSA’s National
10 Transportation Vetting Center. She is sued in both her official and individual capacities. Her
11 work address is 6955 Springfield Center Dr., Springfield, VA 20598.

12 28. Defendant Alaska Airlines is an Alaska corporation doing business in
13 California. Its headquarters is at 19300 International Blvd., Seatac, WA 98188. Its registered
14 agent in California is CSC-Lawyers Incorporating Service, Suite 150N, 2710 Gateway Oaks
15 Dr., Sacramento, CA 95833.

16 29. Defendant Allegiant Airlines is a Nevada corporation doing business in
17 California. Its headquarters is at 31201 N. Town Center Dr., Las Vegas, NV 89144. Its
18 registered agent in California is CSC-Lawyers Incorporating Service, Suite 150N, 2710
19 Gateway Oaks Dr., Sacramento, CA 95833.

20 30. Defendant American Airlines is a Delaware corporation doing business in
21 California. Its headquarters is at 1 Skyview Dr., Fort Worth, TX 76155. Its registered agent
22 in California is C.T. Corporation System, Suite 700, 330 N. Brand Blvd., Glendale, CA
23 91203.

24 31. Defendant Delta Air Lines is a Delaware corporation doing business in
25 California. Its headquarters is at 1030 Delta Blvd., Atlanta, GA 30354. Its registered agent
26 in California is CSC-Lawyers Incorporating Service, Suite 150N, 2710 Gateway Oaks Dr.,
27 Sacramento, CA 95833-3505.

28 32. Defendant Frontier Airlines is a Delaware corporation doing business in
29 California. Its headquarters is at 4545 Airport Way, Denver, CO 80239. Its registered agent

1 in California is CSC-Lawyers Incorporating Service, Suite 150N, 2710 Gateway Oaks Dr.,
2 Sacramento, CA 95833.

3 33. Defendant Hawaiian Airlines is a Delaware corporation doing business in
4 California. Its headquarters is at Suite G350, 3375 Koapaka St., Honolulu, HI 96819. Its
5 registered agent in California is CSC-Lawyers Incorporating Service, Suite 150N, 2710
6 Gateway Oaks Dr., Sacramento, CA 95833.

7 34. Defendant Southwest Airlines is a Texas corporation doing business in
8 California. Its headquarters is at 2702 Love Field Dr., Dallas, TX, 75235. Its registered
9 agent in California is CSC-Lawyers Incorporating Service, Suite 150N, 2710 Gateway Oaks
10 Dr., Sacramento, CA 95833.

11 35. Defendant United Airlines is a Delaware corporation doing business in
12 California. Its headquarters is at 233 S. Wacker Dr., Chicago, IL 60606. Its registered agent
13 in California is C.T. Corporation System, Suite 700, 330 N. Brand Blvd, Glendale, CA
14 91203.

15 36. Defendant Numerous Yet-to-Be-Named Employees of the 8 Airlines consist
16 of all officers, executives, and staff of the Airline Defendants who participated in the
17 conspiracy to interfere with our civil rights and/or neglected to prevent such interference.
18 Their names will be learned during discovery. Until then, attorneys for the Airline
19 Defendants should adequately represent their interests.

20 37. Defendant STAT-MD describes itself as providing “Airline Consultation
21 Services” including in-flight emergency consultation as well as fitness-to-fly ground
22 screening. STAT-MD is a nonprofit organization backed by the resources of the University
23 of Pittsburgh Medical Center. Its headquarters is at 200 Lothrop St. #F1301, Pittsburgh, PA
24 15213.

25 38. Defendant MedAire is an Nevada Corporation that describes itself as a
26 medical advisory group delivering “integrated medical and security solutions for airlines
27 that includes training, equipment, and professional services for crew and passengers beyond
28 the cabin.” Its headquarters is at Suite 450, 4722 North 24th St., Phoenix, AZ 85016. Its
29

1 registered agent in California is CSC-Lawyers Incorporating Service, Suite 150N, 2710
2 Gateway Oaks Dr., Sacramento, CA 95833-3505.

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4 **III. JURISDICTION, VENUE & STANDING**

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6 39. This Court has original jurisdiction over our claims pursuant to 28 USC §
7 1331 since this case involves questions of federal law, including the U.S. Constitution, U.S.
8 Code, Code of Federal Regulations, and international treaties ratified by the United States.
9 This Court also has jurisdiction pursuant to 28 USC § 1343 because we seek damages for
10 violations of our civil rights.

11 40. Our state-law claims are so related to those under which this Court has
12 original jurisdiction that they form part of the same case and controversy under Article III of
13 the Constitution. Our state-law claims share common operative facts with our federal-law
14 claims and the parties are identical. Resolving our federal and state claims in a single action
15 serves the interests of judicial economy, convenience, consistency, and fairness to the
16 parties. Supplemental jurisdiction is therefore appropriate pursuant to 28 USC § 1367.

17 41. This Court has jurisdiction over our claims for declaratory and injunctive
18 relief, as well as to award monetary damages against the Airline Defendants, the Individual
19 Defendants, and the Medical Defendants, under the Declaratory Judgment Act and this
20 Court's inherent powers pursuant to 28 USC §§ 2201 & 2202 and 5 USC §§ 702 & 706.

21 42. The Court also has diversity jurisdiction under 28 USC § 1332 since we are
22 citizens of California and Ohio; the Airline Defendants do not have their principal place of
23 business and are not incorporated in California; and the Medical Defendants likewise do not
24 have their principal place of business and not incorporated in California. The amount of
25 controversy is greater than \$75,000.

26 43. Venue is proper in this Court because a substantial part of the events or
27 omissions giving rise to this lawsuit occurred in California and in connection with flights
28 to/from California. 28 USC § 1391.

1 44. We have standing to sue the Federal Defendants because the FTMM and
2 ITTR restricts our freedom of travel and unlawfully discriminate against us as disabled
3 passengers, *inter alia*. A court order declaring unlawful and setting aside the FTMM and
4 ITTR would redress our injuries because our freedom to travel without covering our faces
5 and being subjected to virus testing would be restored.

6 45. We have standing to sue the Airline Defendants, the Individual Defendants,
7 and the Medical Defendants because they illegally discriminated against us on the basis of
8 our medical conditions by denying us to ability to fly without wearing a mask as well as
9 forcing us in violation of federal law and in breach of contract to wear unauthorized and/or
10 EUA masks against our will to the detriment of our health. A court order declaring unlawful
11 and enjoining the nongovernment defendants’ illegal discrimination and contract breaches –
12 plus an award of compensatory and punitive damages – would redress our injuries.

13
14 **IV. STATEMENT OF FACTS**

15
16 **A. The travel history of Plaintiffs Uri and Yvonne Marcus during the COVID-19**
17 **pandemic, their future travel plans, their disabling medical conditions that**
18 **prevent them from masking, and the revocation of Mr. Marcus’ Pre-Check**
19 **eligibility.**

20 46. **URIEL MARCUS’ 2020 FLIGHTS:** Nov 20, 2020: United on Flight 955
21 from Tel Aviv, Israel, (TLV) to San Francisco (SFO) forced Mr. Marcus to mask against his
22 will. Ex. 2.

23 47. Nov 23, 2020: Southwest on Flight 4379 from Oakland (OAK) to Los
24 Angeles (LAX) forced Mr. Marcus to mask against his will. Ex. 3.

25 48. Nov 29, 2020: American on Flight 2645 from LAX to Las Vegas (LAS)
26 forced Mr. Marcus to mask against his will. Ex. 4.

27 49. Dec 4, 2020: Southwest on Flight 4520 from LAS to Phoenix, Arizona,
28 (PHX) forced Mr. Marcus to mask against his will. Ex. 5.

1 50. Dec 9, 2020: Southwest on Flight 4608 from PHX to LAX forced Mr.
2 Marcus to mask against his will. Ex. 6.

3 51. Dec 9, 2020: United on Flight 1548 from LAX to SFO forced Mr. Marcus to
4 mask against his will. Ex. 2.

5 52. Dec 9, 2020: United on Flight 954 from SFO to TLV forced Mr. Marcus to
6 mask against his will. *Id.*

7 53. **YVONNE MARCUS' 2020-21 FLIGHTS:** Nov 20, 2020: United on Flight
8 955 from TLV to SFO forced Mrs. Marcus to mask against her will. Ex. 7.

9 54. Nov 23, 2020: Southwest on Flight 4379 from OAK to LAX forced Mrs.
10 Marcus to mask against her will. Ex. 3.

11 55. Nov 29, 2020: American on Flight 2645 from LAX to LAS forced Mrs.
12 Marcus to mask against her will. Ex. 4.

13 56. Dec 4, 2020: Southwest on Flight 4520 from LAS to PHX forced Mrs.
14 Marcus to mask against her will. Ex. 5.

15 57. Dec 9, 2020: Delta on Flight 3844 from PHX to LAX forced Mrs. Marcus to
16 mask against her will. Ex. 8.

17 58. Jan 6, 2021: United on Flight 5926 from LAX to SFO forced Mrs. Marcus to
18 mask against her will. Ex. 7.

19 59. Jan 6, 2021: United on Flight 954 from SFO to TLV forced Mrs. Marcus to
20 mask against her will. *Id.*

21 60. July 30, 2021: United on Flight 955 from TLV to SFO forced Mrs. Marcus to
22 mask against her will. Ex. 9.

23 61. July 30, 2021: Southwest on Flight 5733 from SFO to Burbank (BUR) forced
24 Mrs. Marcus to mask against her will. Ex. 10.

25 62. Sept. 4, 2021: United on Flight 1548 from LAX to SFO forced Mrs. Marcus
26 to mask against her will. Ex. 9.

27 63. Sept. 4, 2021: United on Flight 954 from SFO to TLV forced Mrs. Marcus to
28 mask against her will. *Id.*

29

1 64. **MR. & MRS. MARCUS CAN'T TOLERATE WEARING FACE**
2 **MASKS:** Due to their hyperactive airways and respiratory illnesses, it is harmful to cover
3 their faces. When forced to muzzle themselves, they become panic-stricken, especially when
4 threatening announcements are made over the cabin PA system, sometimes more than 15
5 times on a single one-hour flight, warning them of dire consequences should they remove
6 the mask to take a full breath of air. There is an overall sense of uneasiness that further
7 exacerbates breathing difficulties during each flight, particularly on the long-haul flights.

8 65. Basal Cell Carcinoma is a type of locally invasive skin cancer and it can be
9 caused by local irritation due to mask wearing. The chronic irritation is consistent with
10 prolonged and persistent wearing of a facial mask. The pressure strip is persistently pinched
11 to maintain proper sealing over and around the nose, persistent moisture of exhalation of
12 moist air, and constant friction are a causative factor leading to the growth of this type of
13 skin cancer.

14 66. Mrs. Marcus had no problems with the skin of her nose and no lesions on the
15 skin on her nose until she flew roundtrip from TLV to LAX via SFO in November 2020,
16 returning in January 2021. In July 2021, she had to make another flight from TLV to SFO
17 and on to LAX due to the death of her father.

18 67. During all eight flights, four of which were about 14 hours long each, she
19 complained of irritation and itching on the left side of her nose where the pressure of her
20 required face mask rested. Because of flight rules requiring the mask at all times, she could
21 not remove her mask to relieve the pressure on the sensitive area of her nose and
22 subsequently developed a lesion within a week of her arrival.

23 68. During her return trip from SFO to TLV on Sept. 4-5, 2021, again she was
24 required to wear the mask for some 14 hours while still dealing with the open lesion on her
25 nose, noting sensitivity, pain and itching on the left side of the nasal bridge.

26 69. By October 2021, after lesion did not heal and the sensitivity, pain and
27 itching had become a health concern, she consulted with Dr. Leon Gilead, a dermatologist
28 and Mohs specialist, who diagnosed her condition as Basal Cell Carcinoma and
29 recommended Mohs surgery. In his written opinion, he felt that the persistent irritation of

1 prolonged mask wearing was a factor in causing the appearance of basal cell carcinoma in
2 this location. Ex. 11.

3 70. On Dec. 26, 2021, Mrs. Marcus consulted with Dr. Leora Fisher-Peled, who
4 confirmed the diagnosis of Basal Cell Carcinoma. Ex. 12.

5 71. On Jan. 26, 2022, Mrs. Marcus sought the medical opinion of a third doctor,
6 Dr. Ephraim ben-Zeev. Dr. ben-Zeev remarked that these types of skin cancers are certainly
7 related to ongoing local irritation. Such a process of chronic irritation is consistent with
8 prolonged wearing of a facial mask, where the pressure strip is persistently pinched to
9 maintain proper sealing over and around the nose. Persistent moisture of exhalation of moist
10 air and constant friction are a causative factor leading to the growth of this type of skin
11 cancer. Ex. 13.

12 72. Mrs. Marcus underwent surgery Feb 8, 2022, to remove the skin cancer that
13 was the result of prolonged masking demanded by the defendants. Masking in Israel is not
14 legally required anywhere, provided a person simply states that they are medically exempt.

15 73. Mrs. Marcus is still recovering from surgery which resulted in a hole the size
16 of a dime on the bridge of her nose. Ex. 14. She experiences pain and burning sensations
17 daily without a break, and her wound will not fully recover for 4-6 months. It will also scar,
18 causing facial disfigurement.

19 74. In anticipation of upcoming travel, Mr. and Mrs. Marcus both obtained mask-
20 exemption letters from their physicians on Sept. 19, 2021. Ex. 15.

21 75. **ATTEMPTS TO BOOK 2022 FLIGHTS:** Mr. and Mrs. Marcus purchased
22 roundtrip tickets from United Airlines on Jan. 27, 2022, for itinerary to fly TLV March 6-
23 31. Ex. 16.

24 76. United fraudulently misrepresented that “Refusing to wear a face mask in the
25 airport or on board is a federal offense which may result in a fine of up to \$35,000.” *Id.* In
26 reality, refusing to wear a mask comes with a TSA civil fine up to \$500.

27 77. United fraudulently misrepresented that “federal law” requires passengers to
28 don masks. But Congress has never passed such a law. *Id.*

29

1 78. United denied their mask exemptions despite the detailed doctors' notes we
2 submitted. *Id.*

3 79. Additional correspondence with United did not resolve the improper denials.
4 *Id.*

5 80. Mr. and Mrs. Marcus were forced to cancel their tickets due to United's
6 discrimination. *Id.*

7 81. Plaintiffs Uri Marcus and Yvonne Marcus purchased a one-way ticket from
8 American Airlines on Feb 2, 2022, to fly JFK-LAX-JFK-TLV, for travel from March 7 to
9 31, 2022. Ex. 17.

10 82. American fraudulently misrepresents that "federal law" requires the wearing
11 of face coverings. But Congress has never enacted such a law. *Id.*

12 83. American initially denied our mask exemptions multiple times. *Id.*

13 84. American unlawfully informed us that it will only carry one mask-exempt
14 passenger per flight. *Id. But see* 14 CFR § 382.17.

15 85. After several follow-up correspondence, American finally granted the
16 Marcuses provisional mask exemptions. But plaintiffs were discriminated against. They
17 were assigned, against their will, to seats located in the last row of the planes. They would
18 further have been forced to submit to Polymerase Chain Reaction ("PCR") COVID-19
19 testing and would be allowed to board only with a negative test result. Ex. 17.

20 86. American does not require nondisabled passengers to PCR test prior to
21 boarding.

22 87. Mr. and Mrs. Marcus were forced to cancel their tickets due to American's
23 discrimination. *Id.*

24 88. Mr. and Mrs. Marcus purchased roundtrip tickets from Delta Airlines Feb.
25 10, 2022, to fly TLV-New York (JFK)-LAX-JFK-TLV from March 17 to April 10, 2022.
26 Ex. 18.

27 89. Delta fraudulently misrepresents that "federal law" requires the wearing of
28 face coverings. But Congress has never enacted such a law. *Id.*

29

1 90. Mask exemptions were denied via Delta’s illegal “Clearance to Fly,” process
2 which involved consulting with Defendant STAT-MD, which determined that mask
3 exemptions could not be approved in advance even though due to plaintiffs’ disabilities,
4 they could not tolerate masking for 12-14 hour trans-Atlantic long-haul flights. Delta
5 refused to make an exception to its rule. *Id.*

6 91. Mr. and Mrs. Marcus were forced to cancel their tickets due to Delta’s
7 discrimination. *Id.*

8 92. Mr. and Mrs. Marcus purchased a one-way ticket from Alaska Airlines on
9 Feb. 25, 2022, to fly LAX-Boise (BOI) on June 6, 2022. Ex. 19.

10 93. Alaska requires advance notice of at least three days to request a mask
11 exemption. *Id. But see* 14 CFR § 382.25.

12 94. Alaska requires COVID-19 testing for disabled passengers, but this rule does
13 not apply to nondisabled passengers. Ex. 19.

14 95. Alaska requires a medical certificate. *Id. But see* 14 CFR § 382.23(a).

15 96. Alaska fraudulently misrepresents that “federal law” requires the wearing of
16 face coverings. But Congress has never enacted such a law. Ex. 19.

17 97. Mr. and Mrs. Marcus selected seats in Row 19. *Id.*

18 98. Provisional mask exemptions were approved by Alaska but Mr. and Mrs.
19 Marcus were discriminated against. They were assigned, against their will, to seats located
20 in the last row (32) of the plane and would have been forced to submit to COVID-19 PCR
21 testing, a rule that doesn’t apply to nondisabled customers. *Id.*

22 99. Mr. and Mrs. Marcus were forced to cancel their tickets due to Alaska’s
23 discrimination. *Id.*

24 100. Mr. and Mrs. Marcus purchased two one-way tickets and one roundtrip ticket
25 from Southwest Airlines on Feb. 25, 2022, for three separate itineraries: 1) BOI-Denver
26 (DEN) on June 16, 2022; 2) Houston (HOU)-Phoenix (PHX) on June 24, 2022; and 3)
27 LAX-LAS-LAX on June 28 to July 5. Ex. 20.

28 101. Provisional mask exemptions were approved but plaintiffs were assigned,
29 against their will, to seats located in the last row of all flights, despite Southwest’s “open

1 seating policy” for all passengers. Further, they would have been forced to submit to
2 COVID-19 PCR testing and would be allowed to board only with a negative test result.
3 However, no other passengers would have been required to PCR test prior to boarding. *Id.*

4 102. Mr. and Mrs. Marcus booked roundtrip tickets from Hawaiian Airlines on
5 Feb. 25, 2022, for flights LAX-Honolulu (HNL)-LAX on July 7-14. Ex. 21.

6 103. Hawaiian fraudulently misrepresents that “federal law” requires the wearing
7 of face coverings. But Congress has never enacted such a law. *Id.*

8 104. Hawaiian informed us we would need to undergo a medical screening with
9 Defendant MedAire’s MedLink service. *Id.*

10 105. Mask exemptions were denied via Hawaiian’s illegal “Fit to Fly” process,
11 which involved a full medical assessment with MedAire, who determined that mask
12 exemptions could not be approved in advance even though due to Plaintiffs’ disabilities,
13 they could not tolerate masking for 5-7 hour trans-Pacific long-haul flights. Hawaiian would
14 make no exception to its rule. *Id.*

15 106. A Hawaiian agent told Mr. Marcus on the phone that if he and his wife
16 appeared for their flight to HNL and passed the Fit to Fly examination, they would be forced
17 to sit in the rear of the aircraft regardless of what seats they chose during booking.

18 107. Additional flights for business and family reasons are planned in the near
19 future to multiple destinations, which the Marcuses are concerned will have to be canceled
20 due to the FTMM and airlines’ discriminatory mask policies.

21 108. **REVOCATION OF MR. MARCUS’ PRE-CHECK ELIGIBILITY:** Mr.
22 Marcus applied for TSA Pre-Check status June 16, 2017, and paid the \$85 fee. Ex. 22.

23 109. Travelers approved for Pre-Check are allowed access to expedited security-
24 screening lanes at airports nationwide.

25 110. TSA approved Mr. Marcus’ Pre-Check application June 21, 2017. Ex. 23.

26 111. His Pre-Check status was granted through June 16, 2022. *Id.*

27 112. Mrs. Marcus signed up for Pre-Check at the same time Mr. Marcus did. Her
28 application was also approved.

29

1 113. Mr. Marcus, along with Larry James Bonin Jr., filed a Petition for Review
2 with the U.S. Court of Appeals for the Fifth Circuit on Oct. 19, 2021, to challenge the
3 legality of TSA’s enforcement of the FTMM. Ex. 24.

4 114. That case was later transferred to the U.S. Court of Appeals for the District of
5 Columbia Circuit, where it is currently being briefed. *Marcus v. TSA*, No. 21-1225.

6 115. Defendant Julie Carrigan, TSA’s acting division director for the National
7 Transportation Vetting Center, wrote a letter dated Nov. 23, 2021 to Mr. Marcus informing
8 him that his Pre-Check status was revoked: “As a result of recurrent checks and based on a
9 comprehensive background check, TSA was unable to determine that you pose a sufficiently
10 low risk to transportation and national security to continue to be eligible for expedited
11 airport security screening through the TSA Pre-Check Application Program. As a result,
12 TSA has determined that you are no longer eligible to participate in the TSA Pre-Check
13 Application Program.” Ex. 25.

14 116. Ms. Carrigan electronically signed the letter Nov. 18 – one month after Mr.
15 Marcus exercised his First Amendment right to petition the government for a redress of
16 grievances by challenging TSA’s FTMM enforcement in court. *Id.*

17 117. Ms. Carrigan did not cite a reason why Mr. Marcus was flagged for
18 revocation of his Pre-Check status, when he had not taken a flight in the United States or
19 been present in the country since Dec 9, 2020. *Id.*

20 118. However, TSA publishes a list of “Disqualifying Offenses & Other Factors”
21 that it supposed to cite when denying or revoking Pre-Check eligibility. Ex. 26.

22 119. TSA and Ms. Carrigan did not give Mr. Marcus an opportunity to respond to
23 any allegations made against him, including a hearing.

24 120. Mrs. Marcus is not suing TSA. Interestingly she has not received a letter from
25 TSA revoking her Pre-Check eligibility.

26 121. Mr. Marcus poses no threat to aviation security.

27 122. Mr. Marcus is a Federal Aviation Administration Certified Commercial Pilot
28 who also holds a CFII MEI (Flight Instructor Airplane Single & Multi Engine Instrument
29 Airplane) Certificate, as well as a Private Pilot License holder in Israel. Ex. 27.

1 123. In February 2009, Mr. Marcus was awarded a certificate of completion for
2 navigating the Washington, D.C., Special Flight Rules Area by FAA, for which oversight is
3 by TSA. Ex. 28. This document is given only to pilots who have demonstrated that they
4 pose no security risk over D.C.'s protected airspace.

5 124. In July 2010, Mr. Marcus was vetted by TSA at SNA (John Wayne Santa
6 Ana Airport, California) and was given clearance and access to secured areas of the airport,
7 where he rented aircraft from Sunrise Aviation Inc.

8 125. In 2014, Mr. Marcus passed a General Aviation Security Course, for which
9 TSA issued a Certificate of Completion. Ex. 29.

10 126. Mrs. Marcus, who again is not suing TSA, received an invitation from the
11 agency Dec. 16, 2021, to renew her Pre-Check benefit. Ex. 30.

12 127. TSA approved Mr. Marcus' Pre-Check renewal Dec. 18, 2021. Ex. 31.

13
14 **B. Plaintiffs Uri and Yvonne Marcus' exhaustion of administrative remedies.**

15 128. Mr. and Mrs. Marcus filed complaints of disability discrimination by Alaska
16 Airlines with DOT. Ex. 32.

17 129. Mr. and Mrs. Marcus filed complaints of disability discrimination by
18 American Airlines with DOT. Ex. 33.

19 130. Mr. and Mrs. Marcus filed complaints of disability discrimination by Delta
20 Air Lines with DOT. Ex. 34.

21 131. Mr. and Mrs. Marcus filed complaints of disability discrimination by
22 Hawaiian Airlines with DOT. Ex. 35.

23 132. Mr. and Mrs. Marcus filed complaints of disability discrimination by
24 Southwest Airlines with DOT. Ex. 36.

25 133. Mr. and Mrs. Marcus filed complaints of disability discrimination by United
26 Airlines with DOT. Ex. 37.

27 134. DOT has failed to investigate or resolve any of their complaints against these
28 six Airline Defendants.

1 135. Mr. Marcus made an inquiry to TSA on March 10, 2022, via its webform to
2 ask why his Pre-Check eligibility was revoked and what could be done to reinstate him
3 since no reasons were given by Ms. Carrigan in the Nov. 23, 2021, letter. Ex. 38.

4 136. On March 14, 2022, TSA responded outlining the steps Mr. Marcus could
5 take to have his Pre-Check reinstated. The letter states, “You received a letter that provides
6 the reasons for the disqualification and directions to submit a correction of record.” Ex. 39.

7 137. However, the Nov. 23, 2021, letter from Ms. Carrigan gave no reason for
8 disqualification or directions to submit a correction of record. Ex. 25.

9 138. Mr. Marcus requested clarification from TSA on March 14, 2022, via email.
10 Ex. 40.

11 139. Two days later, TSA sent an e-mail to Mr. Marcus inviting him to renew his
12 Pre-Check eligibility that’s about to expire in July. Ex. 41.

13 140. Later on March 16, 2022, after attempting to renew Mr. Marcus’ eligibility
14 online, as invited, the renewal was denied. Ex. 42.

15 141. Mr. Marcus called the TSA renewal center on March 16, 2022, but after
16 nearly an hour, no one was able to give him a reason why his renewal was not processed and
17 approved.

18 142. TSA e-mailed Mr. Marcus on March 17, 2022, indicating it would reply to
19 his correspondence within 48 hours. Ex. 43.

20 143. Mr. Marcus messaged TSA again March 24, 2022, seeking a proper response
21 to his difficulty renewing his TSA eligibility. Ex. 44.

22 144. TSA has not responded to Mr. Marcus.

23
24 **C. The travel history of Plaintiffs Avrohom Gordon and Devorah Gordon during**
25 **the COVID-19 pandemic, their future travel plans, and their disabling medical**
26 **conditions that preclude masking.**

27 145. Plaintiff Avrohom Gordon has not been able to travel because of the FTMM
28 and his inability to wear a mask due to breathing issues that he had surgery for in the past.

29

1 He has missed a few important events such as a friend's wedding, children's competition
2 celebrations, work conferences, etc.

3 146. Jan. 17, 2022: Mr. Gordon was booked on Allegiant Flight 4692 from
4 Cincinnati (CVG) to LAX. Ex. 45.

5 147. Allegiant denied Mr. Gordon's mask exemption. *Id.*

6 148. He was not able to travel because he has a medical disability that does not
7 allow him to wear a mask, and masking would have been harmful to his health. Mr. Gordon
8 was forced to cancel his trip.

9 149. Jan. 18, 2022: Mr. Gordon was booked to fly Frontier Flight 2184 from
10 Ontario (ONT) to LAS then Frontier Flight 2022 from LAS to CVG. Ex. 46.

11 150. Frontier denied Mr. Gordon's mask exemption. *Id.*

12 151. He was not able to travel because masking would have been harmful to his
13 health. Mr. Gordon was forced to cancel his trip.

14 152. Plaintiff Devorah Gordon has a medical disability that does not allow her to
15 wear a mask.

16 153. She has flown ten times during the pandemic and been harassed about
17 masking, causing even more anxiety to an already stressful medical situation.

18 154. Feb. 10, 2021: American demanded from Mrs. Gordon to mask on Flight
19 2552 from Charlotte (CLT) to Newark (EWR). Ex. 47.

20 155. Feb. 11, 2021: American demanded from Mrs. Gordon to mask against her
21 will on Airlines Flight 2554 from EWR to CLT. Ex. 48.

22 156. Aug. 23, 2021: American demanded from Mrs. Gordon to mask against her
23 will on a flight from CLT to Little Rock (LIT). Ex. 49.

24 157. Aug. 23, 2021: American demanded from Mrs. Gordon to mask against her
25 will on a flight from LIT to CLT. Ex. 50.

26 158. Sept. 19, 2021: American demanded from Mrs. Gordon to mask against her
27 will on Flight 5232 from CLT to CVG. Ex. 51.

28 159. Sept. 20, 2021: American demanded from Mrs. Gordon to mask against her
29 will on Flight 5352 from CVG to CLT. Ex. 52.

1 160. Oct. 5, 2021: American demanded from Mrs. Gordon to mask against her will
2 on Flight 1884 from CLT to CVG. Ex. 53.

3 161. Oct. 6, 2021: American demanded from Mrs. Gordon to mask against her will
4 on a flight from CVG to CLT.

5 162. Jan. 17, 2022: Allegiant demanded from Mrs. Gordon to mask against her
6 will on Flight 4692 from CVG to LAX. Ex. 54.

7 163. Jan. 18, 2022: Frontier demanded from Mrs. Gordon to mask against her will
8 on Flight 2184 from ONT to LAS and Flight 2022 from LAS to CVG. Ex. 55.

9 164. Mask-exemption demands were sent to Allegiant and Frontier because Mrs.
10 Gordon is medically unable to safely wear a face covering. Exs. 56 & 61.

11 165. All requests were denied by Allegiant and Frontier. Ex. *Id.*

12 166. Ms. Gordon felt physically, emotionally, psychologically, and spiritually ill
13 for the duration of travel Jan. 17-18.

14 167. At both the security checkpoint and boarding gate on Jan. 17, 2022, Mrs.
15 Gordon said she has a disability that prevents her from wearing a mask safely. TSA and
16 Allegiant asked her if she had a medical certificate from a doctor. She responded that
17 according to law, they may not ask her for details of her disability or require her to prove
18 her disability with a medical certificate.

19 168. Frontier did not allow Mrs. Gordon to use her own mask and provided a
20 disposable blue surgical-style mask to wear. On the wrapper it came in, it was written:
21 “CIVIL PROTECTION, NOT MEDICAL.” Ex. 57.

22 169. Aboard the Allegiant aircraft, multiple threatening announcements were
23 made that according to the “law,” passengers must mask or “be kicked off the plane and/or
24 arrested, fined and/or put in jail.”

25 170. Mrs. Gordon went to the lavatory without a mask on. Upon exiting, an
26 Allegiant flight attendant immediately reprimanded her very strongly, stating that “You
27 must wear the mask the whole time.”

28 171. While eating, an Allegiant flight attendant approached Mrs. Gordon and said
29 “You have been told too many times to put the mask on.” She complied with the orders of

1 the flight crew and fully donned the mask for the rest of the flight, even though she had not
2 yet finished eating and she medically can't tolerate having her breathing blocked.

3 172. The Allegiant flight attendant nevertheless asked for Mrs. Gordon to
4 surrender her ID. When she hesitated, the Allegiant employee threatened to have the police
5 meet her at the arrival gate, where she "would be fined \$10,000."

6 173. This is a fraudulent misrepresentation by Allegiant as the TSA civil fine for
7 not wearing a mask is \$500.

8 174. When Mrs. Gordon did not comply with the request to present her
9 identification, the Allegiant flight attendant told her she had a choice to surrender her ID or
10 have the police meet her at the gate. Mrs. Gordon again chose not to surrender her ID
11 because she had not violated any laws. The flight attendant replied in a nasty tone "fine, so
12 the police will meet you at the gate."

13 175. The captain of Allegiant Flight 4692 then announced on the aircraft's public-
14 address system "There is one passenger that is not complying with the mask rules. We will
15 give her one last chance and hope she will make the right choice, otherwise she will be met
16 at the gate by the police." The flight attendant then came back and presented her with a
17 written notice of the warning. Ex. 58.

18 176. Allegiant fraudulently misrepresented on the notice that "Your behavior is in
19 violation of Title 14 of the Code of Federal Regulations." *Id.* However, the FTMM is not a
20 federal regulation.

21 177. The notice Allegiant gave to Mrs. Gordon fraudulently threatened her with
22 "fines up to \$25,000 and up to 20 years imprisonment, or both." *Id.*

23 178. When the Allegiant flight arrived at LAX, there were two police officers who
24 met her at the gate. Ex. 59.

25 179. Mrs. Gordon agreed to speak with them. They asked her for her ID and
26 warned that if she did not surrender it, the FBI could be called, she could go to jail, and
27 could receive a big fine. (All of which are lies since the FTMM is not a criminal law enacted
28 by Congress.)
29

1 180. Mrs. Gordon eventually surrendered it, because they would not/could not
2 give her clear information about the process when she asked, and she could not think
3 straight with the mask on. The officers gave her ID to Allegiant and then returned it to her.

4 181. It soon become clear that no laws had been violated, and the airport police
5 could not do anything further. Mrs. Gordon removed her mask and proceeded to exit the
6 terminal without any further incident.

7 182. On return trip Jan. 18, 2022, from ONT, at the boarding gate, Frontier told
8 her to don a mask. Mrs. Gordon informed Frontier's agent that she has a disability that does
9 not permit her to wear a mask. Frontier informed her that this needs to be cleared in
10 advance. Mrs. Gordon informed them that this constitutes discrimination. She demanded to
11 speak with a supervisor.

12 183. The Frontier supervisor was unable to cite any law that required her to wear
13 a face mask. But the supervisor denied her boarding. Ex. 60.

14 184. Being coerced and under threat of being prevented from returning home, Mrs.
15 Gordon harmed her health by donning a mask against her will. Then she was permitted to
16 board the aircraft.

17 185. On the second leg of the return flight home Jan. 18 from LAS to CVG, Mrs.
18 Gordon was again instructed by Frontier to don a mask. Several announcements were made
19 about the policy. But on this flight, masking was not enforced, and no one seemed to notice
20 that she did not muzzle herself. This indicates that the rules issued by Frontier are enforced
21 arbitrarily and capriciously.

22
23 **D. Plaintiffs Avrohom and Devorah Gordon's exhaustion of administrative**
24 **remedies.**

25 186. Because Plaintiffs Avrohom Gordon and Devorah Gordon suffer from
26 respiratory limitations, they are medically unable to fly masked, and cannot safely wear face
27 coverings.

28 187. Mr. and Mrs. Gordon timely filed charges for discrimination with DOT for
29 violations of the Air Carrier Access Act. Ex. 62.

1 188. DOT has failed to investigate or resolve any of their complaints.

2 189. Additional flights for business and family reasons are planned in the near
3 future to multiple destinations, which the Gordons are concerned will have to be canceled
4 due to the FTMM and airlines' discriminatory mask policies.

5
6 **E. The travel history of Plaintiff Cindy Russo during the COVID-19 pandemic,**
7 **her future travel plans, and her disabling medical conditions that make it**
8 **intolerable to cover her face.**

9 190. Plaintiff Cindy Russo has not been able to travel because of the FTMM and
10 the airlines' discriminatory mask policies because she suffers from claustrophobia and Post-
11 Traumatic Stress Disorder ("PTSD"). She medically cannot safely wear a face mask. She
12 has missed important personal as well as work-related events as a result.

13 191. When her mouth and nose are covered, it is both mentally and physically
14 harmful to Ms. Russo. It reminds her of a traumatic situation wherein she was trapped and
15 couldn't breathe. It is extremely harmful for her to cover her face because it produces
16 massive anxiety.

17 192. When Ms. Russo is forced by the defendants to cover her face, she feels
18 anxious, trapped, and starts to profusely sweat. Her heart races and her head pounds.

19 193. Her doctor has provided to her an exemption from wearing a mask. Ex. 63.

20 194. Ms. Russo has flown eight times during the pandemic and been harassed
21 about masking, causing even more anxiety to an already stressful medical situation.

22 195. Sept. 22, 2021: United forced Ms. Russo to mask against her will on Flight
23 5655 from Burbank (BUR) to SFO. Ex. 64.

24 196. Sept. 22, 2021: United forced Ms. Russo to mask against her will on Flight
25 1419 from SFO to EWR. Ex. 65.

26 197. Sept. 29, 2021: American forced Ms. Russo to mask against her will on
27 Flight 802 from EWR to Dallas (DFW). Ex. 66.

28 198. Sept. 29, 2021: American forced Ms. Russo to mask against her will on
29 Flight 2597 from DFW to BUR. Ex. 67.

1 199. Ms. Russo submitted a mask-exemption demand to United on Oct. 14, 2021,
2 for an upcoming trip, noting United’s numerous illegal policies. Ex. 68.

3 200. United denied Ms. Russo’s mask-exemption demand. Ex. 69.

4 201. Oct 28, 2021: United forced Ms. Russo to mask against her will on United
5 Flight 5655 from BUR to SFO. Ex. 70.

6 202. Oct. 28, 2021: United forced Ms. Russo to mask against her will on United
7 Flight 2324 SFO to EWR. *Id.*

8 203. Nov. 1, 2021: United forced Ms. Russo to mask against her will on Flight
9 414 from EWR to SFO. Ex. 71.

10 204. Nov. 1, 2021: United forced Ms. Russo to mask against her will on Flight
11 1980 from SFO to Orange County (SNA). *Id.*

12
13 **F. Plaintiff Cindy Russo’s exhaustion of administrative remedies.**

14 205. Mask-exemption demands were sent to United and American because Ms.
15 Russo cannot tolerate masking due to her medical conditions.

16 206. All requests were denied and she was forced to muzzle herself. Ms. Russo
17 felt physically, emotionally, psychologically and spiritually ill for the entire duration of
18 travel.

19 207. Ms. Russo filed a complaint for discrimination against United with DOT for
20 violations of the Air Carrier Access Act. Ex. 72.

21 208. DOT has failed to investigate or resolve her complaint.

22 209. Additional flights for business and family reasons are planned in the near
23 future to multiple destinations, which Ms. Russo is concerned she will have to cancel due to
24 the FTMM and airlines’ discriminatory mask policies.

25
26 **G. Federal Transportation Mask Mandate**

27 210. **PRESIDENTIAL ACTION:** The day after taking office (Jan. 21, 2021),
28 President Joseph Biden issued “Executive Order Promoting COVID-19 Safety in Domestic
29 & International Travel.” E.O. 13998, 86 Fed. Reg. 7205 (Jan. 26, 2021); Ex. 102. This

1 executive order set in motion the FTMM issued by CDC and HHS as well as other federal
2 agencies.

3 211. President Biden’s action marked an abrupt change of policy from the former
4 administration. DOT “in October [2020] rejected a petition to require masks on airplanes,
5 subways, and other forms of transportation, with Secretary Elaine Chao’s general counsel
6 saying the department ‘embraces the notion that there should be no more regulations than
7 necessary.’” Ex. 103.

8 212. “The nation’s aviation regulator has deferred to airlines on masks, with
9 Federal Aviation Administration chief Stephen Dickson telling senators at a June [2020]
10 hearing ‘we do not plan to provide an enforcement specifically on that issue.’” *Id.*

11 213. **DHS ACTION:** To carry out E.O. 13998, the Department of Homeland
12 Security (“DHS”) issued Determination 21-130 on Jan. 27, 2021: “Determination of a
13 National Emergency Requiring Actions to Protect the Safety of Americans Using &
14 Employed by the Transportation System.” Ex. 104.

15 214. DHS directed its agency TSA to take actions to enforce CDC’s FTMM order.
16 *Id.*

17 215. **CDC ACTION:** Without providing public notice or soliciting comment,
18 CDC – an agency within HHS – issued an order “Requirement for Persons to Wear Masks
19 While on Conveyances & at Transportation Hubs” on Feb. 1, 2020, effective immediately.
20 86 Fed. Reg. 8,025 (Feb. 3, 2021). Ex. 105. This is the mask mandate we challenge in this
21 Complaint.

22 216. “This Order will remain in effect unless modified or rescinded based on
23 specific public health or other considerations, or until the Secretary of Health and Human
24 Services rescinds the determination under section 319 of the Public Health Service Act (42
25 U.S.C. 247d) that a public health emergency exists.” *Id.*

26 217. As authority for the FTMM, CDC invoked § 361 of the Public Health Service
27 Act (42 USC § 264) and CDC regulations implementing that statute (42 CFR §§ 70.2,
28 71.31(b), & 71.32(b)). *Id.*

29

1 218. CDC’s FTMM order applies to wholly intrastate transportation, including
2 taking a rideshare, city bus, subway, or other mode of transit less than one mile – or even
3 just sitting alone at a bus stop or train station reading a newspaper or talking on a cell phone
4 without any intent to travel. *Id.*

5 219. “This Order exempts the following categories of persons: • A child under the
6 age of 2 years; • A person with a disability who cannot wear a mask, or cannot safely wear a
7 mask, because of the disability as defined by the Americans with Disabilities Act ... This is
8 a narrow exception that includes a person with a disability who cannot wear a mask for
9 reasons related to the disability.” *Id.*

10 220. “Operators of conveyances or transportation hubs may impose requirements,
11 or conditions for carriage, on persons requesting an exemption from the requirement to wear
12 a mask, including **medical consultation by a third party, medical documentation by a**
13 **licensed medical provider**, and/or other information as determined by the operator, as well
14 as **require evidence that the person does not have COVID–19 such as a negative result**
15 **from a SARS–CoV–2 viral test or documentation of recovery from COVID–19.** ...
16 Operators may further require that persons seeking exemption from the requirement to wear
17 a mask **request an accommodation in advance.**” *Id.* (emphasis added to show provisions
18 that violate the ACAA).

19 221. CDC’s FTMM order makes no mention of the ACAA (49 USC § 41705) or
20 the regulations promulgated thereunder (14 CFR Part 382).

21 222. “This Order applies to persons on conveyances and at transportation hubs
22 **directly operated by U.S. state**, local, territorial, or tribal **government authorities**, as well
23 as the operators themselves. **U.S. state**, local, territorial, or tribal **government authorities**
24 **directly operating conveyances and transportation hubs may be subject to additional**
25 **federal authorities or actions**, and are encouraged to implement additional measures
26 enforcing the provisions of this Order regarding persons traveling onboard conveyances and
27 at transportation hubs operated by these government entities.” *Id.* (emphasis added to
28 illustrate 10th Amendment problems).
29

1 223. CDC’s FTMM order makes numerous false claims about the effectiveness of
2 face coverings. *Id.*

3 224. The order fails to note that the scientific consensus for decades has been that
4 face masks do not reduce the transmission of respiratory viruses and that covering one’s
5 face causes at least 68 harms to human health. See 228 scientific studies, medical articles,
6 and videos at <https://bit.ly/masksarebad>.

7 225. CDC’s FTMM order contradicts numerous World Health Organization
8 recommendations and standards, including that children under six should never wear masks.
9 Ex. 106.

10 226. “Individuals traveling into or departing from the United States, traveling
11 interstate, **or traveling entirely intrastate**, conveyance operators that transport such
12 individuals, and transportation hub operators that facilitate such transportation, must comply
13 with the mask-wearing requirements set forth in this Order.” *Id.* (emphasis added to
14 illustrate 10th Amendment problem).

15 227. Without citing any authority allowing it to delegate its supposed statutory and
16 regulatory authority to an agency contained in a department outside of HHS, CDC’s order
17 includes a provision that “To address the COVID-19 public health threat to transportation
18 security, this Order shall be enforced by the Transportation Security Administration...” *Id.*

19 228. On its website, CDC falsely claims, “Most people, including those with
20 disabilities, can tolerate and safely wear a mask...” Ex. 107.

21 229. **TSA ACTIONS:** Based on CDC’s questionable delegation of its authority to
22 an agency contained in a separate executive department, TSA issued three “Security
23 Directives” (more accurately labeled “Health Directives”) and one Emergency Amendment
24 Feb. 1, 2021, to transportation operators requiring them to vigorously enforce the mask
25 mandate. These four orders were effective until May 11, 2021, and have been renewed four
26 times until April 18, 2022.

27 230. Plaintiff Uri Marcus is part of a group of 13 disabled Americans challenging
28 TSA’s three Health Directives and one Emergency Amendment enforcing CDC’s FTMM
29 order. There are six Petitions for Review currently before the U.S. Court of Appeals for the

1 District of Columbia Circuit: *Wall v. TSA*, No. 21-1220; *Faris v. TSA*, No. 21-1221; *Marcus*
2 *v. TSA*, No. 21-1225; *Eades v. TSA*, No. 21-1236; *Andreadakis v. TSA*, No. 21-1237; and
3 *Abadi v. TSA*, No. 21-1258.

4 231. These cases have been consolidated into *Wall v. TSA*. Petitioners' joint
5 opening brief is due April 11.

7 **H. Congress has never enacted a mask mandate**

8 232. CDC and HHS' imposition of the FTMM goes against the express wishes of
9 Congress. The Legislative Branch has explicitly failed to mandate masks in any setting,
10 including the transportation sector. This shows clear, unambiguous congressional intent.

11 233. The federal legislative response to corona virus has been enormous with
12 dozens of bills related to the COVID-19 pandemic enacted into law.

13 234. Not a single provision in any of the enacted bills grant CDC and HHS the
14 authority to require face masks.

15 235. Numerous bills have been introduced in Congress to require masks in the
16 transportation sector. None have been passed out of committee in either chamber.

17 236. On March 15, 2022, the Senate voted 57-40 to pass Senate Joint Resolution
18 37 disapproving of CDC's FTMM order. Ex. 108.

20 **I. CDC and HHS ignore better options than imposing the FTMM**

21 237. The Federal Defendants have not used more-effective options than the
22 FTMM to reduce COVID-19 infections in the transportation sector.

23 238. For example, in June 2007, CDC and HHS developed a public-health Do Not
24 Board ("DNB") list, enabling domestic and international health officials to request that
25 individuals with communicable diseases be restricted from boarding commercial aircraft
26 arriving into, departing from, or traveling within the United States.

27 239. CDC published a notice more than six years ago concerning the "Criteria for
28 Requesting Federal Travel Restrictions for Public Health Purposes, Including for Viral
29 Hemorrhagic Fevers." 18 Fed. Reg. 16,400 (March 27, 2015); Ex. 109.

1 240. There also exists a complimentary Public Health Border Lookout Record
2 (“Lookout”) system for individuals with communicable diseases that pose a public-health
3 threat to travelers to restrict them from boarding commercial aircraft arriving into, departing
4 from, or traveling within the United States. *Id.*

5 241. Once an individual is placed on the DNB list, airlines are instructed not to
6 issue a boarding pass to the individual for any commercial flight. Individuals included on
7 the DNB list are assigned a Lookout record that assists in ensuring that an infected
8 individual is detected if he or she attempts to enter or depart the United States through a port
9 of entry. *Id.*

10 242. “Disease is just a flight away. To protect America’s health, CDC partners
11 with the Department of Homeland Security to prevent the spread of serious contagious
12 diseases during travel. CDC uses a Do Not Board list to prevent travelers from boarding
13 commercial airplanes if they are known or suspected to have a contagious disease that poses
14 a threat to the public’s health. Sick travelers are also placed on a Lookout list so they will be
15 detected if they attempt to enter the United States by land or sea. These tools can be used for
16 anyone who poses a threat to the public’s health.” Ex. 110.

17 243. But there is no evidence in the administrative record, media reports, or
18 anywhere else that the Federal Defendants are using the DNB list and Lookout system to
19 stop people who have tested positive for COVID-19 from traveling during the time they are
20 a danger to spread the virus to others (typically considered to be about 10 days).

21
22 **J. The Federal Defendants and Airline Defendants ignore that mask mandates**
23 **endanger aviation safety.**

24 244. Plaintiff Uri Marcus is an FAA certificated commercial multi-engine
25 instrument airplane pilot and flight instructor. Exs. 27-29.

26 245. A Pilots’ health is strictly governed by regulations issued by the Federal
27 Aviation Administration. Ex. 111.

28 246. Pilots are prohibited from operating an aircraft during any period of medical
29 deficiency. However, they are required to comply with the FTMM, which causes known

1 medical deficiencies. “[N]o person who holds a medical certificate issued under part 67 of
2 this chapter may act as pilot in command, or in any other capacity as a required pilot flight
3 crewmember, while that person: ... (1) Knows or has reason to know of any medical
4 condition that would make the person unable to meet the requirements for the medical
5 certificate necessary for the pilot operation...” 14 CFR § 61.53(a).

6 247. Wearing a mask before and during flight causes Mr. Marcus numerous
7 medical deficiencies, whether he is acting as Pilot-in-Command or otherwise. “[A] person
8 shall not act as pilot in command, or in any other capacity as a required pilot flight
9 crewmember, while that person knows or has reason to know of any medical condition that
10 would make the person unable to operate the aircraft in a safe manner.” 14 CFR § 61.53(b).

11 248. Wearing a mask before and during flight causes Mr. Marcus to feel that he is
12 unable to operate the aircraft in a safe manner.

13 249. Wearing a mask before the flight (for example, while in an airport terminal)
14 makes Mr. Marcus feel like he is not fully prepared to perform as a pilot due to fatigue.

15 250. “Extended wearing of [a] mask, which has become a part of routine life, has
16 led to the emergence of ‘mask fatigue.’ Mask fatigue is defined as the lack of energy that
17 accompanies, and/or follows prolonged wearing of a mask.” Ex. 201.

18 251. Forced masking “is considered as an impediment to professional work as
19 well. This is because of the newly emerging condition, mask fatigue.” *Id.*

20 252. “We define mask fatigue as the lack of energy that accompanies, and/or is a
21 consequence of extended use of a mask.” *Id.*

22 253. “There is published evidence which shows that extended wearing of mask
23 impairs functioning...” *Id.*

24 254. Aspects of mask fatigue include pressure/pain over ears, cheeks, and nose;
25 skin breakdown; aggravation of acne; itching; contact dermatitis; voice fatigue; laryngitis;
26 sore throat; respiratory compromise; Hypoxia; Hypercapnia; increased work of breathing;
27 dizziness; headache; irritability; physical exhaustion; decreased concentration/work
28 efficiency; confusion and disorientation; breathlessness; reduced fluid and food intake;
29 chronic health effects on renal and metabolic functions; aggravation of anxiety, depression,

1 and feeling of impending doom; claustrophobia; impaired social interaction/recognition; and
2 maskophobia. *Id.*

3 255. “The consequences of a negligent or wrongful certification, which would
4 permit an unqualified person to take the controls of an aircraft, can be serious for the
5 public...,” according to FAA’s Guide for Aviation Medical Examiners. Ex. 111.

6 256. All active pilots must see an FAA certified doctor (“Aviation Medical
7 Examiner” or “AME”) 1-2 times each year. Pilots are all obligated by law (49 USC §
8 46310, which imposes criminal penalties) to disclose any disqualification condition
9 pertaining to obtaining or maintaining their medical certificate. If a pilot knows that masks
10 are unhealthy for him and their continued use can cause cumulative harm (as evidenced by
11 years of unbiased scientific studies prior to COVID-19 politicization), s/he is morally and
12 legally obligated to abstain and/or report.

13 257. However, the FTMM forces pilots not to disclose any disqualification
14 condition due to the ill effects of forced masking.

15 258. The FTMM forces a pilot to obstruct his oxygen intake, causing diminished
16 mental and physical capacity during any flight, including recurrent training flights.

17 259. Masking impairs a pilot’s ability when conducting any flight as evidenced by
18 the fact that they are not, per FAA rules, required to wear a mask in the cockpit when flying.

19 260. DOT, which includes FAA, notes that “the failure to wear a face covering is
20 not itself a federal violation,” contradicting the FTMM. Ex. 111.

21 261. FAA recognizes the dangers of forced masking: “Air carriers should
22 complete a safety risk assessment and provide guidance to their crewmembers on
23 procedures for the use of masks as they may affect the donning of oxygen masks or
24 conducting other safety functions on the flight deck or in the cabin.” FAA Safety Alert for
25 Operators 20,009 (May 25, 2021); Ex. 112.

26
27 **K. The Federal Defendants and Airline Defendants ignore that mask mandates**
28 **have created chaos in the sky.**
29

1 262. The defendants fail to take into account that in addition to the millions of
2 Americans who can't safely obstruct their breathing because of a medical condition, tens of
3 millions of Americans vehemently object to anyone ordering them to wear face masks. This
4 is evidenced by some 5,981 incidents of "unruly" behavior aboard airplanes reported to the
5 Federal Aviation Administration during 2021, 4,290 of which related to the FTMM. Ex.
6 113.

7 263. 2021 "was the worst year on record for buffoonish behavior on planes." Ex.
8 301.

9 264. So far this year, FAA has received 814 reports of unruly passengers, 535 of
10 which related to the FTMM. Ex. 114.

11 265. This conduct is understandable since the Food, Drug, & Cosmetic Act
12 protects all Americans' right to refuse administration of an FDA unauthorized or EUA
13 medical device such as a face covering, and masks make it difficult to breathe and function.

14 266. The FTMM worsens transportation safety as some people violently stand up
15 for their right to breathe freely, and many flight crews have sadly become increasingly
16 hostile to any passenger who dares remove his/her mask for any reason.

17 267. "'The number of physical and verbal assaults in our workplace has increased
18 dramatically, many of which are related to mask compliance,' TWU Local 556, which
19 represents Southwest's flight attendants, wrote in a letter." Ex. 302.

20 268. "Despite coming with hefty fines and the threat of criminal prosecution, the
21 [FTMM] has spawned an epidemic of shouting matches – and worse – between defiant
22 passengers and flight crews. ... But if airlines are the last place in America to require masks,
23 the skies are likely to become even less friendly for flight crews." Ex. 301.

24 269. "[T]he level of in-flight fracas has gotten exponentially worse in the past two
25 years, with most cases involving disputes over masking." *Id.*

26 270. Airplanes, airports, and other transportation conveyances and terminals are
27 now among the last places in America where anyone is forced to block their breathing.

28 271. Chaos in the sky is likely to soon get worse. "Imagine the fury among anti-
29 mask passengers if the federal government continues to enforce a mask requirement on

1 airlines into the late spring and even the summer, when no one's making people mask up
2 anywhere else. ... Should the mask mandate continue into the summer and beyond, airlines
3 could expect the bad behavior to increase, as customers grow accustomed to going maskless
4 everywhere else.” *Id.*

5 272. There are numerous videos posted to YouTube of in-flight conflicts between
6 flight crews and passengers over the illegal mask mandates. A small sample of these videos
7 is listed at Ex. 303.

8 273. “The current climate in the passenger cabin is highly stressed. We are
9 experiencing a record high number of aggressive passenger incidents, many of which are
10 fueled by ... refusal to comply with onboard mask rules,” the president of a major flight-
11 attendant union said Dec. 24, 2021. Ex. 304.

12 274. All of the “unruly” behavior we’ve seen aboard airplanes when airlines try to
13 enforce the FTMM is explained by science, none of which the defendants considered:
14 “Wearing masks, thus, entails a feeling of deprivation of freedom and loss of autonomy and
15 self-determination, which can lead to suppressed anger and subconscious constant
16 distraction, especially as the wearing of masks is mostly dictated and ordered by others.
17 These perceived interferences of integrity, self-determination and autonomy, coupled with
18 discomfort, often contribute to substantial distraction and may ultimately be combined with
19 the physiologically mask-related decline in psychomotoric abilities, reduced responsiveness,
20 and an overall impaired cognitive performance.” Ex. 202.

21 275. Being forced to cover the nose and mouth, a person’s only two sources of
22 oxygen – breathing is of course essential to maintaining life – “leads to misjudging
23 situations as well as delayed, incorrect, and inappropriate behavior and a decline in the
24 effectiveness of the mask wearer.” *Id.*

25 276. “The use of masks for several hours often causes further detectable adverse
26 effects such as headaches, local acne, mask-associated skin irritation, itching, sensations of
27 heat and dampness, impairments, and discomfort predominantly affecting the head and face.
28 However, the head and face are significant for well-being due to their large representation in
29 the sensitive cerebral cortex (homunculus).” *Id.*

1 277. “[P]assengers have verbally abused and taunted flight attendants trying to
2 enforce airline mask requirements...” Ex. 305.

3 278. “A flight attendant reported being so busy seeking mask compliance that the
4 employee couldn’t safely reach a seat in time for landing. One airline captain, distracted by
5 mask concerns, descended to the wrong altitude. The repeated talk of problem passengers in
6 Row 12 led the captain to mistakenly head toward 12,000 feet, not a higher altitude given by
7 air traffic control to keep planes safely apart.” *Id.*

8 279. But passengers are allowed to drop their masks to eat and sip beverages,
9 negating any possible positive impact of forced masking. “When you start opening it up to
10 eating, the whole thing kind of weakens.” *Id.*

11 280. “Flight attendants are dealing with mask compliance issues on every single
12 flight they work right now.” *Id.*

13 281. “The Federal Aviation Administration is warning air travelers about what it
14 describes as a dramatic increase in unruly or dangerous behavior aboard passenger
15 airplanes.” Ex. 306.

16 282. “It is no secret that the threats flight attendants face each day have
17 dramatically increased,” states a letter from Julie Hedrick, president of the Association of
18 Professional Flight Attendants. “Every day, we are subjected to verbal and sometimes
19 physical altercations, mainly centered around mask compliance.” Ex. 307.

20 283. “Airlines and federal officials have noted an uptick in passenger misbehavior.
21 Flight attendant union leaders have attributed much of the uptick in passengers refusing to
22 wear masks ...” *Id.*

23 284. “President Joe Biden made a federal face mask rule on planes one of his first
24 executive orders after he took office. But passenger misbehavior has continued throughout
25 the year despite numerous fines against passengers proposed by the FAA.” *Id.*

26 285. May 28, 2021: “Incidents of unruly behavior from airplane passengers has
27 risen to an unprecedented level this year, union leader Sara Nelson told CNBC on Friday,
28 the start of the Memorial Day holiday weekend. ‘This is an environment that we just haven't
29

1 seen before, and we can't wait for it to be over,' the president of the Association of Flight
2 Attendants-CWA said ... She noted the role masks are playing in the surge..." Ex. 308.

3 286. Carrying out mask rules also worsens the already strained position of flight
4 attendants, who are frontline enforcers even as they keep their usual safety responsibilities.
5 "Flight attendants are dealing with mask compliance issues on every single flight they work
6 right now," said Taylor Garland, spokeswoman for the Association of Flight Attendants-
7 CWA, noting that those efforts range from friendly reminders to facing passengers "actively
8 challenging the flight attendants' authority." *Id.*

9 287. "One in five flight attendants so far this year has been involved in physical
10 altercations with unruly passengers and 85% of cabin crew members have dealt with
11 disruptive passengers this year..." Ex. 309.

12 288. "[M]any flight attendants reported ... being subjected to yelling and swearing
13 for federal mask mandate directions." *Id.*

14 289. The FTMM has "proven problematic. Physical confrontations on airplanes
15 have dramatically increased this year, and of the 3,000+ that have been recorded by the
16 Federal Aviation Administration so far in 2021, nearly three-quarters of them have been a
17 direct result of arguments over wearing a face mask – whether between crew members and
18 passengers, or passengers vs. passengers." Ex. 310.

19 290. "My fear, however, is that the mandate is going to someday cause a far
20 bigger problem while in the air than just some unruly passenger being eventually duct-taped
21 to a seat. One of these days, a confrontation is going to escalate far further than the crew
22 member who had a finger bitten or the flight attendant who caught an errant punch square in
23 the face and had two teeth knocked out. Ask yourself, is it worth it to have a mandate that
24 ostensibly is for your safety but only leads further to unsafe conditions?" *Id.*

25 291. The defendants' reckless continual enforcement of the FTMM has led to "a
26 surge in aggressive and violent behavior at airports and on flights..." Ex. 311.

27 292. "The system for keeping the peace in America's skies is creaking under the
28 pressure of what airlines and regulators say is an unprecedented proliferation of
29

1 misbehavior. ... As travel rebounds, that structure is being strained by hostility to mask
2 mandates...” Ex. 312.

3 293. “Even if not intended to bring the plane down, you can imagine the kind of
4 pandemonium on planes that we’ve seen in some of these videos that people have taken that
5 can cause an incredibly dangerous accident,” said U.S. Attorney General Merrick Garland.”
6 *Id.*

7 294. These incidents would vanish if this Court vacates the FTMM and enjoins the
8 Airline Defendants from mandating masks.

9 295. “The FAA has seen a disturbing increase in incidents where airline
10 passengers have disrupted flights with threatening or violent behavior. These incidents have
11 stemmed ... from passengers’ refusals to wear masks...” Ex. 115.

12 296. “The tense situation in the air this summer has led many attendants to say that
13 they feel exhausted, afraid for their personal safety and, in some cases, concerned that the
14 situation could turn dangerous.” Due to the unlawful mask mandate, “encountering unruly
15 passengers, once rare, is now almost expected.” Ex. 313.

16 297. “Flight attendants across many airlines say the situation is wearing on their
17 mental health and physical well-being,” which is dangerous for aviation safety. *Id.*

18 298. Major airlines having been calling for the abolition of the FTMM for the past
19 10 months.

20 299. Frontier CEO Barry Biffle said June 23, 2021, that face coverings are a prime
21 contributor to a string of recent in-flight disruptions: “The reality is, a lot of people don’t
22 want to wear masks,” Biffle said. “You don’t have to wear a mask here [at the convention],
23 you don’t have to wear [masks] at Walmart, but yet you’ve got to do it on a plane.” Ex. 401.

24 300. Spirit CEO Ted Christie also said June 23, 2021, that the U.S. government
25 can help reduce the incidence of unruly air passenger behavior by doing away with the
26 requirement that travelers wear face coverings: “That’s got to be the next step – when facial
27 [covering requirements] are relaxed on airplanes,” Christie said. “That is going to take a lot
28 of steam out of things.” *Id.*

29

1 301. Southwest’s then-CEO Gary Kelly and Airlines for America, the trade group
2 representing most major U.S. carriers, lobbied for the FTMM to terminate Sept. 13, 2021.
3 Exs. 402-404.

4 302. With mask mandates “in place, there has been a rise in onboard incidents that
5 have harmed flight attendants, delayed or cancelled flights ... When this atmosphere is
6 combined with tensions around mask policy, we have seen a summer with more onboard
7 skirmishes and more people injured than ever before,” wrote Ben Baldanza, former CEO of
8 Spirit Airlines. Ex. 405.

9 303. “[T]he root cause of most of these incidents has been the mandated mask
10 policy. It’s not the policy itself, but the inconsistency of that policy with other parts of life.
11 While many of us may be able to clearly understand why we must wear a mask on a plane
12 but don’t have to in restaurant, to others this makes no sense. Put that view in the stressful
13 and emotional environment of an airline flight and the results we’ve seen this summer are
14 not totally surprising.” *Id.*

15 304. “[L]etting the [mask] mandate expire would lower the tensions onboard
16 significantly and greatly reduce the number of potentially dangerous confrontations that
17 flight attendants must face.” *Id.*

18
19 **L. The Airline Defendants ignore better options than imposing unlawful and**
20 **discriminatory mask mandates.**

21 305. The Airline Defendants have more effective tools to combat COVID-19
22 spread than requiring their passengers be muzzled (and refusing to grant medical
23 exemptions). However, the defendants have not worked to implement these better
24 procedures to reduce infections in the transportation sector.

25 306. There’s no evidence that the airlines have sought the government’s
26 cooperation in using existing federal procedures that actually target the sick.

27 307. For example, the Airline Defendants have not worked with the Federal
28 Defendants to use the public-health DNB and Lookout lists to prevent passengers who have
29 recently tested positive for COVID-19 from flying.

1 308. If the Airline Defendants truly care about preventing COVID-19 transmission
2 on their planes, they would work with CDC, HHS, DHS, TSA, and other federal agencies to
3 use the DNB and Lookout systems. Instead, they illegally treat every single passenger as
4 having the corona virus and mandating they wear masks in defiance of the science that face
5 coverings do nothing to prevent COVID-19 infections and deaths but harm human health.

6 <https://bit.ly/masksarebad>.

7 309. It appears Frontier is the only airline using a simple mitigation strategy that
8 doesn't discriminate against anyone who isn't actually ill: "Frontier is the first U.S. airline
9 to take passengers' temperatures with a touchless thermometer before boarding, and will
10 block anyone with a temperature of 100.4 F or higher from flights." Ex. 406.

11 310. It's a mystery why the other Airline Defendants don't appear to be utilizing
12 this simple measure to check for fevers (a key symptom of COVID-19) before check in or
13 boarding.

14
15 **M. The Federal Defendants and Airline Defendants fail to take into account that**
16 **airplane cabins pose little risk for corona virus spread.**

17 311. There's nothing in the administrative record showing that CDC and HHS
18 considered the ample evidence provided by the aviation industry and others that masks
19 aren't necessary and do nothing to reduce COVID-19 spread.

20 312. U.S. air carriers commissioned a lengthy report "Assessment of Risks of
21 SARS-CoV-2 Transmission During Air Travel & Non-Pharmaceutical Interventions to
22 Reduce Risk" by the Harvard T.H. Chan School of Public Health as part of the Aviation
23 Public Health Initiative ("APHI"). Ex. 203.

24 313. This is yet another scientific/medical study the Federal Defendants ignored
25 when promulgating the FTMM without any public notice or comment period.

26 314. "Ventilation Systems on Aircraft: These sophisticated systems deliver high
27 amounts of clean air to the cabin that rapidly disperses exhaled air, with displacement in the
28 downward direction, reducing the risk of passenger-to-passenger spread of respiratory
29 pathogens. Aircraft ventilation offers enhanced protection for diluting and removing

1 airborne contagions in comparison to other indoor spaces with conventional mechanical
2 ventilation and is substantially better than residential situations. This level of ventilation
3 effectively counters the proximity travelers will be subject to during flights. The level of
4 ventilation provided onboard aircraft would substantially reduce the opportunity for person-
5 to-person transmission of infectious particles...” *Id.*

6 315. “Particular emphasis is placed on the effectiveness of aircraft ventilation
7 systems, which are able to filter 99.97% of SARS-CoV-2 particles out of air found on
8 aircraft.” *Id.*

9 316. The study confirms what the airlines themselves have been promoting to
10 customers: There is little-to-no risk of contracting COVID-19 aboard an aircraft. “After
11 detailed analysis of these reports, ***it is the view of APHI that there have been a very low***
12 ***number of infections that could be attributed to exposure on aircraft during travel.***” *Id.*
13 (emphasis added).

14 317. CDC itself admitted “***the risk of getting a contagious disease on an airplane***
15 ***is low.***” *Id.* (emphasis added).

16 318. “A significant finding from the evaluation of these evacuation flight
17 procedures [from China early in the pandemic] was that there was no COVID-19 infection
18 among any of the air medical crews, despite the exposure to numerous positive cases.” *Id.*

19 319. “Given the volume of commercial flights daily, carrying millions of
20 passengers and crew worldwide, ***the number of documented incidents of infectious disease***
21 ***transmission occurring on board an aircraft remains infrequent.***” *Id.* (emphasis added).

22 320. “Based on the investigations of outbreaks of other respiratory diseases on
23 aircraft, it appears that transmission on aircraft is relatively infrequent.” *Id.*

24 321. “Air recirculation happens mostly when cruising, where about 40% to 50% of
25 the cabin air is recirculated and filtered through a high-efficiency particulate air filter, also
26 known as a HEPA filter. All the airlines interviewed have aircraft that are equipped with
27 HEPA filters, and one of the airlines has increased the replacement frequency of their HEPA
28 filters.” *Id.*

29

1 322. “The HEPA filters remove, at a minimum, 99.97% of the particulate matter
2 from the return air. This high level of filtration ensures that the air supplied to the cabin is
3 virtually free of particulate matter, including bacteria and viruses.” *Id.*

4 323. “Aircraft meeting current ventilation standards with 50% recirculation
5 HEPA-filtered air will supply passengers with a clean air delivery rate of 19 cfm/person,
6 which is essentially free of any virus particles.” *Id.*

7 324. “[T]he risk of SARS-CoV-2 transmission onboard aircraft will be below that
8 found in other routine activities during the pandemic, such as grocery shopping or eating
9 out.” *Id.*

10 325. “[T]he aircraft’s environmental control systems effectively diluting and
11 removing pathogens significantly reduce the risk of passengers and crewmembers from
12 acquiring COVID-19 during the cruise segment of their journey.” *Id.*

13 326. American’s and Southwest’s CEOs testified to a Senate committee Dec. 15,
14 2021, that masks do not reduce the spread of COVID-19 and airplane cabins are already safe
15 because of their excellent air filtration and recirculation. Ex. 407.

16 327. Airlines for America, the airline industry’s largest trade group representing
17 nearly all major U.S. airlines, joined in a Feb. 25, 2021, letter to the White House again
18 urging repeal of the FTMM. Ex. 408.

19 328. “By March 18, repeal the Federal mask mandate for public transportation or
20 provide a clear roadmap to remove the mask mandate within 90 days. ... Airplanes are
21 already equipped with advanced air filtration systems, and airports have made large
22 investments in air filtration, sanitation, and layouts. COVID-19 hospitalization rates have
23 decreased significantly and ***the mask mandate should be lifted*** to reflect the improved
24 public health environment.” *Id.* (emphasis added).

25 329. “[M]any of these same policies also came with the ***devastating*** ...
26 consequences of severely limiting and discouraging travel. ... Since the start of the
27 pandemic, the federal government’s advisories, policies, and public messaging have focused
28 on discouraging or actively restricting domestic and international travel. It is time for high-
29 level officials within the Administration to publicly encourage travel to and within the U.S.

1 Doing so would send a clear message to U.S. businesses, trading partners, and travelers
2 alike that America is once again open for business.” *Id.* (emphasis added).

3 330. “[W]e encourage the Administration to immediately remove travel
4 requirements that no longer fit with the current environment and to set clear timelines and
5 metrics for when others will be lifted,” including the mask mandate. *Id.*

6 331. When President Biden, CDC, HHS, TSA, and others refused to let the
7 FTMM expire March 18, Airlines for America fired off another letter to him March 23,
8 2022: “We are encouraged by the current data and the lifting of COVID-19 restrictions from
9 coast to coast, which indicate it is past time to eliminate COVID-era transportation policies.
10 ... much has changed since these measures were imposed and they no longer make sense in
11 the current public health context. The persistent and steady decline of hospitalization and
12 death rates are the most compelling indicators that our country is well protected against
13 severe disease from COVID-19.” Ex. 409.

14 332. “**Now is the time for the Administration to sunset federal transportation**
15 **travel restrictions – including the international predeparture testing requirement and**
16 **the federal mask mandate – that are no longer aligned with the realities of the current**
17 **epidemiological environment.” *Id.* (emphasis original).**

18 333. The International Air Transport Association (“IATA”) – which represents
19 more than 290 international airlines including six of the largest U.S. passenger carriers – has
20 called for an end to mask mandates aboard airplanes worldwide. Travel restrictions such as
21 the FTMM “have had such a devastating impact on lives, economies, and the freedom to
22 travel,” said Willie Walsh, IATA’s director general. Ex. 410; *see also* Ex. 411.

23 334. “The past few weeks have seen a dramatic shift by many governments around
24 the world to ease or remove COVID-19-related travel restrictions and requirements as the
25 disease enters its endemic phase. It’s vital that this process continue and even accelerate, to
26 more quickly restore damaged global supply chains and enable people to resume their lives.
27 ***One step to encourage a return to normality is to remove mask mandates for air travel. It***
28 ***makes no sense to continue to require masks on airplanes*** when they are no longer being
29 required in shopping malls, theatres or offices. Aircraft are equipped with highly

1 sophisticated hospital quality filtration systems and have much higher air flow and air
2 exchange rates than most other indoor environments where mask mandates already have
3 been removed.” Ex. 410 (emphasis added).

4 335. “[T]he international airline industry has been significantly harmed by
5 COVID-19 and the myriad government responses to the virus. While we have begun to see
6 signs of a recovery, the industry today has nearly 50% less passenger traffic than it did prior
7 to COVID-19...” Mr. Walsh of IATA wrote the White House on March 8, 2022. Ex. 412.

8 336. “We urge the Biden Administration not to renew its mask mandate for
9 transportation when it lapses on March 18, 2022. It makes no sense to continue to require
10 masks on airplanes when they are no longer being required in shopping malls, theatres or
11 offices. *Aircraft are equipped with highly sophisticated hospital quality filtration systems
12 and have much higher air flow and air exchange rates than most other indoor
13 environments where mask mandates already have been removed.*” *Id.* (emphasis added).

14 337. IATA notes on its website that “The risk of transmission in the modern cabin
15 environment is low for a number of reasons: passengers face the same direction, seatbacks
16 act as barriers, air flow is from the top to bottom, and the air is also very clean. Cabin air is
17 refreshed 20-30 times an hour; About 10 times more than most office buildings.” Ex. 211.

18 338. “Most modern jet aircraft are equipped with High-Efficiency Particulate Air
19 (HEPA) filters. These filters have similar performance to those used in hospital operating
20 theatres and industrial clean rooms.” *Id.*

21 339. The bacteria/virus removal efficiency rate of the HEPA filters onboard planes
22 is 99.993%, including removal of SARS, which is similar to COVID-19. *Id.*

23 340. The U.S. Department of Defense’s Transportation Command conducted a
24 study in October 2020 that found “aerosol particles were ‘rapidly diluted by the high air
25 exchange rates’ of a typical aircraft cabin. Aerosol particles remained detectable for a period
26 of less than six minutes on average. Both aircraft models (B777 and B767) tested removed
27 particulate matter 15 times faster than a typical home ventilation system and 5-6 times faster
28 ‘than the recommended design specifications for modern hospital operating or patient
29 isolation rooms.’” *Id.*

1 341. “Airbus used computational fluid dynamics (CFD) research to create a highly
2 accurate simulation of the air in an A320 cabin, to see how droplets resulting from a cough
3 move within the cabin airflow. ... The result was that potential exposure was *lower* when
4 seated side by side on a plane than when staying six feet apart in an environment such as an
5 office, classroom or grocery store.” *Id.* (emphasis original).

6 342. “Using CFD, Boeing researchers tracked how particles from coughing and
7 breathing move around the airplane cabin. ... The modeling determined the number of
8 cough particles that entered the breathing space of the other passengers. Based on the
9 airborne particle count, passengers sitting next to one another on an airplane is the same as
10 standing more than seven feet (or two meters) apart in a typical building environment.” *Id.*

11 343. “Using CFD, cabin air flow and droplet dispersion models validated in full-
12 scale cabin environment testing, Embraer analyzed the cabin environment considering a
13 coughing passenger in several different seats and air flow conditions in our different aircraft
14 to measure these variables and their effect. The research Embraer completed shows that risk
15 of onboard transmission is extremely low, and the actual data on in-flight transmissions that
16 may have occurred, supports these findings.” *Id.*

17 344. As major U.S. airlines just told the president March 23: “It makes no sense
18 that people are still required to wear masks on airplanes, yet are allowed to congregate in
19 crowded restaurants, schools and at sporting events without masks, despite none of these
20 venues having the protective air filtration system that aircraft do.” Ex. 409.

21
22 **N. All defendants fail to take into account the voluminous scientific and medical**
23 **research showing masks are totally ineffective in reducing COVID-19**
24 **transmission.**

25 345. The CDC official responsible for the FTMM admitted masks are worthless
26 and are just for show: “[W]e mask because it's the way we take care and express our
27 concern for each other,” said Marty Cetron, director of CDC’s Division of Global Migration
28 & Quarantine. Ex. 116.

29

1 346. There’s nothing in the administrative record showing that CDC and HHS
2 considered the robust scientific and medical evidence documenting how masks are totally
3 ineffective in reducing COVID-19 infections, hospitalizations, and deaths. See [https://bit.ly/
4 masksarebad](https://bit.ly/masksarebad) for 228 scientific studies, medical articles, and videos detailing how masks do
5 not reduce virus transmission but hurt human health. A sampling of these studies are quoted
6 below.

7 347. A study released May 25, 2021, by the University of Louisville found state
8 mask mandates didn't help slow COVID-19 transmission. Ex. 204.

9 348. Mask manufacturers themselves admit their products are “not for medical
10 use,” “cannot eliminate the risk of contracting an infectious disease,” “are not personal
11 protective equipment,” and “are not intended ... to prevent any disease or illness.” Exs. 205-
12 206 (photographs of various masks for sale).

13 349. The federal government’s experience confirms masks aren’t effective, data
14 that CDC and HHS failed to consider. TSA admits that, as of March 13, 2022, 22,297 of its
15 employees³ – all of whom must wear masks – have tested positive for COVID-19. Ex. 117.

16 350. CDC and HHS fail to answer a simple question: “If masks are effective, why
17 have so many TSA workers contracted COVID-19?”

18 351. During the surge of the Omicron corona virus variant during the winter
19 holiday season of 2021-22, masks did not do anything to stop thousands and thousands of
20 airline workers from getting infected, causing massive disruptions to the nation’s air
21 transportation system. Exs. 531-538.

22 352. Wearing a cloth mask does not shield the user from corona virus because too
23 many infected droplets can slip through, according to a study by scientists at New Mexico
24 State University. Ex. 207.

25
26
27 ³ Since about half of those infected with COVID-19 don’t have symptoms and might not realize they are
28 infected, health authorities indicate that the real prevalence of the virus is typically at least double the number
29 of cases confirmed by testing. TSA admits 22,297 of its workers have tested positive for corona virus (34% of
its employees). Ex. 117. This means that some 44,594 TSA workers, an astounding two-thirds of its workforce
of 65,000, have likely had corona virus. Yet they all have been forced to wear masks for more than 1½ years.
So how exactly are masks effective in stopping COVID-19?

1 353. Masks can't be worn while transportation passengers are eating and drinking,
2 thereby eliminating any effectiveness they might have in reducing virus transmission from
3 infected travelers.

4 354. One of the first real-world studies to conclude that face masks don't reduce
5 COVID-19 infections was published in November 2020 by Danish scientists. The study
6 divided thousands of Danish into groups of mask-wearers and non mask-wearers. "4,862
7 completed the study. Infection with SARS-CoV-2 occurred in 42 participants [wearing]
8 masks (1.8%) and 53 control participants [who did not cover their faces] (2.1%). The
9 between-group difference was 0.3 percentage point ... ***the difference observed was not***
10 ***statistically significant...***" Ex. 208 (emphasis added).

11 355. "When it comes to masks, it appears there is still little good evidence they
12 prevent the spread of airborne diseases. ... overall, ***there is a troubling lack of robust***
13 ***evidence on face masks and Covid-19.***" Ex. 209 (emphasis added).

14 356. "[N]ow that we have properly rigorous scientific research we can rely on, ***the***
15 ***evidence shows that wearing masks in the community does not significantly reduce the***
16 ***rates of infection.***" *Id.* (emphasis added).

17 357. "Upon our critical review of the available literature, we found only weak
18 evidence for wearing a face mask as an efficient hygienic tool to prevent the spread of a
19 viral infection," according to a study published in the European Journal of Medical
20 Research. Ex. 210.

21 358. "In controlled laboratory situations, face masks appear to do a good job of
22 reducing the spread of corona virus (at least in hamsters) and other respiratory viruses.
23 However, evidence shows mask-wearing policies seem to have had much less impact on the
24 community spread of COVID-19. Why this gap between the effectiveness in the lab and the
25 effectiveness seen in the community? The real world is more complex than a controlled
26 laboratory situation." Ex. 212.

27 359. "The most comprehensive between-country study of masks for COVID-19
28 infection is a comparison of policy changes, such as social distancing, travel restrictions,
29

1 and mask wearing, across 41 countries. ***It found introducing a mask-wearing policy had***
2 ***little impact ...***” *Id.* (emphasis added).

3 360. “CDC has admitted face masks do little to prevent the spread of COVID-19
4 amid mounting pressure to lift mask mandates across the U.S. In a new study, the CDC
5 found face masks had a negligible impact on corona virus numbers that didn't exceed
6 statistical margins of error.” Ex. 213.

7 361. “***Where others say the science is settled, our analysis shows that is not the***
8 ***case.*** We break down the most widely referenced studies on masking policies so you can see
9 for yourself what the data really says. We should also point out that ***it is unscientific to***
10 ***claim that the science is settled.*** Science is always a work-in-progress and we should never
11 make the false claim that a scientific theory is settled as fact.” Ex. 214 (emphasis added).

12 362. “COVID-19 is as politically-charged as it is infectious. Early in the COVID-
13 19 pandemic, the WHO, the CDC, and NIH’s Dr. Anthony Fauci discouraged wearing
14 masks as not useful for non-health care workers. Now they recommend wearing cloth face
15 coverings in public settings where other social distancing measures are hard to do (e.g.,
16 grocery stores and pharmacies). ***The recommendation was published without a single***
17 ***scientific paper or other information provided to support that cloth masks actually provide***
18 ***any respiratory protection,***” according to the Association of American Physicians &
19 Surgeons. Ex. 215 (emphasis added).

20 363. “Conclusion: ***Wearing masks (other than N95) will not be effective at***
21 ***preventing SARS-CoV-2 transmission,*** whether worn as source control or as PPE.” *Id.*
22 (emphasis added).

23 364. CDC constantly ignores its own research: “In a recent report in Emerging
24 Infectious Diseases, ... CDC suggests what experts have stated all along: There is no
25 conclusive evidence that cloth masks protects users from corona virus, especially since most
26 people do not use them correctly and do not keep them clean.” Ex. 216.

27 365. “There is increasing evidence that cloth masks not only may be ineffective
28 against stopping corona virus transmission, but that ***they may actually increase the spread***
29 ***of the virus, as well as worsening other health conditions.***” *Id.* (emphasis added).

1 366. “A September report by the CDC found that more than 70% of COVID-
2 positive patients contracted the virus in spite of faithful mask wearing while in public.
3 Moreover, 14% of the patients who said they ‘often’ wore masks were also infected.
4 Meanwhile, just 4% of the COVID-positive patients said they ‘never’ wore masks in the 14
5 days before the onset of their illness.” *Id.*

6 367. “A Covid-19 cross-country study by the University of East Anglia came to
7 the conclusion that a mask requirement was of no benefit and could even *increase the risk*
8 *of infection.*” Ex. 217.

9 368. “A July 2020 study by Japanese researchers found that *cloth masks ‘offer*
10 *zero protection against corona virus’* due to their large pore size and generally poor fit.” *Id.*
11 (emphasis added).

12 369. “Importantly, *the evidence just is and was not there to support mask use for*
13 *asymptomatic people to stop viral spread during a pandemic.* While the evidence may
14 seem conflicted, the evidence (including the peer-reviewed evidence) actually does not
15 support its use and *leans heavily toward masks having no significant impact in stopping*
16 *spread of the COVID virus.* In fact, it is not unreasonable at this time to conclude that
17 surgical and cloth masks, used as they currently are, have absolutely no impact on
18 controlling the transmission of Covid-19 virus, and *current evidence implies that face*
19 *masks can be actually harmful.*” Ex. 218 (emphasis added).

20 370. CDC and HHS “have failed to look at the evidence or follow it, and *continue*
21 *to operate in an arbitrary nonscientific, non-evidence informed manner.*” *Id.* (emphasis
22 added).

23 371. “The history of modern times shows that already in the influenza pandemics
24 of 1918-1919, 1957-58, 1968, 2002, in SARS 2004–2005, as well as with the influenza in
25 2009, *masks in everyday use could not achieve the hoped-for success in the fight against*
26 *viral infection scenarios.*” Ex. 202 (emphasis added).

27 372. CDC admitted in its “Emerging Infectious Diseases” May 2020 publication
28 that “Although mechanistic studies support the potential effect of hand hygiene or face
29 masks, evidence from 14 randomized controlled trials of these measures did not support a

1 substantial effect on transmission of laboratory-confirmed influenza. ... The effect of hand
2 hygiene combined with face masks on laboratory-confirmed influenza was not statistically
3 significant ...” Ex. 219.

4 373. The University of Colorado School of Medicine published an article in the
5 January/February 2021 edition of *Annals of Family Medicine* concluding: “Cloth masks
6 lack evidence for adequate protection of health care clinicians against respiratory viral
7 infections. The CDC notes that cloth masks are not considered [personal protective
8 equipment] and that their capability to protect health care clinicians is not currently known.
9 The CDC does not offer information regarding the degree of protection a cloth mask might
10 provide compared to a medical mask.” Ex. 220.

11 374. “Transmission of COVID-19 in 282 clusters in Catalonia, Spain: a Cohort
12 Study,” published Feb. 2, 2021, in *Lancet Infectious Diseases*, “***observed no association of***
13 ***risk of transmission with reported mask usage by contacts...***” Ex. 221 (emphasis added).

14 375. “At the very end of 2020, the WHO updated [its] guidelines, noting that any
15 kind of mask was ineffective if the wearer comes into close contact with someone for 15
16 minutes or more. ... A mask alone, even when it is used correctly, is insufficient to provide
17 adequate protection or source control.” Ex. 222.

18 376. “The World Health Organization admits there is no scientific medical reason
19 for any healthy person to wear a mask outside of a hospital. ... If you do not have any
20 respiratory symptoms, such as fever, cough, or runny nose, you do not need to wear a
21 medical mask. When used alone, masks can give you a false feeling of protection and can
22 even be a source of infection when not used correctly.” Ex. 223.

23 377. The U.S. Department of Labor’s Occupational Health & Safety
24 Administration (“OSHA”) states “Surgical masks are not considered respirators by OSHA
25 ... surgical masks do not seal tightly to the wearer’s face, nor do they provide a reliable
26 level of protection from inhaling smaller airborne particles.” Ex. 224.

27 378. New studies and articles come out every week showing that masks don’t
28 reduce COVID-19 spread but harm human health. For a few recent examples, *see* Exs. 225-
29 228.

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O. All defendants fail to consider that masks pose serious health risks to humans forced to wear them. By requiring masks, the Airline Defendants recklessly endanger the well-being of all passengers.

379. In addition to the science showing that masks have proven totally ineffective in reducing corona virus spread and deaths, there’s nothing in the administrative record showing that CDC and HHS considered the serious health risks to human beings of forced masking nor the dangers of oxygen deprivation at high altitude such as in airplane cabins.

380. Hundreds of scientific and medical studies illustrate the frightening number of negative health consequences of covering your face. <https://bit.ly/masksarebad>.

381. A table succinctly summarizes the numerous “Physiological & Psychological Effects of Wearing Facemasks & Their Potential Health Consequences.” Ex. 229.

382. A diagram shows the multiple devastating harms caused by face masks. Ex. 230.

383. “It is not clear however, what the scientific and clinical basis for wearing facemasks as protective strategy, given the fact that facemasks restrict breathing, causing hypoxemia and hypercapnia, and increase the risk for respiratory complications, self-contamination, and exacerbation of existing chronic conditions,” according to a paper published by the National Institutes of Health (“NIH”), a part of HHS. Ex. 231.

384. The leading authority on this subject is a 42-page paper published April 20, 2021, by eight German doctors and scientists in the International Journal of Environmental Research & Public Health. Ex. 202.

385. They found: “Up until now, there has been no comprehensive investigation as to the adverse health effects masks can cause.” The doctors reviewed 65 scientific papers on masks – and determined dozens of adverse health effects of covering your nose and mouth. *Id.*

386. These German doctors and scientists coined a new disease: Mask-Induced Exhaustion Syndrome (“MIES”). *Id.*

1 387. Symptoms of MIES include “an increase in breathing dead space volume,
2 increase in breathing resistance, increase in blood carbon dioxide, decrease in blood oxygen
3 saturation, increase in heart rate, increase in blood pressure, decrease in cardiopulmonary
4 capacity, increase in respiratory rate, shortness of breath and difficulty breathing, headache,
5 dizziness, feeling hot and clammy, decreased ability to concentrate, decreased ability to
6 think, drowsiness, decrease in empathy perception, impaired skin barrier function with
7 itching, acne, skin lesions and irritation, overall perceived fatigue and exhaustion.” *Id.*

8 388. Scientists have identified at least 68 dangers to human health from mask-
9 wearing including adverse skin reactions such as acne, alveolitis (an inflammatory lung
10 disorder), anxiety, asthma, bacterial pneumonia, blood-oxygen depletion, breathing
11 difficulties, bronchiectasis (a condition in which the lungs' airways become damaged),
12 carbon-dioxide retention, candidiasis (fungal infestation of the mucous membranes),
13 cheilitis (inflammation of the lips), chronic bronchitis, chronic pneumonia, confusion,
14 concentration problems, decrease in psychomotoric abilities, decreased thinking ability and
15 disorientation, depression, dental impacts such as cavities, discouragement, disrupted
16 nonverbal and verbal communication, disrupted social interaction, disruption of the basics
17 of human communication (verbal and non-verbal), dizziness, drowsiness, dry mouth,
18 elevated risk of COVID-19 through self-contamination, elevated transcutaneous carbon-
19 dioxide values, exhaustion, facial deformities, facial itching, facial rashes, fatigue, fibrosis
20 (excess tissue deposition), gingivitis (inflammation of the gums), halitosis (bad breath),
21 headaches, hypercapnia hyperventilation, hypoxia, impaired clarity of speech, impaired
22 cognitive abilities, impaired field of vision, impaired learning, impetigo (a bacterial
23 infection that produces red sores and can lead to kidney damage), increased blood pressure,
24 increased feelings of insecurity, increased heart rate, increased risk of infection because
25 masks are an ideal growth and breeding ground for various pathogens such as bacteria and
26 fungi, increased stress, inhalation of toxic substances such as microplastics and chlorine
27 compounds located in the masks, irritability, irritation of the respiratory tract, isolation,
28 malaise, microbiological contamination (germ colonization), neuropathological and
29 cardiovascular consequences, numbness, panic attacks, physiological changes and

1 discomfort, reduced cardiopulmonary capacity, reduced happiness, reduced performance
2 capability, skin irritation, social withdrawal, spontaneous pneumothorax, vascular damage,
3 and voice disorders. <https://bit.ly/masksarebad>.

4 389. Numerous other medical and scientific studies warn us of the dangers of
5 wearing face masks: “A recent study in the journal Cancer Discovery found that inhalation
6 of harmful microbes can contribute to advanced stage lung cancer in adults. ***Long-term use***
7 ***of face masks may help breed these dangerous pathogens.*** Microbiologists agree that
8 frequent mask wearing creates a moist environment in which microbes are allowed to grow
9 and proliferate before entering the lungs.” Ex. 232 (emphasis added).

10 390. “Since forced mask wearing began, dermatologists have coined the term
11 ‘maskne’ to describe an onset of pimples near the mouth caused by masks clogging up pores
12 with oil and bacteria. This can be caused by either disposable or cloth masks.” *Id.*

13 391. “Dentists have also been warning about a phenomenon known as ‘mask
14 mouth’ in which patients are arriving back to the dental office with an increase in gingivitis
15 and tooth decay as high as 50% in a period of just a few months since mask mandates
16 began. ***This discovery sheds light on the growing evidence of harm caused by long-term***
17 ***mask wearing.***” *Id.* (emphasis added).

18 392. “In some situations, wearing a cloth face covering may exacerbate a physical
19 or mental health condition, lead to a medical emergency, or introduce significant safety
20 concerns, [CDC] explains.” Ex. 233.

21 393. “Breathing is one of the most important physiological functions to sustain life
22 and health. Human body requires a continuous and adequate oxygen (O₂) supply to all
23 organs and cells for normal function and survival. ... Long-term practice of wearing
24 facemasks has ***strong potential for devastating health consequences.***” Ex. 231.

25 394. “Vulnerable populations such as people with mental health disorders ... are at
26 significant health risk for complications and harm ... Wearing [a] facemask mechanically
27 restricts breathing by increasing the resistance of air movement during both inhalation and
28 exhalation process. ... ***prolonged and continuous effect of wearing facemask is***
29 ***maladaptive and could be detrimental for health.***” *Id.* (emphasis added).

1 395. “***Cloth masks actually risk your health rather than protect it.*** The moisture
2 caught in these masks will become mildew-ridden in 30 minutes. Dry coughing, enhanced
3 allergies, sore throat are all symptoms of a micro-mold in your mask.” Ex. 222 (emphasis
4 added).

5 396. “Scores of dermatologists, dentists, immunologists, virologists, [and]
6 pediatricians all over the world have been sounding the alarm for months over the continued
7 use of face masks.” *Id.*

8 397. “***But aside from not being as effective against the corona virus as so-called***
9 ***health experts claim, masks may even pose a risk to human health. For instance, a recently***
10 ***published review of studies on mask-related adverse health effects suggested that*** ***mask-***
11 ***wearing may seriously harm people without any notable benefit.***” Ex. 234 (emphasis
12 added).

13 398. “Scientists have found evidence that some face masks which are on sale and
14 being used by members of the general public are laced with toxic chemicals. Preliminary
15 tests have revealed traces of a variety of compounds which are heavily restricted for both
16 health and environmental reasons. This includes formaldehyde, a chemical known to cause
17 watery eyes; a burning sensations in the eyes, nose, and throat; coughing; wheezing; and
18 nausea. Experts are concerned that the presence of these chemicals in masks which are
19 being worn for prolonged periods of time could cause unintended health issues.” Ex. 235.

20 399. “Carbon dioxide (CO₂) is a colorless, odorless, non-flammable gas that
21 naturally occurs in the atmosphere. CO₂ is produced by body metabolism and is a normal
22 component of exhaled breath. ... CO₂ is denser than air and can collect in high
23 concentrations in ... confined spaces [such as within face masks] where it can displace
24 oxygen creating a serious health hazard.” Ex. 236.

25 400. “***The primary health effects caused by CO₂ are the result of its behavior as a***
26 ***simple asphyxiant. A simple asphyxiant is a gas which reduces or displaces the normal***
27 ***oxygen in breathing air. Symptoms of mild CO₂ exposure may include headache and***
28 ***drowsiness. At higher levels, rapid breathing, confusion, increased cardiac output, elevated***
29 ***blood pressure and increased arrhythmias may occur.***” *Id.*

1 401. Airplanes contain lower oxygen levels than most flight crew and passengers
2 who live at sea level are used to. Most airplanes are pressurized to an elevation of 8,000
3 feet. As most people know, oxygen levels decrease with altitude. “For people with
4 conditions – like heart or lung disease – that cause them to have special oxygen
5 requirements, this is a big deal, and means they might need to fly with an oxygen
6 concentrator, or not fly at all. But even for healthy people who are used to the abundant
7 levels of oxygen present at sea level, it can have an effect.” Ex. 237.

8
9 **P. The FTMM violates the Food, Drug, & Cosmetic Act by forcing travelers to**
10 **wear Food & Drug Administration unauthorized or Emergency Use**
11 **Authorization medical devices without our consent. The Airline Defendants’**
12 **mask mandates constitute practicing medicine without a license.**

13 402. CDC itself admits a mask does “NOT provide the wearer with a reliable level
14 of protection from inhaling smaller airborne particles and is not considered respiratory
15 protection.” Ex. 118.

16 403. Mask manufacturers concede their products are ineffective in preventing
17 COVID-19 infection: “It is also important to ensure the product does not have any
18 additional antimicrobial or antiviral claims made within its labeling.” Ex. 503.

19 404. FDA, an agency within HHS, regulates most face masks under EUAs. Ex.
20 119.

21 405. HHS and FDA state: “On April 18, 2020, in response to concerns relating to
22 insufficient supply and availability of face masks, [FDA] issued an [EUA] authorizing the
23 use of face masks for use by members of the general public... A face mask is a device ...
24 that covers the user’s nose and mouth and may or may not meet fluid barrier or filtration
25 efficiency levels. It includes cloth face coverings as a subset. ... Face masks are regulated
26 by FDA when they meet the definition of a ‘device’ under section 201(h) of the Act.
27 Generally, face masks fall within this definition when they are intended for a medical
28 purpose. ... Face masks are authorized under this EUA when they are intended for use as
29 source control, by members of the general public ... to cover their noses and mouths, in

1 accordance with CDC recommendations, to help prevent the spread of SARS-CoV-2 during
2 the COVID-19 pandemic.” Ex. 120.

3 406. “Face masks are not personal protective equipment.” Ex. 121.

4 407. The HHS secretary authorized EUAs for COVID-19 countermeasures (85
5 Fed. Reg. 17,335; Ex. 122) including respiratory devices (85 Fed. Reg. 13,907; Ex. 123).

6 408. FDA published an EUA for face masks July 14, 2020. 85 Fed. Reg. 42,410;
7 Ex. 124.

8 409. Another mask EUA was published Nov. 20, 2020. 85 Fed. Reg. 74,352; Ex.
9 125.

10 410. FDA states face masks must not be “labeled in such a manner that would
11 misrepresent the product’s intended use; for example, the labeling must not state or imply
12 that the product is intended for antimicrobial or antiviral protection or related uses or is for
13 use such as infection prevention or reduction... No printed matter, including advertising or
14 promotional materials, relating to the use of the authorized face mask *may represent or*
15 *suggest that such product is safe or effective for the prevention or treatment of patients*
16 *during the COVID-19 pandemic.”* Ex. 120 (emphasis added).

17 411. The instruction manual for a 3M N95 respirator mask, which is FDA
18 approved, makes clear its wearing still has risks: “Misuse may result in sickness or death. ...
19 [It] cannot eliminate the risk of contracting infection, illness, or disease... Individuals with a
20 compromised respiratory system, such as asthma or emphysema, should consult a physician
21 and must complete a medical evaluation prior to use.” Ex. 504.

22 412. Despite the lack of data that masks are effective, FDA issued an umbrella
23 EUA for 41 types of surgical masks, many of which are used by passengers to comply with
24 the FTMM and the Airline Defendants’ mask policies. Ex. 126.

25 413. Notably five types of masks have been withdrawn from the EUA after FDA
26 found them to be defective. *Id.*

27 414. FDA has also revoked the EUA for respirator masks made in China for being
28 faulty. Ex. 127.

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1 415. CDC’s National Institute for Occupational Safety & Health (“NIOSH”) found
2 many masks made in China “authorized under the April 3, 2020, EUA did not meet the
3 expected performance standards.” *Id.*

4 416. An astounding 167 respirator mask brands from China had their EUAs
5 revoked by FDA. Another 54 were previously revoked. *Id.*

6 417. FDA revokes EUAs when “appropriate to protect the public health or safety.”
7 Ex. 128.

8 418. Surgical masks (typically light blue in color) made in China are also not
9 authorized by FDA.

10 419. Although these 221 respirator mask brands (plus all surgical masks)
11 manufactured in China may no longer be legally sold in the United States, there are likely
12 tens or even hundreds of millions of these face coverings still being used by passengers due
13 to the FTMM and the Airline Defendants’ policies.

14 420. So not only are quality masks worthless in CDC’s goal of reducing
15 transmission of COVID-19 (<https://bit.ly/masksarebad>), but the vast majority sold in the
16 United States are actually defective, according to FDA. Ex. 129.

17 421. “The ‘may be effective’ standard for EUAs provides for a lower level of
18 evidence than the ‘effectiveness’ standard that FDA uses for product approvals.” Ex. 128.

19 422. Even a well-informed consumer would find it nearly impossible to
20 understand what types and brands of face masks have been authorized and which – if any –
21 are regarded as safe to use by NIOSH to comply with the FTMM and the Airline
22 Defendants’ mask policies.

23 423. The Federal Defendants’ administrative record shows no indication these
24 issues were considered.

25 424. There’s no indication these issues were considered as part of the Airline
26 Defendants’ conspiracy to interfere with the civil rights of the disabled.

27 425. When a mask manufacturer applies for an EUA, it must agree it may not
28 “misrepresent the product or create an undue risk in light of the public health emergency.
29 For example, the labeling must not include any express or implied claims for: ...

1 antimicrobial or antiviral protection or related uses, (3) infection prevention, infection
2 reduction, or related uses, or (4) viral filtration efficiency.” Ex. 130.

3 426. “All COVID-19 masks ... are authorized, not approved or licensed, by the
4 federal government; they are Emergency Use Authorization (EUA) only. They merely ‘may
5 be effective.’ ... EUA products are by definition experimental and thus require the right to
6 refuse. Under the Nuremberg Code, the foundation of ethical medicine, no one may be
7 coerced to participate in a medical experiment. Consent of the individual is ‘absolutely
8 essential.’ A federal court held that even the U.S. military could not mandate EUA vaccines
9 to soldiers. *Doe #1 v. Rumsfeld*, 297 F.Supp.2d 119 ([D.D.C.] 2003).” Ex. 505.

10 427. “[M]asks are authorized for use by the general public as ‘investigational
11 products’ under an Emergency Use Authorization (‘EUA’). They are not an approved
12 product, and are referred to in the law as ‘unapproved products’ because they have not been
13 fully tested and approved for use by the FDA. Under the federal law that allows the FDA to
14 issue EUAs (21 U.S.C. § 360bbb-3), you cannot be forced to wear a mask. The law provides
15 that recipients of a product authorized for use under and EUA can refuse to take the
16 product.” Ex. 506.

17 428. “[T]he recipient of the product (the mask) must be informed of the option to
18 refuse administration of the product.” *Id.*

19 429. All defendants do not inform passengers of their legal right to refuse
20 administration of the medical device.

21 430. “[B]y the FDA’s own admission, face masks such as those in common use by
22 the public are not intended to protect the wearer or others from the COVID-19 virus, as they
23 do not prevent or reduce infection.” Ex. 507.

24 431. EUA medical devices are experimental in nature. There’s “long settled legal
25 precedent which establishes that it is not legal to coerce an individual to accept an
26 experimental product. It further provides the historical background and evidence that
27 Congress’ intent in enacting Section 564 [of the FDCA] was to provide only one limited
28 exception to the option to accept or refuse EUA products – that exception applies only to
29 military personnel and only when national security is at risk. Federal agencies have also

1 historically interpreted Section 564 as a prohibition on mandates of EUA products...” Ex.
2 508.

3 432. “To be licensed, the FDA must find that a medical product is ‘safe for use
4 and ... effective in use.’ Until licensed, a medical product remains investigational, even
5 after issuance of an EUA. ... Long settled legal precedent establishes that it is not legal to
6 coerce an individual to accept an unlicensed, and hence experimental, medical product. An
7 individual must voluntarily agree, free from any undue influence, to accept same.” Ex. 509.

8 433. “Lay people and manufacturers of just about every type of business are
9 lending assistance to create masks. Companies that once made mattresses, shoes, apparel
10 and many other products are now turning efforts toward the manufacturing face masks.
11 Even a business that manufactures sports jerseys for professional athletes is now making
12 masks using the same jersey material from its products.” Ex. 131.

13 434. None of these pop-up mask manufactures have FDA certification that their
14 medical devices are safe to place on human faces.

15 435. “The FDA is waiving regulatory requirements, including submission of
16 premarket notification under the 510(k) process, registration and listing requirements,
17 quality system regulation requirements, reports or corrections and removals, and unique
18 device identification requirements. ... the labeling should not include that the mask can be
19 used for antimicrobial or antiviral protection or be used for infection prevention.” *Id.*

20 436. “FDA notes that because it cannot confirm the authenticity of any alternative
21 respirators from abroad, it recommends that people take appropriate steps to verify the
22 authenticity of the products before importing them. ... FDA is now welcoming the
23 opportunity to work with any manufacturer with interest in manufacturing masks and
24 respirators – even if the manufacturer has no previous experience in medical device
25 manufacturing.” *Id.*

26 437. “Counterfeit medical devices have been a danger in the U.S. supply chain for
27 years, but their presence has been especially of concern during the current pandemic, when
28 there have been shortages of products considered to be medical devices by the FDA, such as
29 medical masks...” Ex. 132.

1 438. Additional details about the FDA unauthorized or EUA nature of most masks
2 used by airline passengers against the will of Plaintiffs is available at Exs. 133-135.

3 439. “Simply put: manufacturers producing even simple cloth face coverings are
4 now producing medical devices regulated by FDA and must therefore comply with certain
5 regulatory requirements.” Ex. 510.

6
7 **Q. All 50 states do not require masking. The federal government may not impede**
8 **on the states’ sovereign police power to protect public health.**

9 440. CDC’s FTMM order overrides the mask policies of all 50 states that don’t
10 require masks. Ex. 136.

11 441. Ten states never adopted a statewide mask mandate. The other 40 states –
12 seeing that mandatory masking had no effect on their COVID-19 cases, hospitalizations,
13 and fatalities – have repealed their face-covering dictates. *Id.*

14 442. There are at least 14 states that prohibit mask mandates. *Id.*

15 443. President Biden acknowledged Dec. 27, 2021, during a meeting of state
16 governors that “Look, there is no federal solution” to COVID-19. “This gets solved at a
17 state level.” Exs. 137-138.

18 444. However, the president has not repealed Executive Order 13998 that told
19 CDC and HHS to mandate masks in the transportation sector. His administration continues
20 extending TSA’s enforcement of the FTMM without providing any explanation for doing
21 so.

22
23 **R. Even if CDC voluntarily repeals its FTMM order, it could be reinstated at any**
24 **time.**

25 445. It’s possible CDC could repeal the FTMM before the Court is able to render a
26 judgment on this Complaint. However, that would in no way moot our case.

27 446. CDC Director Rochelle Walensky, in announcing revised mask guidance
28 Feb. 25, 2022, clearly stated the agency could change its masking recommendations again at
29 any time.

1 447. “None of us know what the future may hold for us and for this virus and we
2 need to be prepared and we need to be ready for whatever comes next. We wanna give
3 people a break from things like mask wearing when our levels are low and then have the
4 ability to reach for them again, should things get worse in the future,” Walensky told
5 reporters during a Feb. 25, 2022, media briefing releasing new guidelines that 99.5% of
6 Americans should not wear masks. Exs. 139-140.

7 448. Likewise Dr. Greta Massetti, a senior epidemiologist at CDC, said the agency
8 will always be updating its mask guidelines, indicating that the FTMM (if ever repealed)
9 could be reinstated at any time.

10 449. “Public-health prevention strategies can be dialed up when our communities
11 are experiencing more severe disease and dialed down when things are more stable,”
12 Massetti told reporters during the Feb. 25 briefing. Ex. 139.

13
14 **S. Many Americans with disabilities can’t wear face masks.**

15 450. CDC “states that a person who has trouble breathing or is unconscious,
16 incapacitated, or otherwise unable to remove the face mask without assistance should not
17 wear a face mask ... Additionally, people with post-traumatic stress disorder, severe
18 anxiety, claustrophobia, autism, or cerebral palsy may have difficulty wearing a face mask.”
19 Ex. 511.

20 451. “People who are deaf or hard of hearing – or those who care for or interact
21 with a person who is hearing impaired – may be unable to wear cloth face coverings if they
22 rely on lip-reading to communicate. Some people, such as people with intellectual and
23 developmental disabilities, mental health conditions, or other sensory sensitivities, may have
24 challenges wearing a cloth face covering.” Ex. 512.

25 452. “Individuals with asthma, chronic obstructive pulmonary disease (COPD), or
26 other respiratory disabilities may not be able to wear a face mask because of difficulty in or
27 impaired breathing.” *Id.*

1 453. “Some people with autism are sensitive to touch and texture. Covering the
2 nose and mouth with fabric can cause sensory overload, feelings of panic, and extreme
3 anxiety.” *Id.*

4 454. A wide range of disabled people should not wear masks. *Id.*

5
6 **T. The FTMM unlawfully discriminates against travelers with disabilities.**

7 455. Because of the FTMM, many airlines have illegally banned passengers with
8 disabilities who request face-mask exemptions, including children as young as two, in
9 violation of the ACAA (49 USC § 41705) and its accompanying regulations (14 CFR Part
10 382).

11 456. Reports abound of unlawful discrimination against the disabled as a direct
12 result of CDC’s FTMM order. A small sample is available at Exs. 314-323.

13 457. CDC itself states that passengers with numerous medical conditions should
14 not be required to wear face coverings, but does nothing to enforce this due to the FTMM.
15 Ex. 513.

16 458. “Masks or Cloth Face Covering: Recommendation: Everyone should
17 correctly wear a mask or cloth face covering over their nose and mouth at all times in the
18 passenger air transportation system (*excluding* children under age 2, or *anyone who has a*
19 *medical condition that causes trouble breathing...*,” according to a July 2020 report issued
20 by HHS and other federal agencies. Ex. 141 . (emphasis added)

21 459. “Reasonable accommodations should be made for persons with disabilities or
22 ailments who cannot wear masks or cloth face coverings. ... Accommodations for persons
23 with disabilities or ailments who cannot wear cloth face coverings should be considered on
24 a case-by-case basis.” *Id.*

25
26 **U. The Airline Defendants conspired to put illegal mask polices in place starting in**
27 **Spring 2020. The conspiracy soon involved interfering with the civil rights of**
28 **the disabled such as plaintiffs with medical conditions who can’t safely wear a**
29

1 **face coverings, totally banning us from using air transportation unless we**
2 **agreed to endanger their health.**

3 460. **ORIGINAL MASK POLICIES:** JetBlue was the first U.S. airline to require
4 passengers to don face masks during flights, announcing the measure on April 27 for flights
5 starting on May 4, 2020. “Exempt: Small children who are not able to maintain a face
6 covering.” Ex. 413.

7 461. Delta simultaneously announced it would also mandate face masks on flights
8 effective May 4, 2020. “Only exceptions are for meal service and young children.” *Id.*

9 462. United simultaneously announced it would also mandate face masks on
10 flights effective May 4, 2020. *Id.*

11 463. Frontier simultaneously announced it would also mandate face masks on
12 flights effective May 8, 2020. Ex. 414.

13 464. Hawaiian simultaneously announced it would also mandate face masks
14 effective May 8. Ex. 415.

15 465. Hawaiian at first complied with the ACAA by noting “guests with a medical
16 condition or disability preventing its use will be exempted from the policy.” *Id.*

17 466. American simultaneously announced it would also mandate face masks on
18 flights effective May 11, 2020. “Only exceptions are for young children and those with
19 medical conditions that prevent them from wearing a face covering.” Ex. 413.

20 467. Alaska simultaneously announced it would also mandate face masks on
21 flights effective May 11, 2020. Ex. 414.

22 468. Southwest simultaneously announced it would also mandate face masks.
23 “Southwest has required passengers to wear masks onboard since May 11, and said it will
24 continue to bar passengers without a mask from boarding.” Ex. 416.

25 469. **LEGAL ADVICE & EARLY EXCEPTIONS:** Lawyers advised the
26 industry at the start of the COVID-19 pandemic that the ACAA prohibits airlines from
27 discriminating against a passenger with a disability in the provision of air transportation. Ex.
28 417.

1 470. Airlines were provided legal advice that “A carrier may deny boarding,
2 require a medical certificate, or impose conditions on a passenger (*such as wearing a mask*)
3 only in cases where a passenger *with a communicable disease* poses a ‘direct threat’ to the
4 safety and health of others. In determining whether a passenger poses such a threat, the
5 airline makes an ‘*individualized assessment*’ by relying on current medical knowledge, the
6 likelihood of potential harm to others, and whether reasonable procedures or modifications
7 could mitigate the risk.” *Id.* (emphasis added).

8 471. The Airline Defendants conspired to impose mask mandates anyway,
9 ignoring this legal guidance.

10 472. All major U.S. airlines except Allegiant conspired to mandate masks in early
11 May 2020. Ex. 418.

12 473. Recognizing that requiring masks violates the RA, ACAA, FDCA, other
13 federal and international laws, and their contracts of carriage, the Airline Defendants at first
14 told their flight attendants and pilots they shouldn’t enforce their mask rules on board
15 planes. *Id.*

16 474. Passengers were still denied boarding if they didn’t wear a mask at the gate,
17 however. At this point, it appears the conspiracy to implement masks was undertaken with
18 some understanding that the defendants could not interfere with the civil rights of the
19 disabled. This would soon change, however.

20 475. It was reported in May 2020: “The major airlines have exceptions so that
21 young children and those with medical issues don’t have to wear masks.” *Id.*

22 476. There was compliance with the ACAA at first. The author of this article
23 noted: “Presumably the airlines would be opening themselves up to a lawsuit if they forced
24 someone to put on a mask when they claim they have a medical condition.” *Id.*

25 477. **STRICT ENFORCEMENT EXCEPT FOR PILOTS:** By mid-June 2020,
26 major airlines extended their conspiracy to ban flyers who refused to – or medically can’t –
27 wear masks from flying. Ex. 419.

28 478. Plaintiffs need discovery to determine to what extent the Airline Defendants
29 have conspired to share their “no-fly lists” among each other.

1 479. Through the trade group they belong to, Airlines for America (“A4A”),
2 Alaska, American, Delta, JetBlue, Southwest, and United announced they were conspiring
3 to begin “vigorously enforcing face covering policies.” *Id.*

4 480. Acknowledging that pilots and flight attendants are not licensed medical
5 providers, the conspirators at this phase continued to permit some medical exemptions
6 because “the crew isn’t qualified to assess medical conditions, so there shouldn’t be any
7 follow-up questions” when someone self-declares a disability that makes it impossible for
8 them to cover their nose and mouth. *Id.*

9 481. “U.S. airlines are very serious about requiring face coverings on their flights.
10 Carriers are stepping up enforcement of face coverings and implementing substantial
11 consequences for those who do not comply with the rules,” said A4A President & CEO
12 Nicholas Calio. Ex. 420.

13 482. “Beginning June 16[, 2020] at American and June 18 at United, any
14 passenger who does not wear a mask while traveling could be flagged for each airline’s list
15 of restricted flyers, possibly causing them to be barred from flying with the carrier again. ...
16 The policy updates by American and United coincided with a Monday announcement from
17 the Airlines for America (A4A) trade group, which said many of its members were stepping
18 up enforcement of their onboard mask policies.” Ex. 416.

19 483. While the Airline Defendants were stepping up their mask enforcement in
20 early Summer 2020, they were exempting pilots from the muzzling rule because of the need
21 for safety in the cockpit. American, for example, issued a memo to staff July 2, 2020, noting
22 there is a “Flight Deck safety exception.” Ex. 421.

23 484. In a lawsuit seeking *vacatur* of the FTMM, pilots from several of the Airline
24 Defendants said they are exempt from masking in the cockpit, but not while in airport
25 terminals. Complaint, *Carlin v. CDC*, No. 22-cv-800 (D.D.C.).

26 485. In a July 10, 2020, memo, American detailed its flight deck safety exception:
27 “Pilots have certain exemptions on wearing masks in the flight deck for safety reasons. (i.e.
28 A mask may interfere with their ability to see or don an oxygen mask.) ... The pilots do not
29 have to put on a face covering if they feel it could impact safety.” Ex. 421.

1 486. These memos obtained from an American employee show how the airline
2 industry was well aware that obstructing a person’s breathing by mandating face coverings
3 is dangerous.

4 487. “When COVID-19 first became a threat, most airlines prohibited crews from
5 wearing masks. ... But even when mask usage started to become more common and
6 ultimately permitted for flight attendants, it remained prohibited for cockpit crews by the
7 FAA.” Ex. 422.

8 488. “Additionally, the FAA issued a ruling that was adopted by most if not all
9 airlines in the US, that allowed but did not require pilots to wear masks in the cockpit.” *Id.*

10 489. “There are a number of issues that come with wearing a mask in the cockpit
11 and those reasons are why most crew members don’t wear one in flight. First, in an
12 explosive decompression, getting your facial mask off and the oxygen mask on adds
13 seconds to a procedure that is already time critical. Second is the issue of re-breathing CO2
14 for hours on end while at altitude in a safety critical position. Third, for those who wear
15 glasses, masks represent a challenge that frequently leads to those glasses becoming fogged.
16 This can be a challenge even for those with perfect vision during daytime flights when you
17 need to wear sunglasses. Even with the built-in shades, it can get very bright in the cockpit
18 at altitude. Consequently, wearing a mask while operating the aircraft compromises safety.
19 With what we know about how air flows on aircraft, the risks posed by wearing a mask
20 greatly outweigh the risks that come from not wearing one inside the flight deck.” *Id.*

21 490. The Airline Defendants ignored that numerous current and former flight
22 attendants said all flight crew and passengers also should not wear masks for safety reasons
23 because decreased oxygen levels reduce reaction time in an emergency. A cabin full of
24 muzzled, oxygen-deprived flight attendants and passengers could result in a disaster if they
25 are slow to respond to an in-flight emergency. Complaint, *Troceno v. CDC*, No. 22-cv-727
26 (D. Colo.).

27 491. Masks also impair the critical ability for passengers and crew to communicate
28 during an emergency. *Id.*

29

1 492. The conspiracy now involved endangering the health and safety of the Airline
2 Defendants' passengers.

3 493. The crew on board every aircraft is there for one main reason: to guarantee
4 the safety of the flight, including the crew and passengers on board the aircraft. To limit the
5 oxygen intake of the crew and the passengers in an already low-oxygen environment like a
6 plane is beyond dangerous as it impedes an optimum oxygen level in our bodies – not only
7 for any pre-existing medical conditions any passenger or crew member might already have
8 but also because it endangers the safety of the flight in case of emergency. *Id.*

9 494. Not only would passengers and crew members lose precious time to wear an
10 oxygen mask in case of a decompression because they would have to remove their own
11 unauthorized or FDA EUA face covering first, but also the flight attendants would not be fit
12 to handle an emergency because the already low oxygen level in their own bodies would
13 incapacitate them from performing the emergency procedures that they have all been trained
14 for. *Id.*

15 495. **PROHIBITING THE DISABLED FROM FLYING:** The conspiracy
16 would soon evolve to indisputably interfere with the civil rights of disabled passengers by
17 totally banning us from using air transportation unless we agreed to harm our health by
18 wearing a mask.

19 496. The Individual Defendants should have known that forbidding disabled
20 passengers from flying violates numerous federal and international laws, but they did
21 nothing to stop the conspiracy.

22 497. American and Southwest were the first carriers to institute a total ban on
23 passengers with disabilities who can't wear a face mask. Ex. 423.

24 498. "Some carriers, such as American and Frontier, have created policies
25 designed to make it exceedingly difficult or impossible for disabled people to fly without a
26 mask. It is clear that testing requirements impose an undue burden on disabled travelers as
27 there are few places in the country that guarantee a test result within 72 hours. In areas
28 where rapid testing is possible, it is often not covered by health insurance plans and can cost
29 hundreds of dollars. The DOT's decision to grant airlines the authority to dictate which

1 flights disabled people can take is ripe for abuse and further demonstrates that the Office of
2 Aviation Consumer Protection has little to no interest in protecting the rights of disabled
3 people.” Ex. 424.

4 499. The other airline conspirators soon followed in prohibiting the disabled from
5 flying.

6 500. “Alaska Airlines announced a strengthening of [its] mask policy, requiring all
7 passengers above the age of two to wear face coverings, with no medical exceptions
8 allowed. The change goes into effect August 7[, 2020]. Alaska’s announcement came the
9 same day as New York-based JetBlue’s, who also announced it is eliminating medical
10 exemptions for mask wearing, effective August 10th. Alaska, along with JetBlue, now
11 joined American and Southwest, which announced similar zero-exceptions policies in recent
12 weeks, as the airlines with the strictest face covering policies in the United States.” Ex. 425.

13 501. Allegiant adopted a rule: “Only children under the age of 2 are exempt from
14 wearing a face covering. Customers who are not able to wear a face covering will not be
15 permitted to travel.” *Id.*

16 502. Frontier said “We require both passengers and employees to wear a face-
17 covering over nose and mouth throughout the Frontier travel experience including ticket
18 counters, gate areas, baggage claim and onboard all flights. The only exception is for
19 children under the age of 2.” *Id.*

20 503. “Buried in a July 22 press release, United Airlines states that ‘if a passenger
21 believes that there are extraordinary circumstances that warrant an exception, they should
22 contact United or speak to a representative at the airport.’ Repeated requests for clarification
23 were refused and, because the statement is not included on the airline’s customer-facing
24 website, Plaintiffs do not believe that United is willing to serve disabled passengers who
25 cannot wear a mask. Ex. 426.

26 504. “That’s 8 of the 10 largest U.S. airlines which have told disabled people with
27 autism, asthma, cerebral palsy, claustrophobia, COPD, PTSD, severe anxiety, and other
28 conditions that they are not welcome onboard an aircraft. It is the largest ban on disabled air
29 travel since the Air Carrier Access Act became law in 1986.” *Id.*

1 505. These policies were all implemented in late July and early August 2020,
2 demonstrating both intra-corporate and inter-corporate conspiracies to interfere with civil
3 rights by prohibiting all disabled Americans who can't obstruct our breathing from flying.

4 506. A ban such as the one imposed by the conspirators leaves disabled
5 "customers who are traveling for medical treatments or surgeries to out of state specialized
6 medical procedures at a great disadvantage. The numbers of Cancer Deaths has skyrocketed
7 globally since these new rules went into place. This is mainly attributed to these patients not
8 having access to their Cancer Screenings and Cancer Treatments." Ex. 324.

9 507. "The major airlines are now serious about enforcing their requirements that
10 passengers (unless they are age 2 and under, usually) wear face masks during boarding and
11 on the plane, as well as in areas throughout airports they serve, such as customer service
12 counters and gates. The only time masks may be removed is for eating or drinking ...
13 They've announced that travelers who refuse to wear masks onboard will not be allowed to
14 fly." Ex. 427.

15 508. Hawaiian opted not to ban disabled passengers but did adopt Aug. 17, 2020, a
16 stricter mask policy "initiating a new health screening for those unable to wear a face mask
17 or covering due to a medical condition or disability. ... guests unable to wear a face mask or
18 covering due to a medical condition or disability must now undergo a personal medical
19 assessment at the airport to be cleared to board. Guests requesting an exemption should
20 arrive at the airport early as the assessment may take up to one hour." Ex. 428.

21 509. The conspiracy continued into January 2021, when the defendants
22 collectively lobbied for the Federal Transportation Mask Mandate. "[A]irlines and their
23 unions requested [the FTMM] to help with passenger mask compliance..." Ex. 429.

24
25 **V. Once the Federal Transportation Mask Mandate went into effect Feb. 1, 2021,**
26 **the Department of Transportation finally forced the Airline Defendants to offer**
27 **exemptions. But the conspiracy to prevent the disabled from flying continues as**
28 **the exemption process each airline created is illegal and a farce, making it**
29 **virtually impossible to get a waiver.**

1 510. **ALASKA’S ILLEGAL POLICIES:** “Alaska Airlines announced a
2 strengthening of [its] mask policy, requiring all passengers above the age of two to wear
3 face coverings, with no medical exceptions allowed. The change goes into effect August 7[,
4 2020]. Alaska’s announcement comes the same day as New York-based JetBlue’s, who also
5 announced it is eliminating medical exemptions for mask wearing, effective August 10th.
6 Alaska, along with JetBlue, now join American and Southwest, which announced similar
7 zero-exceptions policies in recent weeks, as the airlines with the strictest face covering
8 policies in the United States.” Ex. 430.

9 511. “Alaska Airlines said on Wednesday that it will no longer fly passengers who
10 are unwilling or unable to wear a mask – even when there’s a legitimate and documented
11 medical reason – following similar moves by American Airlines and Southwest.” Ex. 431.

12 512. “If a guest is unwilling or unable to wear a mask for any reason while at the
13 airport, they will not be permitted to travel,” the airline said in a statement. “If a guest
14 refuses to wear a mask after boarding their flight, they will be suspended from future
15 travel.” *Id.*

16 513. This policy follows a “yellow card” program that Alaska rolled out in June,
17 in which flight attendants would issue a formal notice to passengers who refuse to wear
18 masks. The airline said that going forward, any passenger who does not comply with the
19 mask requirement after receiving a yellow card will be banned from flying with it
20 immediately on landing, and will have any connecting or return flights cancelled. *Id.*

21 514. Alaska’s current mask rules are: “If you have a disability and are unable to
22 wear a mask, please call our dedicated accessible services line at 1-800-503-0101 ... to
23 request an exemption from the mask requirement.” Ex. 432.

24 515. “Exemptions will require: • Documentation from a licensed health care
25 provider as to your inability to wear a mask due to your disability; and • Proof of a negative
26 test result from an FDA approved molecular NAAT or PCR Covid-19 test taken within 72
27 hours of your scheduled flight departure.” *Id.*

1 516. “Documentation from your health care provider must be submitted to Alaska
2 Airlines at least 72 hours before your flight. We recommend that you contact us at least one
3 week before departure to start the exemption process.” *Id.*

4 517. Alaska requires a passenger’s doctor to disclose private medical information,
5 against his/her will, to a third-party medical consultant “Open Doors NFP,” which then
6 recommends to Alaska to approve or deny a mask-exemption request, even though no
7 licensed medical doctors actually work at Open Doors. Ex. 32.

8 518. Alaska required Plaintiffs Uri and Yvonne Marcus to provide a direct e-mail
9 contact for their family physicians so that OpenDoors could contact them and verify their
10 private medical information and conditions. This is an invasion of privacy.

11 519. Open Doors does not have any doctors on staff, which puts it in the same
12 category as Alaska, which said, “We are not doctors and cannot verify if you qualify for a
13 mask exemption.”

14 520. Open Doors and Alaska are practicing medicine without a license.

15 521. Alaska granted plaintiffs’ mask exemptions but this was contingent on
16 numerous additional steps that violate the law.

17 522. Alaska fraudulently informs plaintiffs on its website that “federal law”
18 requires all passengers to wear a mask while flying. But Congress never passed such a law,
19 nor has DOT or any other agency promulgated such a regulation.

20 523. **ALLEGIANT’S ILLEGAL POLICIES:** As of June 19, 2020, Allegiant
21 was the only major U.S. airline not participating in the conspiracy to interfere with the civil
22 rights of the disabled, and the only major carrier not to break the FDCA by requiring any
23 passenger to don an FDA unauthorized or EUA medical device on their face. Ex. 433.

24 524. Allegiant did provide customers with FDA unauthorized or EUA medical
25 devices, however, practicing medicine without a license: “[E]ach passenger gets a
26 complimentary health and safety kit with a face mask, gloves, and two sanitizing wipes” and
27 Allegiant “strongly encouraged passengers to wear” the devices. *Id.*

28 525. Allegiant was the lone holdout in the conspiracy at this time, noting the
29 importance of not interfering with the civil rights of the disabled: “We’ve also heard from

1 customers with asthma and other health conditions who say they can't wear masks. We want
2 to ensure our policies accommodate them, as well." *Id.*

3 526. Defendant Allegiant quickly changed its tune, however, joining the
4 conspiracy and implementing a mandatory mask policy July 2, 2020. Ex. 434.

5 527. Allegiant became the last major carrier to mandate muzzling. *Id.*

6 528. Defendant Allegiant in June 2021 falsely represented that "federal law
7 requires every person to wear a face covering that covers the nose and mouth at all times
8 while traveling." Ex. 435. There is no such law enacted by Congress. This is a deceptive and
9 unfair trade practice.

10 529. Allegiant misrepresents the FTMM by informing customers "Those with
11 limited mobility who are unable to remove a face covering without assistance are exempt
12 from the requirement." *Id.* But there are many other categories of exemptions under the
13 FTMM. This is a deceptive and unfair trade practice.

14 530. "To request face mask exemptions. please email our Disabilities Team at
15 ACAA@allegiantair.com at least 10 days prior to the departure of the first flight on your
16 itinerary. Please note, if your exemption is approved, a negative COVID test will be
17 required within 3 days of each flight segment." *Id. But see* 14 CFR Part 382.

18 531. Allegiant makes it difficult for customers with disabilities to (illegally)
19 request in advance a mask exemption when booking their ticket. When a customer attempts
20 to reserve a flight, a "Special Assistance" form comes up. But there is no box to check for
21 mask exemption.

22 532. **AMERICAN'S ILLEGAL POLICIES:** American makes little information
23 about its mask-exemption process available on its website.

24 533. "If you may be exempt because you have a disability that prevents you from
25 safely wearing a mask as defined by the Americans with Disabilities Act (42 USC 12101 et.
26 seq) you must contact us at least 72 hours before you plan to travel and travel with
27 documentation confirming a negative COVID test or recovery." Ex. 436.

28 534. Additional unlawful American policies were described to Plaintiff Uri
29 Marcus during a phone call Feb. 9, 2022.

1 535. American fraudulently informed plaintiffs throughout the online ticket
2 purchase pages that “federal law” requires each person to wear a mask while flying.
3 However, Congress has never passed such a law, nor has DOT or any other agency
4 promulgated such a regulation. The DOT itself on its own FAQ section on its website
5 specifically states that wearing masks is NOT a federal law. Ex. 33.

6 536. American required Mr. and Mrs. Marcus to submit exemption requests in
7 advance, which is illegal. 14 CFR § 382.25. *Id.*

8 537. Plaintiffs submitted the forms as a courtesy despite it being unlawful to
9 demand advance notice. Plaintiffs included, as a courtesy, signed medical summaries from
10 their family physicians that they should not wear a mask. Plaintiffs wrote that American’s
11 mask policy is illegal in numerous ways including that airlines by federal law are NOT
12 permitted to impose certain requirements or conditions on a person requesting an exemption
13 from the mask mandate. *Id.*

14 538. After American finally did grant Mr. and Mrs. Marcus provisional mask
15 exemptions, they went on to discriminate against them and assigned them, against their will,
16 seats located in the last row of each flight. *Id.*

17 539. American and their employees at their Special Assistance Coordinators
18 Department conspired to interfere with the civil rights of plaintiffs. *Id.*

19 540. **DELTA’S ILLEGAL POLICIES:** Delta requires passengers to submit to a
20 “Clearance to Fly” process prior to departure at the airport on the day of departure through
21 STAT-MD, which means that a passenger who cannot don a mask for legitimate medical
22 reasons because of his/her disability cannot know if he/she will actually be permitted board
23 his or her flight after purchasing a ticket and arriving at the airport, ready to travel. Exs.
24 437-444.

25 541. Delta fraudulently informs plaintiffs throughout the online ticket purchasing
26 process that “federal law” requires each person to wear a mask while flying. However,
27 Congress has never passed such a law, nor has DOT or any other agency promulgated such
28 a regulation.

29

1 542. **FRONTIER’S ILLEGAL POLICIES:** Defendant Frontier also illegally
2 requires advance notice and a medical certificate, among other discriminatory rules: “At
3 least 10 days prior to departure: Submit documentation from a licensed medical provider on
4 professional letterhead stating the customer is a person with a disability who cannot wear a
5 mask, or cannot safely wear a mask...” Ex. 445. *But see* 14 CFR Part 382.

6 543. This means a Frontier frequent flier would have to see his/her doctor before
7 *every trip* on the airline. In other words, Frontier, like other airlines, refuses to grant
8 passengers who have proven their disability a permanent mask exemption – meaning
9 Frontier discriminates against disabled passengers on every single trip they take.

10 544. “Failure to provide 10 days’ notice will result in denial of the request.” *Id.*
11 *But see* 14 CFR Part 382.

12 545. “Present evidence that the customer requesting a mask exemption does not
13 have COVID-19 by providing a negative result from a SARS-CoV-2 viral test; the specimen
14 for the test must have been collected no more than 3 days before the applicable flight.” *Id.*
15 *But see* 14 CFR Part 382.

16 546. Flyers with disabilities must endure this torment on each segment of their
17 journey. “These testing requirements apply to return travel.” *Id.*

18 547. Like Defendant Allegiant, Frontier makes it difficult for passengers to seek
19 mask exemptions. While booking a flight a screen appears for a customer to select if he
20 needs any “Special Services” – but there’s no box to check for mask exemption. *Id.*

21 548. Frontier Airlines CEO Barry Biffle expressed his interest June 23, 2021, in
22 removing himself and his airline from the conspiracy to interfere with the civil rights of the
23 disabled. He said at an industry conference that face coverings are a prime contributor to a
24 string of recent in-flight disruptions: “The reality is, a lot of people don’t want to wear
25 masks,” Biffle said. “You don’t have to wear a mask here [at the convention], you don’t
26 have to wear [masks] at Walmart, but yet you’ve got to do it on a plane.” Ex. 401.

27 549. Despite his comments, Mr. Biffle has not taken any action to actually end his
28 role in the conspiracy. Frontier has not stopped illegally depriving passengers of their right
29 under the FDCA to refuse administration of an FDA unauthorized or EUA medical device,

1 nor has he eliminated his company's numerous illegal mask-exemption rules that break the
2 ACAA.

3 550. **HAWAIIAN'S ILLEGAL POLICIES:** Despite acknowledging "the risk of
4 viral transmission on board a commercial aircraft is extremely low," Hawaiian frequently
5 states to customers that "Federal law requires that all guests two years and older wear a
6 mask at the airport, while boarding, through the duration of the flight and while deplaning at
7 their destination. Refusing to wear a mask is a violation of federal law and may result in
8 denial of boarding, removal from the aircraft and/or penalties under federal law." Ex. 446.

9 551. Congress has never passed such a law, nor has DOT or any other agency
10 promulgated such a regulation.

11 552. Hawaiian states "Guests who are unable to wear a face mask due to a medical
12 condition or disability will be required to complete an assessment with a medical
13 professional via phone at the airport. We recommend arriving at the airport early with ample
14 time to complete the assessment, as the process may take more than one hour, and your
15 flight will not be held. Please notify one of our Guest Services Agents as soon as you are
16 ready to complete the medical assessment. If you are unable to meet this requirement, we
17 recommend that you reconsider your travel." *Id.*

18 553. Hawaiian forces any passenger who passes its Fit to Fly medical consultation
19 to sit in the rear of the aircraft regardless of what seats they chose during booking.

20 554. Plaintiffs did not agree with Hawaiian's illegal policy that required them to
21 complete a medical assessment from MedAire at the airport to be granted their mask
22 exemptions as a condition to board the aircraft. Ex. 35.

23 555. Hawaiian even went so far as to demean and mock the medical disabilities of
24 Plaintiffs Mr. and Mr. Marcus during the mask-exemption-request process by asking "Why
25 in the world would you even want to ask for a mask exemption?"

26 556. Plaintiffs Mr. and Mrs. Marcus submitted medical summaries that they
27 cannot wear a mask, signed by their family physicians as a courtesy despite it being
28 unlawful for Hawaiian to demand such documentation. *Id.*

29

1 557. **SOUTHWEST’S ILLEGAL POLICIES:** “Customers with disabilities are
2 not required to provide advance notice of the need for assistance...” Southwest correctly
3 states on one of its web pages. Ex. 447.

4 558. However, Southwest then illegally makes passengers needing a mask
5 exemption complete a “Passenger Application for Exemption to Federal Mask Requirement
6 on Southwest Airlines” form and submit it at least seven days in advance. *Id.*

7 559. Southwest’s form requires passengers to acknowledge an illegal policy that
8 “Southwest Airlines may change his travel dates and/or flights should one or more of his
9 originally scheduled flights have a capacity of 75% or more, or another Passenger approved
10 for a mask exemption booked on such flight.” *Id.*

11 560. “Per guidance from the U.S. Department of Transportation, airlines are
12 permitted to impose certain requirements or conditions on a person requesting an exemption
13 from the mask requirement. These requirements/conditions are described below.” *Id.*
14 Southwest fails to advise customers these requirements or conditions are prohibited by the
15 RA and ACAA.

16 561. Because DOT’s guidance (Ex. 101) is illegal, there’s no remedy for the
17 disabled for the violation of our rights under the ACAA, therefore giving plaintiffs a private
18 right of action to enforce the ACAA since DOT has failed its statutory duty to do so.

19 562. “As a mitigation measure, DOT allows airlines to schedule the passenger (not
20 wearing a mask) on a less crowded flight,” according to Southwest. Ex. 447.

21 563. “Southwest requires that a Passenger obtaining a mask exemption travel on a
22 flight with less than 75% capacity at the time of the flight’s departure, and with no other
23 Passengers on board approved for a mask exemption. If the passenger’s preferred flight ends
24 up being more than 50% full on the day of travel, Southwest Airlines will work to re-
25 accommodate Passengers who obtain a mask exemption. Please note that Passengers may be
26 required to travel on a different date than their scheduled itinerary.” *Id.*

27 564. “At least seven (7) days prior to the Passenger’s planned date of travel, a
28 Passenger requesting a mask exemption for travel on Southwest Airlines must complete and
29 submit [the form]...” *Id.*

1 565. “A signed letter [is required] from the requesting Passenger’s Medical
2 Physician on the Physician’s letterhead stating that the Passenger with a disability has a
3 recognized medical condition precluding the wearing or safe wearing of a mask because of
4 their disability.” *Id.*

5 566. “Once Southwest Airlines receives a mask exemption application in line with
6 the above criteria, at Southwest’s request to Passenger, Passenger may undergo a private
7 medical screening (over the phone) with a third-party medical provider...” *Id.*

8 567. “No later than 24 hours prior to the Passenger's scheduled departure(s),
9 Passenger must provide evidence of Passenger’s qualifying COVID negative viral test
10 result.” *Id.* This sets different requirements for passengers without and with disabilities to
11 fly; those who can mask don’t need a test, those who can’t mask must get an expensive test
12 for each segment of their journey.

13 568. “Roundtrip travel will require an additional qualifying COVID negative viral
14 test result taken within three (3) calendar days preceding the Passenger’s scheduled date of
15 return travel and submitted no later than 24 hours prior to the Passenger's scheduled
16 departure...” *Id.*

17 569. No provision of federal law or regulations permit an airline to require that
18 any person be tested for a disease as a condition of carriage, and such a provision is not
19 contained in Southwest’s contract of carriage.

20 570. The most outrageous and discriminatory policy of Southwest is that “if the
21 Passenger’s originally scheduled date of travel is changed as a result of the flight having a
22 capacity of 75% or more or another Passenger approved for a mask exemption, then you
23 will be required to obtain a qualifying COVID negative viral test result within three (3)
24 calendar days preceding the Passenger’s new scheduled date of departure or return travel, as
25 applicable and at your own expense.” *Id.*

26 571. So in other words, Southwest violates the law by refusing to carry a disabled
27 person because the flight is pretty full and/or because there’s another disabled person on
28 board, and then it is going to violate the law AGAIN by mandating that Plaintiffs get
29

1 ANOTHER negative COVID-19 test when nondisabled passengers are not subject to the
2 testing requirement.

3 572. “Southwest Airlines will introduce tough new face mask rules that will make
4 it even more difficult for passengers with a legitimate medical exemption to fly with the
5 airline...” Ex. 448.

6 573. “Once a passenger has jumped through those hoops, Southwest Airlines will
7 still refuse to board them if the flight is booked to 50% capacity or more. Even on a near-
8 empty flight, an exempt passenger may still be refused boarding if there is more than one
9 exempt passenger booked on the same flight.” *Id.*

10 574. Before the FTMM, “Southwest Airlines barred anyone over the age of two
11 years old from flying with them if they claimed to have a medical condition that prevented
12 them wearing a face mask. Instead, Southwest told passengers to either delay travel
13 indefinitely or find another airline to fly with.” *Id.*

14 575. Southwest finally changed its tune in Summer 2021, saying publicly it wants
15 to withdraw from the conspiracy to interfere with the civil rights of disabled travelers.

16 576. Southwest then-CEO Gary Kelly lobbied for the FTMM to terminate Sept.
17 13, 2021. Exs. 403 & 449.

18 577. He testified to a Senate committee on Dec. 15, 2021, that masks are worthless
19 in trying to reduce the spread of COVID-19 on planes. Ex. 407.

20 578. Yet Southwest still makes obtaining disability exemptions nearly impossible,
21 and it has not actually withdrawn from the conspiracy.

22 579. Mr. Kelly serves as A4A chairman. He said the aviation interest group wants
23 the mandate ended due in part because “Reports abound of passengers refusing to wear
24 masks and becoming aggressive with flight crews.” Ex. 450.

25 580. However, the FTMM was extended from Sept. 13 to Jan. 18, 2022, and again
26 until March 18, 2022, and now again until April 18, 2022. None of the Airline Defendants
27 have sued the federal government to block it even though they realize how discriminatory
28 and dangerous it is.

29

1 581. Southwest fraudulently informs plaintiffs on their website that “federal law”
2 requires all to wear a mask while flying. But Congress never passed such a law, nor has
3 DOT or any other agency promulgated such a regulation.

4 582. **UNITED’S ILLEGAL POLICIES:** United requires a mask-exemption
5 demand form must be submitted a minimum of seven days prior to scheduled departure. Ex.
6 451.

7 583. United requires proof of a negative COVID-19 PCR test result taken within
8 72 hours of scheduled departure. *Id.*

9 584. United may require a mask-exempt customer and anyone traveling with
10 him/her to move to alternate seats in the cabin and/or change their itinerary to less-full
11 flights. *Id.*

12 585. If granted, a United mask exemption request is applicable only to flights in a
13 single reservation, and any exemption for future travel or travel in separate reservations will
14 need to be applied anew. *Id.*

15 586. Mask-exemption applicants must agree: “I authorize the release of medical
16 information pertaining to this mask exemption request and authorize my treating physician
17 to speak with a United Airlines medical representative or any agent acting on its behalf.” *Id.*
18 This is an invasion of privacy.

19 587. “In order to assess and manage my request I understand that it may be
20 necessary for United to disclose information relating to my health information to third
21 parties such as medical professionals, airport staff, health agencies, United Express and Star
22 Alliance carriers, and their employees, among others.” *Id.* This is an invasion of privacy.

23 588. A section of United’s mask-exemption demand form “must be completed by
24 a medical provider specifically treating the passenger’s disability,” making it a medical
25 certificate. *Id.*

26 589. United fraudulently informs plaintiffs through its website that “federal law”
27 requires each person to wear a mask while flying. However, Congress has never passed such
28 a law, nor has DOT or any other agency promulgated such a regulation.
29

1 **W. The Airline Defendants accepted federal pandemic funding, subjecting them to**
2 **the Rehabilitation Act, which prohibits recipients of federal financial assistance**
3 **from discriminating against the disabled.**

4 590. Most passenger airlines have historically not been subject to the RA, however
5 that changed in 2020 when they accepted \$25 billion in federal assistance from Congress in
6 the Corona virus Aid, Relief, & Economic Security Act (“CARES Act”), signed into law
7 March 27, 2020 (P.L. 116-136). The act provides assistance to consumers and businesses,
8 including aid to air carriers, according to the Congressional Research Service (“CRS”). Ex.
9 142.

10 591. “Treasury data show that, by October 5, 2020, more than \$28 billion in
11 payroll support had been approved for disbursement to 610 recipients, including 352
12 passenger airlines...” *Id.*

13 592. Another \$29 billion in federal loans were made available to airlines. Ex. 143.

14 593. “In the midst of this crisis which threatens the jobs of tens of thousands of
15 employees, distressed airlines have turned to the federal government for financial
16 assistance.” Ex. 514.

17 594. Section 504 of the RA applies to programs receiving federal funds. Ex. 144.

18 595. Legislative intent in passing the RA: “The time has come to firmly establish
19 the right of these Americans to dignity and self-respect as equal and contributing members
20 of society, and to end the virtual isolation of millions of children and adults from society.”
21 *Id.*

22 596. “The definition of disability applicable to Section 504 was amended by the
23 ADA Amendments Act of 2008 to conform with the new definition of disability for the
24 ADA. ... *the definition of disability shall be construed in favor of broad coverage* to the
25 maximum extent permitted by the terms of the act... The ADA Amendments Act
26 specifically lists examples of major life activities including ... *breathing...*” *Id.* (emphasis
27 added).

1 597. The Supreme Court has determined that “Section 504 requires even-handed
2 treatment and an opportunity for individuals with disabilities to participate and benefit from
3 programs receiving federal funds.” *Id.*

4 598. “The Spending Clause empowers Congress to tax and spend for the general
5 welfare. Under this authority, which is subject to several limitations, Congress may offer
6 federal funds to nonfederal entities and prescribe the terms and conditions under which the
7 funds are accepted and used by recipients.” Ex. 145.

8 599. By agreeing to accept \$25 billion from the CARES Act and more money
9 from subsequent appropriations, the Airline Defendants entered into a contract with the
10 federal government to protect the rights of disabled travelers pursuant to the RA, the
11 ACAA, and other federal and international laws.

12 600. All Airlines Defendants have received federal funding during the COVID-19
13 pandemic.

14 601. “Under the Spending Clause, Congress can place certain conditions upon
15 granting federal funds. Under Title VI, the recipient agrees not to discriminate on the
16 grounds of race by accepting the money. A similar analogy applies to § 504 with disability
17 discrimination. When a recipient of federal funds discriminates, he is essentially breaking
18 his agreement with Congress.” Ex. 515.

19 602. “A funding recipient is generally on notice that it is subject not only to those
20 remedies explicitly provided in the relevant legislation, but also to those remedies
21 traditionally available in suits for breach of contract.” *Id.*

22 **X. The Airline Defendants are unlawfully discriminating against millions of**
23 **travelers with disabilities including the plaintiffs.**

24 603. The Airline Defendants have a long track record during the pandemic of
25 illegally banning passengers with disabilities who request face-mask exemptions, including
26 children as young as two, in violation of the ACAA (49 USC § 41705) and its
27 accompanying regulations (14 CFR Part 382). There are thousands of media reports of
28 ACAA violations by the defendants.
29

1 604. “The ability to access transportation is a precondition to the full enjoyment of
2 many human rights by people with disabilities,” according to the National Council on
3 Disability (“NCD”). Ex. 501.

4 605. The Airline Defendants’ mask policies violate guidelines from the
5 International Air Transport Association, the major trade group for the worldwide aviation
6 industry.

7 606. The Airline Defendants’ “lack of accommodation impedes the individual’s
8 participation in society. Inequality is not due to the impairment, but to the inability of
9 society to eliminate barriers challenging persons with disabilities. This model puts the
10 person at the center, not his/her impairment, recognizing the values and rights of persons
11 with disabilities as part of society.” Ex. 502.

12 607. IATA adopted standards in August 2020 for serving the disabled during the
13 COVID-19 pandemic. “Ensuring access to aviation facilities, services and information is
14 fundamental to a disability inclusive COVID-19 response and recovery. If public health
15 information, airport terminals, transport, communications, technologies and goods and
16 services are not accessible, persons with disabilities may not be able to live and travel
17 independently.” *Id.*

18 608. IATA’s standards state that the disabled should not “be subject to a more
19 stringent medical screening or clearance than that required for other passengers. To be
20 equitable, the standards applied should be the same.” *Id.*

21 609. “Airlines should develop a specific and detailed company policy for the
22 assistance and support to passengers with disabilities that is consistent across their network
23 during the COVID-19 crisis. This policy should be robust, based on science...” *Id.*

24 610. The Airline Defendants’ mask policies are NOT based on science.
25 <https://bit.ly/masksarebad>.

26 611. The Airline Defendants’ policies are out of step with international standards
27 set by IATA: “Airlines should provide reasonable accommodation to passengers ... This
28 will help to ensuring that all passengers exercise their human rights and their fundamental
29 freedoms in an equitable manner.” Ex. 502.

1 612. “Some passengers, such as those who cannot put on or remove a face mask
2 themselves, small children, and those who have certain types of medical conditions may not
3 be able to tolerate the use of face coverings or masks for a lengthy period.” *Id.*

4 613. “[I]t is important to note how persons with disabilities are uniquely impacted
5 by the pandemic in various aspects, including in the transport area. As countries relax their
6 border control systems and airlines resume their services, accessibility and inclusion of
7 persons with disabilities in aviation’s COVID-19 response and recovery is a vital part of
8 achieving the pledge to leave no one behind.” *Id.*

9 614. In another document, IATA made clear that “denied boarding and passenger
10 bans have raised criticism on airlines’ policies that restrict people with disabilities from
11 accessing air transportation as a violation of anti-discrimination and disability rights
12 regulations.” Ex. 516.

13 615. “Airlines should provide reasonable accommodation to passengers ... This
14 will help to ensure that all passengers exercise their human rights and their fundamental
15 freedoms in an equitable manner.” *Id.*

16 616. IATA advised airlines worldwide: “Some passengers, such as those who
17 cannot put on or remove face masks themselves, very young children, and those who have
18 certain types of medical conditions may not be able to tolerate the use of face coverings or
19 masks for a lengthy period – or at all.” *Id.*

20 617. The Airline Defendants’ mask policies also violate guidelines from the
21 International Civil Aviation Organization (“ICAO”).

22 618. “Aviation, like all other transport modes, needs to recognize and
23 accommodate this growing passenger segment. Persons with disabilities have the same
24 international rights as other citizens, such as accessibility, and full and effective
25 participation and inclusion in society, including freedom of movement and freedom of
26 choice (United Nations Convention on the Rights of Persons with Disabilities, articles 3.c
27 and 3.f). Persons with disabilities should have equivalent access to air travel. These
28 international rights apply to air travel as to all areas of life,” according to ICAO’s Manual
29 on Access to Air Transport by Persons with Disabilities. Ex. 517.

1 619. “All procedures forming part of an air travel journey, including reservations,
2 check-in, immigration and customs, security clearances, transfers within airports,
3 embarkation and disembarkation, departure, carriage, and arrival should be adapted to the
4 needs of persons with disabilities in order to facilitate the clearance and air transportation of
5 such persons in a dignified manner.” *Id.*

6 620. “The service provided at the request of persons with disabilities should be
7 professional and ‘seamless,’ that is, with no points at which such persons may be left
8 stranded or without assistance.” *Id.*

9 621. “Aircraft operators should not refuse to transport persons with disabilities on
10 the basis of their disabilities...” *Id.*

11 622. The Airline Defendants fail to understand there’s a “sizable population who
12 would find it difficult or impossible to comply with mask mandates... With fewer than 1%
13 of Americans having a confirmed, active case of the corona virus, what is the probability
14 that the lone disabled person not wearing a mask actually poses direct threat?” Ex. 518.

15 623. “People who have a legitimate reason not to wear a mask should not face
16 undue barriers in accessing public accommodations as a result of their circumstance.” *Id.*

17 624. “Under the Americans with Disabilities Act (ADA), individuals cannot be
18 denied transportation services because of a disability. The Air Carrier Access Act (ACAA)
19 is a separate statute specifically for air travel, but provides the same nondiscrimination
20 requirement,” according to NCD. Ex. 519.

21 625. “The Department of Transportation (DOT) regulations also require proper
22 training of transit employees, which includes treating passengers with disabilities in a
23 respectful and courteous manner, while also recognizing the differences in types of
24 disabilities.” *Id.*

25 626. The Airline Defendants clearly are not training their employees to treat the
26 disabled in a “respectful and courteous manner” by banning us from flying just because we
27 can’t wear a mask.

28 627. “[A]ir travel is an essential component of many jobs in the global economy.
29 For people with disabilities to be part of that economy, participate in the world community,

1 and compete effectively for jobs requiring air travel, air carriers and federal oversight
2 officials must ensure that their right to travel with appropriate accommodations is taken
3 seriously and honored. Unfortunately, NCD has found that although things have improved
4 since ACAA was passed in 1986, people with disabilities continue to encounter frequent,
5 significant violations of the statute and regulations. When they complain, they encounter an
6 enforcement effort that is both inconsistent and limited in scope.” Ex. 520.

7 628. “As the economy becomes increasingly global, the ability of employees with
8 disabilities to travel by air is critical to their success and upward mobility. ... More
9 accommodations are available for air travelers with disabilities today than ever before, but
10 the availability of accommodations is inconsistent, and discriminatory treatment continues.
11 It is important to recognize that the negative experiences of disabled travelers go beyond the
12 typical hassles to which frequent travelers are accustomed.” *Id.*

13 629. “[A]ir travelers with disabilities frequently find air travel unnecessarily
14 humiliating and upsetting. Many problems stem from the unwillingness of some airline staff
15 to recognize that a request for an accommodation in air travel invokes civil rights
16 protections. ... For laws like ACAA to achieve the desired effect, they must be taken
17 seriously and owned by government and industry. ***The ultimate test of any civil rights law***
18 ***is the extent to which people in the protected class can count on the law for real***
19 ***protection.***” *Id.* (emphasis added).

20 630. “Historically, air travel for people with disabilities has not been for the faint
21 of heart. Often, people with certain disabilities either chose not to fly or traveled by air
22 knowing they would probably face prejudice, hostility, disability stereotyping, as well as
23 architectural and other physical barriers; sometimes they faced an outright denial of their
24 right to travel.” *Id.*

25 631. “The intent of Congress in legislating the ACAA was to mandate
26 nondiscrimination by requiring the accommodations necessary for travelers with disabilities
27 to have equal access to air travel and related services. ... the statute was specifically
28 intended to remedy ‘discriminatory, inconsistent, and unpredictable treatment’ of air
29 travelers with disabilities. Finally, the statute affirmed that rules for accommodation were to

1 be consistent with safety regulations, and that restrictions not based on safety and applied
2 solely to passengers with disabilities were to be eliminated.” *Id.*

3 632. “DOT clarified that air carrier discretion in imposing additional requirements
4 or restrictions on air travelers with disabilities is limited to what is required by FAA safety
5 rules.” *Id.*

6 633. FAA has no safety rule requiring passengers to wear masks. FAA in June
7 2020 specifically refused to issue such a rule. Ex. 146.

8 634. “Each time they travel, passengers with disabilities must cope with a myriad
9 of potential disability-related complications above and beyond those faced by travelers who
10 do not have disabilities. ... Disability policy has clearly established full participation and
11 integration of people with disabilities as a national goal. Access to transportation is a
12 lynchpin for that participation and integration. As airline travel increasingly becomes a
13 major mode of travel for Americans, it is essential that people with disabilities have full
14 access to air travel.” Ex. 520.

15 635. In conspiring to put into place their illegal mask mandates, the Airline
16 Defendants and the Individual Defendants did not consider the special needs of the disabled
17 – even those who are able to tolerate having their breathing blocked. “Face masks have
18 complicated the situation even further, since those with hearing loss rely heavily on facial
19 expressions, non-verbal cues, and sign language to comprehend people.” Ex. 521.

20 636. Plaintiffs are extremely concerned the Airline Defendants, without action by
21 this Court, will be permitted to enforce their mask mandates forever – excluding the
22 disabled from so many important facets of life. Right now there’s no end game for these
23 unlawful requirements.

24 637. “It seems highly unlikely that corona virus will ever fully die out, so [will
25 mask mandates end when] we’re at the point where annual corona virus deaths are less than
26 average flu deaths, or at some other point? ... Then again, I can’t help but wonder if this
27 will just be another policy that the airline industry keeps in place forever, as with so many
28 policies that came before this.” Ex. 522.

29

1 638. “Airlines must be held to account for what has been a gross violation of the
2 civil rights of disabled people...” Ex. 424.

3
4 **Y. The Department of Transportation fails to enforce the Air Carrier Access Act
5 and its own regulations.**

6 639. The Office of Aviation Consumer Protection (“OACP”), a unit within the
7 Office of the General Counsel of DOT, issued a Notice of Enforcement Policy (“NEP”) Feb.
8 5, 2021, “Accommodation by Carriers of Persons with Disabilities Who Are Unable to
9 Wear or Safely Wear Masks While on Commercial Aircraft” “to remind U.S. and foreign air
10 carriers of their legal obligation to accommodate the needs of passengers with disabilities
11 when developing procedures to implement the Federal mandate on the use of masks to
12 mitigate the public health risks associated with the Corona virus Disease 2019 (COVID-
13 19).” Ex. 101.

14 640. “OACP will exercise its prosecutorial discretion and provide airlines 45 days
15 from the date of this notice to be in compliance with their obligation under the Air Carrier
16 Access Act (‘ACAA’) and the Department’s implementing regulation in 14 CFR Part 382
17 (‘Part 382’) to provide reasonable accommodations to persons with disabilities who are
18 unable to wear or safely wear masks, so long as the airlines demonstrate that they began the
19 process of compliance as soon as this notice was issued.” *Id.*

20 641. The 45-day deadline was March 22, 2021. But there is no evidence DOT has
21 taken any enforcement action against the Airline Defendants for violating the ACAA as
22 these airlines continue to enforce their illegal discriminatory policies requiring, for example,
23 that passengers with a disability that prevents them from wearing a mask must submit a
24 request in advance in violation of 14 CFR § 382.25.

25 642. “[T]he ACAA and Part 382, which are enforced by OACP, require airlines to
26 make reasonable accommodations, based on individualized assessments, for passengers with
27 disabilities who are unable to wear or safely wear a mask due to their disability.” *Id.*

28 643. “To ensure that only qualified persons under the exemptions would be able to
29 travel without a mask, the CDC Order permits operators of transportation conveyances, such

1 as airlines, to impose requirements, or conditions for carriage, on persons requesting an
2 exemption, including requiring a person seeking an exemption to request an accommodation
3 in advance, submit to medical consultation by a third party, provide medical documentation
4 by a licensed medical provider, and/or provide other information as determined by the
5 operator. The CDC Order also permits operators to require protective measures, such as a
6 negative result from a SARS-CoV-2 viral test or documentation of recovery from COVID-
7 19 or seating or otherwise.” *Id. But see* 14 CFR Part 382.

8 644. OACP’s NEP did not advise airlines that the CDC’s order allowing carriers
9 to impose additional requirements is illegal (such as requesting a mask exemption in
10 advance, submitting to a third-party medical consultation, submitting a medical certificate,
11 and requiring a negative COVID-19 test). *Id. See* 14 CFR Part 382.

12 645. In its Feb. 5 NEP, OACP admitted it had failed to enforce the ACAA and its
13 regulations in 2020 when many airlines banned all passengers with disabilities who could
14 not wear a face covering: “Some carriers have adopted policies that expressly allow ‘no
15 exceptions’ to the mask requirement other than for children under the age of two. OACP has
16 received complaints from persons who assert they have a disability that precludes their
17 wearing a mask, and who contend that they were denied transport by an airline under a ‘no
18 exceptions allowed’ mask policy.” *Id.*

19 646. “CDC and other medical authorities recognize that individuals with certain
20 medical conditions may have trouble breathing or other difficulties...” *Id.*

21 647. OACP informed the airlines they had violated the law from Summer 2020 to
22 January 2021 when they banned all travelers with disabilities: “It would be a violation of the
23 ACAA to have an exemption for children under 2 on the basis that children that age cannot
24 wear or safely wear a mask and not to have an exemption for ... individuals with disabilities
25 who similarly cannot wear or safely wear a mask when there is no evidence that these
26 individuals with disabilities would pose a greater health risk to others.” *Id.*

27 648. After DOT complaints are filed by passengers whom the Airline Defendants
28 have discriminated on, investigations appear to average 12-14 months. Even if DOT were to
29 resolve these complaints by finding that the Airline Defendants and their employees have

1 broken the law by refusing the grant medical exemptions, there is no possibility for this
2 process to provide an adequate remedy for disabled persons who need to fly within a week
3 or two. Moreover, DOT is not fining airlines for breaking the law. Ex. 147.

4 649. “The ACAA prohibits U.S. and foreign air carriers from denying air
5 transportation to or otherwise discriminating in the provision of air transportation against a
6 person with a disability by reason of the disability. When a policy or practice adopted by a
7 carrier has the effect of denying service to or otherwise discriminating against passengers
8 because of their disabilities, the Department’s disability regulations in Part 382 require the
9 airline to modify the policy or practice as necessary to provide nondiscriminatory service to
10 the passengers with disabilities ...” Ex. 101.

11 650. But OACP illegally advised airlines that “In accordance with the CDC Order,
12 as conveyance operators, airlines are required to implement face mask policies that *treat*
13 *passengers presumptively as potential carriers of the SARS-CoV-2 virus* and, therefore, as
14 presenting a potential threat to the health and safety of other passengers and the crew.” *Id.*
15 *But see* 14 CFR § 382.23(c)(1), which provides that an airline must have evidence that the
16 passenger “*has*” a communicable disease, e.g. has tested positive for the corona virus. A
17 “presumptive” determination that every single airline passenger is infected with COVID-19
18 is not only scientifically impossible, it goes against the plain language of 14 CFR §
19 382.23(c)(1).

20 651. OACP wrongly informed airlines Feb. 5, 2021 that “both the CDC Order and
21 Part 382 permit airlines to require passengers to consult with the airline’s medical expert
22 and/or to provide medical evaluation documentation from the passenger’s doctor sufficient
23 to satisfy the airline that the passenger does, indeed, have a recognized medical condition
24 precluding the wearing or safe wearing of a mask.” *Id. But see* 14 CFR § 382.23(a).

25 652. OACP wrongly informed airlines that “Part 382, like the CDC Order, permits
26 airlines to require passengers with disabilities who are unable to wear masks to request an
27 accommodation in advance.” *But see* 14 CFR § 382.25.

28 653. OACP wrongly informed airlines that they “may impose protective measures
29 to reduce or prevent the risk to other passengers. For example, airlines may require

1 protective measures, such as a negative result from a SARS-CoV-2 test, taken at the
2 passenger's own expense, during the days immediately prior to the scheduled flight." *Id.* As
3 noted above, there is no provision of the ACAA or 14 CFR Part 382 that allows airlines to
4 require a negative test to board a plane.

5 654. "Airlines are expected to review their face mask policies immediately and to
6 revise them as necessary to comply with the ACAA and Department's disability regulation
7 in Part 382." *Id.*

8 655. However, DOT has failed its duty to enforce the ACAA and its regulations,
9 as evidenced by the Airline Defendants' continuance of policies that violate Part 382
10 fourteen months after the DOT issued its faulty NEP.

11 656. Information provided to passengers by DOT contradicts OACP's Feb. 5,
12 2021 NEP as well as the Airline Defendants' mask policies. In a document "New Horizons:
13 Information for the Air Traveler with a Disability," DOT informs flyers that "***Airlines may***
14 ***not require passengers with disabilities to provide advance notice of their intent to travel***
15 ***or of their disability ...***" Ex. 148 (emphasis added).

16 657. "A medical certificate is a written statement from the passenger's physician
17 saying that the passenger is capable of completing the flight safely without requiring
18 extraordinary medical care. A disability is not sufficient grounds for a carrier to request a
19 medical certificate. ***Carriers shall not require passengers to present a medical certificate***
20 ***unless the person: ... Has a communicable disease or infection that has been determined***
21 ***by federal public health authorities to be generally transmittable during flight.***" *Id.*
22 (emphasis added).

23 658. "If a person who seeks passage ***has an infection or disease*** that would be
24 transmittable during the normal course of a flight, and that has been deemed so by a federal
25 public health authority knowledgeable about the disease or infection, then the carrier may:
26 ***... Impose on the person a condition or requirement not imposed on other passengers***
27 ***(e.g., wearing a mask).***" *Id.* (emphasis added).

28 659. DOT publishes a 190-page handbook "What Airline Employees, Airline
29 Contractors, & Air Travelers with Disabilities Need to Know About Access to Air Travel

1 for Persons with Disabilities: A Guide to the Air Carrier Access Act (ACAA) and its
2 implementing regulations, 14 CFR Part 382.” Relevant excerpts of this handbook are
3 attached at Ex. 149. (CFR citations appear to be different; presumably Part 382 has been
4 reorganized and renumbered since this document was published.)

5 660. “May I ask an individual what his or her disability is? Only to determine if a
6 passenger is entitled to a particular seating accommodation... **Generally, you may not make**
7 ***inquiries about an individual’s disability or the nature or severity of the disability.***” *Id.*
8 (emphasis added).

9 661. “***You must not refuse transportation to a passenger solely on the basis of a***
10 ***disability.***” *Id.* (emphasis added).

11 662. “***You shall not require a passenger with a disability*** to travel with an
12 attendant or ***to present a medical certificate***, except in very limited circumstances.” *Id.*
13 (emphasis added).

14 663. “***You cannot require passengers with disabilities to provide advance notice***
15 ***of their intention to travel or of their disability*** except as provided below.” *Id.* (emphasis
16 added).

17 664. “If you are faced with particular circumstances where you are required to
18 make a determination as to whether a passenger with a communicable disease or infection
19 poses a direct threat to the health or safety of others, ***you must make an individualized***
20 ***assessment*** based on a reasonable judgment, relying on current medical knowledge or the
21 best available objective evidence.” No presumptive judgment that every single person has a
22 communicable disease or infection is permitted. *Id.* (emphasis added).

23 665. “If, in your estimation, a passenger ***with a communicable disease or***
24 ***infection*** poses a direct threat to the health or safety of other passengers, you may ... (iii)
25 impose on that passenger a special condition or restriction (***e.g., wearing a mask.***)” *Id.*
26 (emphasis added).

27 666. “Except under the circumstances described below, ***you must not require***
28 ***medical certification of a passenger with a disability as a condition for providing***
29 ***transportation.*** You may require a medical certificate only if the passenger with a disability

1 is an individual who is traveling on a stretcher or in an incubator (where such service is
2 offered); needs medical oxygen during the flight (where such service is offered); or has a
3 medical condition that causes the carrier to have reasonable doubt that the passenger can
4 complete the flight safely without requiring extraordinary medical assistance during the
5 flight.” *Id.*

6 667. “In addition, if you determine that a passenger ***with a communicable disease***
7 ***or infection*** poses a direct threat to the health or safety risk of others, you may require a
8 medical certificate from the passenger. *Id.* (emphasis added).

9 668. “Generally, you must not refuse travel to, require a medical certificate from,
10 or impose special conditions on a passenger with a communicable disease or infection.” *Id.*

11 669. “Discrimination is Prohibited: Management of carriers are required to ensure
12 that the carrier ... does not discriminate against qualified individuals with a disability by
13 reason of such disability. *Id.*

14 670. The yet-to-be-named Individual Defendants have failed their legal duties to
15 ensure the disabled are not discriminated against.

16 671. “Carriers must not refuse to provide transportation to a passenger with a
17 disability on the basis of his or her disability unless it is expressly permitted by the ACAA
18 and part 382.” *Id.*

19 672. As a result of DOT’s refusal to obey its statutory duty to enforce the ACAA,
20 millions of Americans have been barred from flying.

21 673. DOT has told the Airline Defendants they must accommodate passengers
22 who are unable to tolerate wearing a face mask, however there is no evidence that DOT has
23 actually initiated any civil enforcement proceedings against any air carrier for failure to
24 grant mask exemptions.

25 674. “Masks or Cloth Face Covering: Recommendation: Everyone should
26 correctly wear a mask or cloth face covering over their nose and mouth at all times in the
27 passenger air transportation system (excluding children under age 2, or ***anyone who has a***
28 ***medical condition that causes trouble breathing*** ...,” according to a July 2020 report issued
29 by DOT, DHS, and HHS. Ex. 141 (emphasis added).

1 675. “Reasonable accommodations should be made for persons with disabilities or
2 ailments who cannot wear masks ... Accommodations for persons with disabilities or
3 ailments who cannot wear cloth face coverings should be considered on a case-by-case
4 basis.” *Id.*

5 676. DOT issued updated guidance in December 2020, stressing a key point:
6 “Mask Use, ***specifically the need to accommodate those who cannot wear masks.***” Ex. 150
7 (emphasis added).

8 677. But again, there is no evidence plaintiffs have located that DOT’s OACP has
9 fined any airline who banned customers with disabilities from flying, showing how DOT
10 has failed its statutory duty to enforce the ACAA.

11 678. “Masks Recommendation: Everyone should wear a mask per CDC guidance,
12 over their nose and mouth, at all times in the passenger air transportation system (excluding
13 children under age 2, ***or anyone who has a medical condition for which wearing a mask is***
14 ***contraindicated ... Reasonable accommodations should be made for persons with***
15 ***disabilities or ailments who cannot wear masks.***” *Id.* (emphasis added).

16 679. “Under the Air Carrier Access Act, ***U.S. and foreign air carriers have legal***
17 ***obligations to accommodate the needs of passengers with disabilities when the airlines***
18 ***develop and implement policies requiring the use of masks*** to mitigate the public health
19 risks associated with COVID-19.” *Id.* (emphasis added).

20 680. “The Air Carrier Access Act and its implementing regulations in 14 CFR Part
21 382 require airlines to ensure that their mask policies provide for reasonable
22 accommodations, based on individualized assessments, for passengers with disabilities who
23 are unable to wear a face covering for medical reasons.” *Id.*

24 681. “On the matter of enforcing the law, the DOT has failed – unequivocally. The
25 rights and dignity of travelers requiring special assistance and accommodation are violated
26 frequently, while the department remains silent,” wrote John Morris. Ex. 523.

27 682. “How often does the DOT pursue action? Not often. In the past three years,
28 only five penalties have been levied against airlines for violations of the ACAA. Typically,
29

1 the DOT receives between 100-200 disability service complaints per month. ... Five actions
2 after thousands of complaints – that is not enforcement.” *Id.*

3 683. “Travelers with disabilities, myself included, have no way to ensure that air
4 travel providers will honor the rights they have been guaranteed under the ACAA.
5 Violations occur throughout the travel experience, from booking to baggage claim.
6 Depending on the right that is violated, costs to the passenger may include disrupted travel,
7 financial loss, pain and suffering, emotional distress, physical injury, an affront to personal
8 dignity, or a combination of them all.” *Id.*

9 684. “It is disheartening to know that the DOT, the agency wholly responsible for
10 enforcement of the law, has failed to protect your rights and mine so miserably.” *Id.*

11 685. “[A] civil right does not and cannot exist where an individual can take no
12 definitive action to enforce it before the law or protect against its violation. The crux of the
13 issue is this: The only venues within civil society where persons with disabilities cannot
14 seek recourse before the law for discrimination on the basis of disability are on airplanes
15 and in airports. A civil right is meant to be guaranteed.” *Id.*

16 686. “I have submitted complaints to the DOT, and the agency has affirmed the
17 legitimacy of 100% of my claims. No action has been taken. Those same airlines continue to
18 violate those very same rights, repeatedly, and as if they are immune from the law. If my
19 government will not stand up for me, and I cannot seek a redress for my own grievances
20 before the court, what rights do I truly have?” *Id.*

21 687. “By definition, civil rights are a class of protections that must be protected to
22 have merit and value. If the air travel industry is permitted to ignore the ACAA without
23 threat of challenge, the protections under the law cannot be classified as civil rights. To the
24 travelers with disabilities who have been denied a voice, they are nothing but
25 recommendations that are trampled on by the very airlines which they were meant to
26 regulate.” *Id.*

27 688. “[T]he National Council on Disability (NCD) believes that DOT's approach
28 is critically lacking in the key areas of compliance monitoring, complaint handling, and
29 leadership by the Department of Transportation. ... The key findings indicate that ACAA

1 implementation and enforcement efforts over the past 12 years have been so lacking in
2 several essential areas as to constitute non-enforcement.” Ex. 520.

3
4 **Z. International Traveler Testing Requirement.**

5 689. Without providing public notice or soliciting comment, on Jan. 12, 2021,
6 Defendant CDC announced an order (the ITTR) requiring all passengers flying to the United
7 States from a foreign country to get tested no more than three days before their flight
8 departs and to present the negative result (or documentation of having recovered from
9 COVID-19) to the airline before boarding the plane.

10 690. The day after taking office (Jan. 21, 2021), President Biden issued
11 “Executive Order Promoting COVID-19 Safety in Domestic & International Travel.” E.O.
12 13998, 86 Fed. Reg. 7205 (Jan. 26, 2021); Ex. 102. This Executive Order directed the ITTR
13 be continued.

14 691. The revised ITTR took effect Jan. 26, 2021. 86 Fed. Reg. 7,387 (Jan. 28,
15 2021).

16 692. The next version of the ITTR took effect Nov. 8, 2021. It made a minor
17 change: modifying the requirement for unvaccinated flyers to get tested within one day of
18 departure (keeping the mandate at three days for fully vaccinated passengers).

19 693. Defendant CDC amended the ITTR order again, effective Dec. 6, 2021. This
20 is the version presently in effect that plaintiffs are challenging (“Requirements for Negative
21 Pre-Departure COVID-19 Test Result or Documentation of Recovery from COVID–19 for
22 All Airline or Other Aircraft Passengers Arriving into the United States from Any Foreign
23 Country”). 86 Fed. Reg. 69,256; Ex. 151.

24 694. This latest version made another slight change: requiring all passengers,
25 regardless of vaccination status, to submit a negative COVID-19 test taken within one day
26 of departure.

27 695. Before checking in for an international flight to the United States, CDC
28 requires travelers to complete a “Passenger Disclosure & Attestation to the United States of
29

1 America” form. All airlines must provide the disclosure to their passengers and collect the
2 attestation prior to embarkation. Ex. 152.

3 696. Defendant CDC prohibits airlines from boarding any passenger who does not
4 submit the form with an accompanying negative COVID-19 test taken within one day of
5 departure.

6 697. Congress has explicitly declined to require COVID-19 testing of international
7 air travelers. There is no law authorizing the ITTR.

8
9 **AA. CDC and HHS fail to consider that the ITTR doesn’t apply to travelers entering**
10 **the United States by land and sea, imposes significant financial and time**
11 **burdens on travelers for no discernable benefit, and can leave American**
12 **citizens stranded abroad indefinitely.**

13 698. CDC and HHS have not explained why the ITTR applies only to air travel,
14 not to those entering the United States by land or sea, including illegal aliens crossing the
15 southern border from Mexico to the United States, who are much more likely to be
16 unvaccinated than U.S. citizens flying home from abroad.

17 699. CDC and HHS have not presented any evidence that air travelers pose a
18 greater risk to bringing COVID-19 into the country than land and sea passengers. Numerous
19 COVID-19 outbreaks among illegal immigrants detained by the U.S. Border Patrol along
20 the Mexican border as well as passengers and crew aboard cruise ships docking in the
21 United States illustrate this point.

22 700. For example, CDC has in the recent past told Americans not to cruise
23 because of the high risk of COVID-19 transmission. Exs. 153-154.

24 701. The ITTR imposes significant financial and time burdens on international
25 travelers. Yet there is no discernable benefit as the purported reason for the latest version of
26 the ITTR – to stop the Omicron corona virus variant from entering the United States – is
27 moot because the variant is already widely circulating domestically, comprising about 99%
28 of positive tests in the past month, according to CDC data.

29 702. Healthy people are unlikely to develop severe illness from Omicron. Ex. 155.

1 703. Testing is not reliable. “[N]ew research suggests that rapid tests widely used
2 to identify potential covid-19 cases might be less effective at identifying illness caused by
3 the swiftly spreading omicron variant.” Ex. 524.

4 704. Testing is prone to errors. “Hundreds of people who were told they did not
5 have Covid-19 have now discovered they do, after a Sydney testing center admitted it sent
6 out incorrect PCR results.” Ex. 525.

7 705. If a passenger is in a country or region where rapid COVID-19 testing is not
8 available and it’s impossible to obtain a test result within a day of departure, the ITTR
9 prohibits that person (including U.S. citizens) from flying to the United States indefinitely
10 because the ITTR contains no exemption process for such a situation.

11 706. When an American citizen visits a foreign country, he/she has no guarantee
12 that he/she will ever be able to return home due to the ITTR’s stringent one-day testing
13 requirement. This is a major concern for Mr. and Mrs. Marcus in particular because they
14 need to travel to and from their home in Israel to the United States at least once a year for
15 personal, family, and business reasons.

16 707. The ITTR provides no exemptions in the case a country or region that
17 normally does have rapid corona virus testing availability experiences a shortage of
18 available COVID-19 tests.

19 708. Unavailability of rapid testing is hardly speculative. It has occurred right here
20 in the United States. “[T]he U.S. finds itself in the midst of yet another corona virus test
21 shortage, with consumers facing limited sales at retailers and long lines at testing centers.”
22 Ex. 526.

23 709. “The confusion has frustrated some public health professionals who say there
24 simply aren't enough kits to permit people who are sick, those exposed to someone who has
25 been infected with the virus, and people who want to travel and attend gatherings to get
26 tested.” Ex. 527.

27 710. President Biden admitted finding rapid COVID-19 tests is a “real challenge”
28 and “the need is great to do more in terms of the rapid tests and the availability of it.” Ex.
29 528.

1 711. CDC does not reimburse and is unable to help travelers get reimbursements
2 for travel expenses as a result of canceled or delayed travel because of COVID-19 testing
3 requirements for air passengers flying to the United States.

4 712. For example, CDC does not reimburse travelers for the costs of new plane
5 tickets, lodging, meals, and other expenses as a result of being stranded in a foreign country
6 as a result of an inability to obtain a COVID-19 negative test result within one day of
7 departure.

8 713. CDC does not reimburse travelers for COVID-19 testing fees, which can cost
9 as much as \$200 depending on the location and type of test.

10 714. If an airline passengers pays \$200 for a corona virus test and the results do
11 not come back within a day, not only does that person have to pay for another airline ticket,
12 lodging, and meals, he/she must also pay \$200 for another virus test – with no guarantee the
13 results will come in time.

14 715. If a flight is canceled or delayed until the next day, an airline passenger is
15 forced to obtain another expensive COVID-19 test. The ITTR makes no exceptions for
16 situations like this wholly outside passengers' control.

17
18 **BB. DC and HHS fail to consider that the ITTR violates the International Covenant**
19 **on Civil & Political Rights by interfering with several fundamental human**
20 **rights established by treaty.**

21 716. As recognized in the ITTR, many COVID-19 tests are experimental medical
22 products authorized by FDA only for emergency use. Ex. 151.

23 717. The federal government provides rapid-test kits to U.S. citizens at no cost
24 through the mail. However, these tests are issued by FDA under an EUA, making their use
25 optional. Ex. 156

26 718. Not only does forced use of an emergency medical product without consent
27 violate the Food, Drug, & Cosmetic Act, it breaks America's commitment to basic human
28 rights under international law: "[N]o one shall be subjected without his free consent to
29 medical or scientific experimentation." ICCPR Art. 7.

1 719. Congress has not passed a law requiring airline passengers be refused
2 transportation unless they present a negative COVID-19 test. However, “No one shall be
3 deprived of his liberty except on such grounds and in accordance with such procedure as are
4 established by law.” ICCPR Art. 9.

5 720. “International human rights law does not recognize a ‘right to transportation’
6 per se. Rather, it guarantees the right to liberty of movement, which is elaborated in Article
7 12 of the International Covenant on Civil and Political Rights,” according to NCD.

8 721. “No one shall be arbitrarily deprived of the right to enter his own country.”
9 ICCPR Art. 12.4.

10 722. The ITTR restricts the liberty of movement of all plaintiffs including the
11 freedom to enter and re-enter their country(ies) of citizenship, especially Mr. and Mr.
12 Marcus, who are dual citizens of the United States and Israel and travel often between the
13 two nations.

14
15 **V. CAUSES OF ACTION**

16
17 **A. FIRST CAUSE OF ACTION: VIOLATION OF THE ADMINISTRATIVE**
18 **PROCEDURE ACT: The FTMM exceeds CDC and HHS’ statutory authority**
19 **under the Public Health Service Act.**

20 723. All plaintiffs have been restricted from using public transportation because of
21 the FTMM.

22 724. The FTMM exceeds Defendants CDC and HHS’ authority under § 361 of the
23 Public Health Service Act. 42 USC § 264.

24 725. CDC and HHS are authorized to make and enforce “*regulations* ... to
25 prevent the introduction, transmission, or spread of communicable diseases from foreign
26 countries into the States or possessions, or from one State or possession into any other State
27 or possession.” 42 USC § 264(a) (emphasis added).

28 726. The FTMM is an *order* issued by CDC, not a *regulation* duly promulgated
29 into the Code of Federal Regulations.

1 727. “For purposes of carrying out and enforcing such *regulations*, [CDC and
2 HHS] may provide for such inspection, fumigation, disinfection, sanitation, pest
3 extermination, destruction of animals or articles found to be so infected or contaminated as
4 to be sources of dangerous infection to human beings...” *Id* (emphasis added).

5 728. The FTMM is not a regulation published in the CFR. It also is not an
6 enumerated measure of “inspection, fumigation, disinfection, sanitation, pest extermination,
7 destruction of animals or articles.” *Id*.

8 729. “Sanitation” refers to the proper disposal of human waste (urine and feces) as
9 well as garbage. Masking is not a “sanitation” measure as the government argues. Nobody
10 has ever said, for example, “I’m going to sanitize my face by covering it with a mask.”

11 730. None of the statutes or regulations cited by CDC for the authority to adopt
12 the FTMM – 42 USC § 264; 42 CFR §§ 70.2, 71.31(b), & 71.32(b) – permit CDC to
13 implement or enforce a mask mandate.

14 731. CDC’s broad reading of the statute would be tantamount to creating a general
15 federal police power, but that is reserved to the states under the 10th Amendment.

16 732. CDC’s interpretation of 42 USC § 264 ignores the structure of the statute.
17 The FTMM repeatedly cites § 264(a) as its authority. But § 264(a) only allows CDC to
18 impose specific restrictions on *property*. The FTMM is a restriction on travelers’ *liberty*,
19 which is an issue addressed by § 264(d).

20 733. Section 264(d) applies only to “any individual reasonably believed to be
21 infected with a communicable disease” and allows for apprehension and examination under
22 only those circumstances. CDC and HHS may not force masks upon all travelers and
23 transportation workers, when only a tiny percentage are reasonably believed to be infected
24 with a communicable disease on any given day.

25 734. Read as a whole, as courts must do, it is clear that the “other measures”
26 clause found in § 264(a) does not allow the defendants to restrict the liberty interest of all
27 travelers and transportation employees by requiring us to wear a mask.

28 735. Under the “major questions” doctrine, § 264(a) does not authorize CDC and
29 HHS to require masking throughout the nation’s entire transportation system because that is

1 a decision of such economic and political significance only Congress may specifically
2 authorize it.

3 736. The agencies' interpretation of Section 264(a) as authorizing the ITTR is not
4 entitled to *Chevron* deference.

5 737. A court must "hold unlawful and set aside agency action ... found to be ... in
6 excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 USC
7 § 706(2)(C).

8 738. The Court should hold unlawful and set aside the FTMM because CDC and
9 HHS acted in excess of their statutory authority. *Id.*

10 739. The Court must also issue a permanent injunction prohibiting CDC and HHS
11 from ever again issuing a mask mandate for any sector of society since Congress has never
12 approved this.

13
14 **B. SECOND CAUSE OF ACTION: VIOLATION OF THE ADMINISTRATIVE**
15 **PROCEDURE ACT: Failure to observe the notice-and-comment procedure**
16 **required by law before ordering the FTMM.**

17 740. All plaintiffs have been restricted from using public transportation because of
18 the FTMM.

19 741. The FTMM is an "[a]gency action made reviewable by statute and final
20 agency action for which there is no other adequate remedy in a court." 5 USC § 704. It
21 represents the consummation of CDC and HHS' decision-making process with respect to
22 requiring masks in the entire U.S. transportation sector. And it affects our legal rights and
23 obligations because the mask mandate causes detrimental health effects to those of us who
24 must travel.

25 742. The APA requires agencies to issue rules through a notice-and-comment
26 process. 5 USC § 553.

27 743. The FTMM is a rule within the meaning of the APA because it is "an agency
28 statement of general or particular applicability and future effect designed to implement,
29 interpret, or prescribe law or policy." 5 USC § 551(4).

1 744. CDC issued the FTMM without engaging in the notice-and-comment
2 process.

3 745. Good cause does not excuse CDC's failure to comply with the notice-and-
4 comment process because the agency had 10½ months to give notice, solicit comments,
5 respond to those comments, and publish a regulation in the Code of Federal Regulations
6 from the date the World Health Organization declared COVID-19 a global pandemic
7 (March 11, 2020) until the date the FTMM took effect (Feb. 1, 2021). 5 USC §
8 553(b)(3)(B).

9 746. Had CDC and HHS put the FTMM through the required APA notice-and-
10 comment period, we would have commented that: 1) data shows states without mask
11 mandates suffered fewer deaths per capita than states that imposed such requirements; 2) the
12 FTMM is out of step with the current policies of every state that don't require masking; 3)
13 requiring masks in the transportation sector leads to widespread chaos in the skies and on
14 the ground, endangering aviation and transit safety; 4) the FTMM unlawfully discriminates
15 against travelers who can't wear a face covering due to a disability; 5) the gargantuan
16 amount of scientific and medical evidence showing that masks have proven to be totally
17 ineffective in reducing COVID-19 spread and deaths (*see* 228 scientific studies, medical
18 articles, and videos at <https://bit.ly/masksarebad>); 6) scientists have known for a long time
19 that masks aren't effective in reducing transmission of respiratory viruses (*Id.*); 7) masks
20 pose serious health risks to humans forced to wear them (*Id.*); 8) many experts consider
21 forcing kids to wear masks child abuse (*Id.*); and 9) airplane cabins pose little risk for
22 corona virus spread and there have been few, if any, reports of corona virus transmission on
23 aircraft.

24 747. A court must "hold unlawful and set aside agency action ... found to be ...
25 without observance of procedure required by law." 5 USC § 706(2)(D).

26 748. The Court should hold unlawful and set aside the FTMM because it violates
27 the APA's notice-and-comment requirement. *Id.*

1 **C. THIRD CAUSE OF ACTION: VIOLATION OF THE ADMINISTRATIVE**
2 **PROCEDURE ACT: Arbitrary and capricious agency action in ordering the**
3 **FTMM.**

4 749. All plaintiffs have been restricted from using public transportation because of
5 the FTMM.

6 750. The administrative record shows that CDC and HHS ignored better options
7 than imposing the FTMM such as requiring COVID-19 test providers to report all positive
8 results to the agency so those infected could be placed on the “Do Not Board” and
9 “Lookout” lists, prohibiting them from flying for about two weeks while they are capable of
10 transmitting the virus to others. ¶¶ 237-243.

11 751. The administrative record shows that CDC and HHS ignored that mask
12 mandates have created chaos in the sky, recklessly endangering aviation safety and security.
13 ¶¶ 244-304.

14 752. The administrative record shows that CDC and HHS failed to take into
15 account that airplane cabins pose little risk for corona virus spread. ¶¶ 311-344.

16 753. The administrative record shows that CDC and HHS failed to take into
17 account the voluminous scientific and medical research showing masks have proven to be
18 totally ineffective in reducing COVID-19 spread and deaths. ¶¶ 345-378.

19 754. The administrative record shows that CDC and HHS failed to consider that
20 masks pose serious health risks to humans forced to wear them. ¶¶ 379-401.

21 755. Eight experts in the field of industrial hygiene, with combined experience of
22 nearly 150 years, wrote CDC and others Feb. 22, 2022, to express they are “highly
23 concerned with the inaccurate and misleading guidance being promoted by the CDC on its
24 website regarding efficacy of masking to prevent COVID-19 and now similar guidance
25 regarding respirators and request for immediate correction to said guidance. The guidance is
26 overly broad, inaccurate, and especially inappropriate for children and the general public.”
27 Ex. 238.

28 756. Just three days later, CDC announced Feb. 25, 2022, it would exercise its
29 “enforcement discretion” and no longer require kids on school conveyances to be muzzled.

1 Ex. 161. CDC did not explain why school buses and vans are now exempt from the FTMM
2 but not other modes of transportation.

3 757. CDC did not publish the amended FTMM in the Federal Register.

4 758. When arbitrary and capricious government health mandates are eliminated,
5 “countries that have removed these no-longer fit for purpose travel restrictions have already
6 seen a significant upswing in forward bookings. International travel was artificially
7 constrained by COVID-19 and government policies... we look forward to working with the
8 Biden Administration to remove or modify all remaining COVID-19 travel restrictions...”
9 according to the International Air Transport Association. Ex. 412.

10 759. The Court should hold unlawful and set aside the FTMM because it is
11 arbitrary, capricious, and an abuse of discretion. 5 USC § 706(2)(A).

12
13 **D. FORTH CAUSE OF ACTION: VIOLATION OF THE CONGRESSIONAL**
14 **REVIEW ACT: CDC and HHS did not submit the FTMM to Congress and the**
15 **comptroller general before it took effect.**

16 760. All plaintiffs have been restricted from using public transportation because of
17 the FTMM.

18 761. The Congressional Review Act (“CRA”) “requires federal agencies to submit
19 a report on each new rule to both Houses of Congress and to the Comptroller General for
20 review before a rule can take effect. 5 USC § 801(a)(1)(A). ... The CRA allows Congress to
21 review and disapprove rules issued by federal agencies for a period of 60 days using special
22 procedures. 5 U.S.C. § 802.” Government Accountability Office Decision B-333,501 (Dec.
23 14, 2021); Ex. 157.

24 762. “CDC did not submit a CRA report to Congress or the Comptroller General
25 on the [FTMM].” *Id.*

26 763. The CRA “requires that before a rule can take effect, an agency must submit
27 the rule to both the House of Representatives and the Senate as well as the Comptroller
28 General, and provides procedures for congressional review where Congress may disapprove
29 of rules. We conclude that the [FTMM] meets the definition of a rule for purposes of CRA

1 and, therefore, is subject to CRA’s requirements for submission and congressional review.”
2 *Id.*

3 764. “Here the [FTMM] meets the APA definition of a rule rather than an order.
4 ... despite its label, the [FTMM] is not an order for purposes of the APA because it is not
5 the result of an adjudicatory process.” *Id.*

6 765. The FTMM “is a rule for purposes of CRA because it meets the APA
7 definition of a rule and no CRA exception applies. Accordingly, before it can take effect,
8 the [FTMM] is subject to the requirement that it be submitted to both Houses of Congress
9 and the Comptroller General for review, which provides Congress a period of 60 days in
10 which it may disapprove the rule using special procedures in accordance with the CRA.
11 While CDC asserted the need to act quickly as its justification for not submitting the Mask
12 Requirement for congressional review, there is not an emergency exception under CRA.” *Id.*

13 766. Because CDC and HHS did not submit the FTMM rule to Congress and the
14 comptroller general, it has no legal effect and must be vacated.

15 767. On March 15, 2022, the Senate voted 57-40 to pass Senate Joint Resolution
16 37 disapproving of CDC’s FTMM order. “[S]uch rule shall have no force or effect.” Ex.
17 108.

18 768. A court must “hold unlawful and set aside agency action ... found to be ...
19 without observance of procedure required by law.” 5 USC § 706(2)(D).

20
21 **E. FIFTH CAUSE OF ACTION: VIOLATION OF THE SEPARATION OF**
22 **POWERS: The Public Health Service Act is an improper delegation of**
23 **legislative power.**

24 769. All plaintiffs have been restricted from using public transportation because of
25 the FTMM.

26 770. The U.S. Constitution provides that “All legislative Powers herein granted
27 shall be vested in a Congress of the United States, which shall consist of a Senate and House
28 of Representatives.” Art. I, § 1.

1 771. Under the nondelegation doctrine, Congress cannot transfer legislative power
2 to the Executive Branch. Acts of Congress must supply an intelligible principle to guide the
3 Executive Branch’s enforcement discretion.

4 772. To comply with the nondelegation doctrine, a statute must delineate: 1) a
5 general policy; 2) the agency to apply it; and 3) the boundaries of the delegated authority.
6 The boundaries of the delegated authority must meaningfully constrain the Executive
7 Branch’s discretion.

8 773. If the Court finds it does authorize the FTMM, § 361 of the Public Health
9 Service Act (42 U.S.C. § 264) violates Article I’s Vesting Clause and the separation of
10 powers because Congress delegated legislative power to CDC and HHS with no intelligible
11 principle to guide its discretion. That section authorizes CDC “to make and enforce such
12 regulations as in [its] judgment are necessary to prevent the introduction, transmission, or
13 spread of communicable diseases ... from one State or possession into any other State or
14 possession.” 42 USC § 264(a).

15 774. If PHSA § 361 is so broad as to authorize the FTMM, then Congress
16 provided no intelligible principle to guide CDC’s discretion to take actions that “are
17 necessary” to “prevent the introduction, transmission, or spread of communicable diseases.”
18 *Id.* Vesting CDC with such broad authority and discretion without an intelligible principle
19 violates the nondelegation doctrine.

20 775. Notably Congress has declined numerous times during the two-year-long
21 COVID-19 pandemic to enact into law any mask requirement. ¶¶ 232-236.

22 776. The Senate voted 57-40 on March 15, 2022, to pass Senate Joint Resolution
23 37 disapproving of CDC’s FTMM order. “[S]uch rule shall have no force or effect.” Ex.
24 108.

25 777. The Court should declare that § 361 of the Public Health Service Act is
26 unconstitutional because it violates Article I and the separation of powers.

27 778. The Court should hold unlawful and set aside the FTMM because it is “found
28 to be ... contrary to constitutional right, power, privilege, or immunity.” 5 USC § 706(2)(B).
29

1 **F. SIXTH CAUSE OF ACTION: VIOLATION OF THE 10TH AMENDMENT:**

2 **The FTMM applies to intrastate transportation in direct conflict with the mask**
3 **policies of all 50 states, infringes on the states’ sovereign police power to**
4 **regulate public health, and commandeers state officials to enforce a federal**
5 **order.**

6 779. All plaintiffs have been restricted from using public transportation because of
7 the FTMM.

8 780. “The powers not delegated to the United States by the Constitution, nor
9 prohibited by it to the States, are reserved to the States respectively, or to the people.” U.S.
10 Const. Amend. 10.

11 781. The 10th Amendment precludes CDC and HHS from applying any national
12 mask mandate to intrastate transportation. The federal government only has constitutional
13 authority to regulate interstate commerce. Most modes of transportation affected by the
14 FTMM such as airport and hotel shuttles, city buses, subways, light rail, commuter trains,
15 and rideshare cars never cross state lines. Many flights are likewise wholly intrastate, and
16 airport terminals of course do not ever move and therefore can’t cross state borders.

17 782. In addition to all 50 states not requiring masks, 14 states prohibit any public
18 agency such as an airport or transit authority from requiring face coverings. Ex. 136. The
19 federal government may not pre-empt the states’ authority when it comes to regulating
20 public health within their own borders. ¶¶ 440-444.

21 783. The FTMM unconstitutionally commandeers state officials such as airport
22 authority employees to enforce a federal mandate.

23 784. The Court should declare the FTMM is unconstitutional because it violates
24 the 10th Amendment.

25 785. The Court should hold unlawful and set aside the FTMM as “contrary to
26 constitutional right, power, privilege, or immunity.” 5 USC § 706(2)(B).

27
28 **G. SEVENTH CAUSE OF ACTION: VIOLATION OF THE FIFTH**
29 **AMENDMENT AGAINST DEFENDANTS CDC AND HHS: Deprivation of**

due process by assigning Federal Transportation Mask Mandate enforcement and exemption powers to private companies as well as state, regional, and local agencies with no ability to appeal to a federal decision-maker.

786. All plaintiffs have been denied mask exemptions by private corporations such as airlines with no opportunity to appeal their decision to a neutral federal decision-maker.

787. “No person shall ... be deprived of life, liberty, or property, without due process of law.” U.S. Const. Amend. 5.

788. When a government action deprives an individual of a protected life, liberty, or property interest, the Due Process Clause requires, at minimum, fair notice and an opportunity to be heard.

789. Travelers hold constitutionally protected liberty interests in being able to breathe without the obstruction caused by a face mask, to make our own medical decisions without government interference, and to not have a policy imposed on us that results in numerous adverse health effects.

790. The FTMM deprives travelers of our liberty without satisfying the requirements of due process. CDC and HHS have improperly delegated to private businesses as well as state, regional, and local transportation authorities the sole enforcement power to determine whether a disabled traveler should be granted a mask exemption. There is no right to a hearing – yet alone a rapid pre-deprivation hearing – before a neutral federal decision-maker to challenge a denial of an exemption.

791. The Court should declare the FTMM is unconstitutional because it violates the Fifth Amendment.

792. The Court should hold unlawful and set aside the FTMM as “contrary to constitutional right, power, privilege, or immunity.” 5 U.S.C. § 706(2)(B).

H. EIGHTH CAUSE OF ACTION: VIOLATION OF THE CONSTITUTIONAL RIGHT TO FREEDOM OF TRAVEL AGAINST DEFENDANTS CDC AND HHS: The Federal Transportation Mask Mandate blocks Americans who can’t or won’t wear a face mask from traveling.

1 793. All plaintiffs have been restricted from using public transportation because of
2 the FTMM.

3 794. Ever since adoption of the Articles of Confederation, Americans have had a
4 fundamental right to travel to other states and territories. The Supreme Court has also
5 interpreted that right to include travel to foreign nations.

6 795. Although the Constitution does not expressly mention the freedom to travel,
7 the Supreme Court has long interpreted rights reserved to the people as including the
8 freedom to move about the nation (and world) without unnecessary government restrictions.

9 796. Congress affirmed the constitutional right to fly for disabled Americans by
10 enshrining it into statute: “A citizen of the United States has a public right of transit through
11 the navigable airspace. To further that right, the Secretary of Transportation shall consult
12 with the Architectural and Transportation Barriers Compliance Board ... before prescribing
13 a regulation or issuing an order or procedure that will have a significant impact on the
14 accessibility of commercial airports or commercial air transportation for handicapped
15 individuals.” 49 USC § 40103.

16 797. The FTMM imposes unnecessary government restrictions on our
17 constitutional right to travel, especially since we have disabilities that preclude us from
18 safely wearing a mask.

19 798. The Court should declare the FTMM is unconstitutional because it violates
20 the freedom to travel.

21 799. The Court should hold unlawful and set aside the FTMM as “contrary to
22 constitutional right, power, privilege, or immunity.” 5 U.S.C. § 706(2)(B).

23
24 **I. NINTH CAUSE OF ACTION: VIOLATION OF THE ADMINISTRATIVE**
25 **PROCEDURE ACT AGAINST DEFENDANTS CDC AND HHS: The Federal**
26 **Transportation Mask Mandate does not comply with the Air Carrier Access**
27 **Act and its underlying regulations.**

28 800. All plaintiffs have been restricted from using public transportation because of
29 the FTMM.

1 801. The ACAA, 49 USC § 41705, and its accompanying regulations promulgated
2 by DOT, 14 CFR Part 382, spell out specific procedures for dealing with airline passengers
3 who have disabilities and/or a communicable disease.

4 802. The FTMM allows transportation carriers to declare that all passengers are
5 assumed to be infected with COVID-19. However, airlines are prohibited from requiring a
6 passenger to wear a face covering or refuse him/her transportation unless they determine
7 that the passenger “has” a communicable disease and poses a “direct threat” to other
8 passengers and the flight crew. 14 CFR § 382.21.

9 803. The FTMM’s presumption that every single traveler is infected with COVID-
10 19 and therefore must wear a face covering violates the regulation that “In determining
11 whether an individual poses a direct threat, you must make an individualized assessment.”
12 14 CFR § 382.19(c)(1).

13 804. The FTMM allows airlines to refuse to transport any disabled person who
14 can’t wear a face mask. However, “[Y]ou must not refuse to provide transportation to a
15 passenger with a disability on the basis of his or her disability, except as specifically
16 permitted by this part.” 14 CFR § 382.19(a).

17 805. The FTMM allows airlines to demand a medical certificate from a passenger
18 who demands a mask exemption. However, “Except as provided in this section, you must
19 not require a passenger with a disability to have a medical certificate as a condition for
20 being provided transportation.” 14 CFR § 382.23(a). “You may also require a medical
21 certificate for a passenger if he or she *has* a communicable disease or condition that could
22 pose a direct threat to the health or safety of others on the flight.” 14 CFR § 382.23(c)(1)
23 (emphasis added).

24 806. The FTMM permits airlines to require passengers seeking mask exceptions to
25 undergo an evaluation with a third-party medical vendor such as STAT-MD and MedAire.
26 However, since airlines may not require a medical certificate for a passenger unless he/she
27 “has” a communicable disease (14 CFR § 382.23(a)), they may also not require a third-party
28 medical consultation. “[Y]ou may require that a passenger *with a medical certificate*
29 undergo additional medical review by you if there is a legitimate medical reason for

1 believing that there has been a significant adverse change in the passenger’s condition since
2 the issuance of the medical certificate...” 14 CFR § 382.23(d) (emphasis added).

3 807. The FTMM allows airlines to require a negative COVID-19 test from anyone
4 seeking a mask exemption. However, no provision of the ACAA or its accompanying
5 regulations (nor any other law) permits CDC and HHS to allow airlines to require that
6 passengers submit a negative test for any communicable disease. Mandating disabled flyers
7 needing a mask exemption submit an expensive COVID-19 test before checking in but not
8 requiring the same of nondisabled travelers is illegal discrimination. “[Y]ou must not
9 subject passengers with a disability to restrictions that do not apply to other passengers...”
10 14 CFR § 382.33(a).

11 808. The FTMM allows airlines to limit the number of mask-exempt passengers
12 on a flight. However, “[Y]ou must not limit the number of passengers with a disability who
13 travel on a flight.” 14 CFR § 382.17.

14 809. The FTMM permits airlines to change the seat assignments of mask-exempt
15 customers, e.g. moving us to the back of the plane. However, “[Y]ou must not exclude any
16 passenger with a disability from any seat or require that a passenger with a disability sit in
17 any particular seat, on the basis of disability, except to comply with FAA or applicable
18 foreign government safety requirements.” 14 CFR § 382.87(a).

19 810. The FTMM permits airlines to require advance notice (usually via an
20 application submitted up to 10 days before a flight) from a disabled passenger needing a
21 mask exemption. However, “As a carrier, you must not require a passenger with a disability
22 to provide advance notice of the fact that he or she is traveling on a flight.” 14 CFR §
23 382.25.

24 811. CDC and HHS may not issue an order that violates a statute such as the
25 ACAA or the regulations duly promulgated thereunder (as codified in the U.S. Code and
26 Code of Federal Regulations).

27 812. The Court should hold unlawful and set aside the FTMM because it violates
28 the ACCA and its regulations concerning transportation of passengers with disabilities
29

1 and/or communicable diseases, making it “in excess of statutory jurisdiction, authority, or
2 limitations, or short of statutory right.” 5 USC § 706(2)(C).

3
4 **J. TENTH CAUSE OF ACTION: VIOLATION OF THE ADMINISTRATIVE**
5 **PROCEDURE ACT: The FTMM violates federal law prohibiting the**
6 **mandatory use of any medical device unauthorized or approved under an**
7 **Emergency Use Authorization by the Food & Drug Administration.**

8 813. All plaintiffs have been restricted from using public transportation because of
9 the FTMM.

10 814. CDC and HHS force American travelers and transportation workers to use a
11 medical device (face masks), most of which are approved by FDA – an agency within HHS
12 – under Emergency Use Authorization, or have no authorization at all. ¶¶ 402-439.

13 815. CDC and HHS failed to consider that airline companies and their employees
14 (including flight attendants) are not individuals with the appropriate ethics and scientific
15 education, training, and qualifications to order passengers and employees to use
16 experimental medical devices unauthorized by FDA or issued under an EUA.

17 816. CDC and HHS failed to consider that airline companies are not competent
18 and appropriately qualified physicians or other healthcare professionals able to evaluate who
19 can’t medically tolerate covering their nose and mouth.

20 817. The FTMM is dangerous because it forces passengers and workers to use a
21 medical device, the vast majority of which are unauthorized or approved by FDA under an
22 EUA.

23 818. CDC and HHS, through their partner agency TSA, provide unauthorized
24 and/or EUA masks to passengers and employees, introducing these experimental medical
25 devices into interstate commerce.

26 819. Transportation providers and hubs also provide passengers with unauthorized
27 and/or EUA masks to comply with the FTMM.

28 820. Individuals to whom any EUA product is offered must be given “the option
29 to accept or refuse administration of the product...” 21 USC § 360bbb-3(e)(1)(A)(ii)(III).

1 821. The FTMM violates the Food, Drug, & Cosmetic Act by not giving
2 passengers and workers our legal option to refuse administration of an FDA unauthorized or
3 EUA medical device (a face mask).

4 822. It’s a longstanding principle, codified in law, that it is not permissible to
5 coerce anyone to receive an unlicensed medical product.

6 823. Congress specifically carved out only one exception for when an individual
7 would not have the option to refuse administration of an emergency medical device. The
8 law’s condition that all people must be given the right to refuse use of an EUA product
9 “may be waived only by the President only if the President determines, in writing, that
10 complying with such requirement is not in the interests of national security.” 10 USC §
11 1107a(a)(1). This provision only applies to “members of the armed forces.” *Id.*

12 824. We are not members of the armed forces, and the president has not declared
13 that mandatory use of face masks is required for national security.

14 825. There’s good reason for the law prohibiting forced use of EUA medical
15 devices. Requirements for EUA products are waived for, among other things, “current good
16 manufacturing practice otherwise applicable to the manufacture, processing, packing ... of
17 products subject to regulation under this chapter...” 21 USC § 360bbb-3(e)(3)(A).

18 826. “Nothing in this section provides the [HHS] Secretary any authority to
19 require any person to carry out any activity that becomes lawful pursuant to an authorization
20 under this section...” 21 USC § 360bbb-3(l). But the FTMM requires us to carry out forced
21 use of EUA masks.

22 827. Congress’ prohibition of mandatory mask use is consistent with HHS’
23 regulations requiring that participants in trials of experimental medical devices must be
24 informed that “participation is voluntary, refusal to participate will involve no penalty...” 45
25 CFR § 46.116(a)(8).

26 828. Likewise FDA regulations state that no human shall participate in research
27 trials of uncertified medical devices unless “the investigator has obtained the legally
28 effective informed consent of the subject...” 21 CFR § 50.20.

29

1 829. A person may freely choose to accept medical risks for the benefit of others;
2 they cannot be compelled by the federal government. We don't harvest organs without
3 consent, even if doing so would save many lives. Those who make such sacrifices for others
4 must truly be volunteers, not conscripts.

5 830. The defendants have no authority to order us to obstruct our breathing as a
6 condition of transportation, causing numerous harms, to perhaps spare another person from
7 catching a virus.

8 831. "Protection of others" does not relieve the defendants from the central canon
9 of medical ethics requiring voluntary and informed consent.

10 832. The Court should hold unlawful and set aside the FTMM because it violates
11 the FDCA, making it "in excess of statutory jurisdiction, authority, or limitations, or short of
12 statutory right." 5 USC § 706(2)(C).

13
14 **K. ELEVENTH CAUSE OF ACTION: VIOLATION OF THE**
15 **ADMINISTRATIVE PROCEDURE ACT AGAINST DEFENDANTS CDC**
16 **AND HHS: The International Traveler Testing Requirement exceeds the**
17 **agencies' statutory authority under the Public Health Service Act.**

18 833. Plaintiffs Uri and Yvonne Marcus, who are American and Israeli dual
19 citizens, have been restricted from flying to the United States because of the ITTR.

20 834. The ITTR exceeds CDC and HHS' authority under § 361 of the Public Health
21 Service Act. 42 U.S.C. § 264. Section 361 does not include any authority to test all
22 international flyers departing a foreign nation for the USA for a communicable disease.

23 835. Section 361 does not authorize CDC and HHS to make a decision of such
24 economic and political significance.

25 836. The agencies' interpretation of Section 361 as authorizing the ITTR is not
26 entitled to *Chevron* deference.

27 837. The Court should hold unlawful and set aside the ITTR because CDC and
28 HHS acted in excess of statutory authority. 5 U.S.C. § 706(2)(C).

1 **L. TWELTH CAUSE OF ACTION: VIOLATION OF THE ADMINISTRATIVE**
2 **PROCEDURE ACT AGAINST DEFENDANTS CDC AND HHS: failure to**
3 **observe the notice-and-comment procedure required by law before ordering the**
4 **International Traveler Testing Requirement.**

5 838. Plaintiffs Uri and Yvonne Marcus, who are American and Israeli dual
6 citizens, have been restricted from flying to the United States because of the ITTR.

7 839. The ITTR is an “[a]gency action made reviewable by statute and final agency
8 action for which there is no other adequate remedy in a court.” 5 U.S.C. § 704. It represents
9 the consummation of CDC’s decision-making process with respect to requiring testing for
10 anyone flying into the United States. And it affects our legal rights and obligations because
11 it prevents us from flying into the USA without obtaining an expensive, time-consuming,
12 and unreliable COVID-19 test.

13 840. The APA requires agencies to issue rules through a notice-and-comment
14 process. 5 USC § 553.

15 841. The ITTR is a rule within the meaning of the APA because it is “an agency
16 statement of general or particular applicability and future effect designed to implement,
17 interpret, or prescribe law or policy.” 5 USC § 551(4).

18 842. CDC issued the ITTR without engaging in the notice-and-comment process.
19 5 USC § 553.

20 843. Good cause does not excuse CDC’s failure to comply with the notice-and-
21 comment process. 5 USC § 553(b)(3)(B).

22 844. The Court should hold unlawful and set aside the ITTR because it violates the
23 APA’s notice-and-comment requirement. 5 USC § 706(2)(D).

24
25 **M. THIRTEENTH CAUSE OF ACTION: VIOLATION OF ADMINISTRATIVE**
26 **PROCEDURE ACT AGAINST DEFENDANTS CDC AND HHS: arbitrary**
27 **and capricious agency action in ordering the International Traveler Testing**
28 **Requirement.**

1 845. Plaintiffs Uri and Yvonne Marcus, who are American and Israeli dual
2 citizens, have been restricted from flying to the United States because of the ITTR.

3 846. The administrative record shows that CDC and HHS failed to consider the
4 burden of requiring all airline passengers to obtain a negative COVID-19 test within one
5 day of departure.

6 847. The administrative record shows that CDC and HHS failed to consider that
7 travelers arriving into the United States by land or sea – including millions of illegal aliens
8 crossing the border from Mexico – pose the same or higher risk of bringing corona virus
9 into the country than travelers arriving by airplane.

10 848. The administrative record produced by CDC and HHS fails to articulate any
11 rationale for why airplane travelers should be tested for COVID-19 within a day of entering
12 the United States but not those crossing by land or sea.

13 849. The ITTR has not stopped new COVID-19 variants from entering the United
14 States, as is its stated purpose.

15 850. The Court should hold unlawful and set aside the ITTR because it is
16 arbitrary, capricious, and an abuse of discretion. 5 U.S.C. § 706(2)(A)

17
18 **N. FOURTEENTH CAUSE OF ACTION: VIOLATION OF THE SEPARATION**
19 **OF POWERS AGAINST DEFENDANTS CDC & HHS: The International**
20 **Traveler Testing Requirement is an improper delegation of legislative power.**

21 851. Plaintiffs Uri and Yvonne Marcus, who are American and Israeli dual
22 citizens, have been restricted from flying to the United States because of the ITTR.

23 852. The U.S. Constitution provides that “[a]ll legislative Powers herein granted
24 shall be vested in a Congress of the United States.” U.S. Const. Art. I, § 1. Under the
25 nondelegation doctrine, Congress cannot transfer legislative power to the Executive Branch.
26 Acts of Congress must supply an intelligible principle to guide the Executive Branch’s
27 enforcement discretion.

28 853. If the Court finds it does authorize the ITTR, § 361 of the Public Health
29 Service Act (42 U.S.C. § 264) violates Article I’s Vesting Clause and the separation of

1 powers because Congress delegated legislative power to CDC and HHS with no intelligible
2 principle to guide their discretion. That section authorizes CDC “to make and enforce such
3 regulations as in [its] judgment are necessary to prevent the introduction, transmission, or
4 spread of communicable diseases ... from one State or possession into any other State or
5 possession.” 42 U.S.C. § 264(a). The statute further provides that CDC may take certain
6 specific measures as well as “other measures, as in [its] judgment may be necessary.” *Id.*

7 854. If § 361 is so broad as to authorize the ITTR, then Congress provided no
8 intelligible principle to guide CDC’s discretion to take actions that “are” or “may be
9 necessary” to “prevent the introduction, transmission, or spread of communicable diseases.”
10 *Id.* Vesting CDC with such broad authority and discretion without an intelligible principle
11 violates the non-delegation doctrine.

12 855. Notably Congress has declined numerous times during the 25-month-long
13 COVID-19 pandemic to enact into law any traveler testing requirement.

14 856. The Court should declare that § 361 of the Public Health Service Act is
15 unconstitutional because it violates Article I and the separation of powers.

16 857. The Court should hold unlawful and set aside the FTMM because it is “found
17 to be ... contrary to constitutional right, power, privilege, or immunity.” 5 U.S.C. §
18 706(2)(B).

19
20 **O. FIFTEENTH CAUSE OF ACTION: VIOLATION OF THE**
21 **CONSTITUTIONAL RIGHT TO FREEDOM OF TRAVEL AGAINST**
22 **DEFENDANTS CDC AND HHS: The International Traveler Testing**
23 **Requirement interferes with Americans’ right to travel internationally.**

24 858. Plaintiffs Uri and Yvonne Marcus, who are American and Israeli dual
25 citizens, have been restricted from flying to the United States because of the ITTR.

26 859. The ITTR imposes unnecessary government restrictions on my constitutional
27 right to travel internationally. If I’m abroad and can’t obtain a rapid COVID-19 test, I am
28 prohibited from flying home to the United States.

1 860. The Court should declare the ITTR is unconstitutional because it violates the
2 freedom to travel.

3 861. The Court should hold unlawful and set aside the FTMM as “contrary to
4 constitutional right, power, privilege, or immunity.” 5 U.S.C. § 706(2)(B).

5
6 **P. SIXTEENTH CAUSE OF ACTION: VIOLATION OF THE**
7 **ADMINISTRATIVE PROCEDURE ACT AGAINST DEFENDANTS CDC**
8 **AND HHS: The International Traveler Testing Requirement violates federal**
9 **law prohibiting the mandatory use of any medical device unauthorized or**
10 **approved under an Emergency Use Authorization by the Food & Drug**
11 **Administration.**

12 862. Plaintiffs Uri and Yvonne Marcus, who are American and Israeli dual
13 citizens, have been restricted from flying to the United States because of the ITTR.

14 863. CDC and HHS force American travelers to use a medical device (COVID-19
15 tests), most of which are approved by FDA – an agency within HHS – under Emergency
16 Use Authorization, or have no authorization at all.

17 864. The ITTR acknowledges that many COVID-19 tests are only approved for
18 emergency use. “Viral Test means a viral detection test for current infection (i.e., a nucleic
19 acid amplification test [NAAT] or a viral antigen test) cleared, approved, or issued an
20 emergency use authorization (EUA) by the U.S. Food and Drug Administration...” Ex. 44.

21 865. Since the ITTR only applies in foreign countries, there is no way for an
22 airline passenger to determine if a testing procedure available locally is authorized by FDA,
23 which lacks jurisdiction outside the United States.

24 866. CDC and HHS have no way to verify the authenticity and reliability of
25 COVID-19 tests manufactured abroad without FDA authorization.

26 867. The ITTR violates the Food, Drug, & Cosmetic Act by not giving passengers
27 our legal option to refuse administration of an FDA unauthorized or EUA medical device (a
28 COVID-19 test).

1 868. Individuals to whom any EUA product is offered must be informed “of the
2 option to accept or refuse administration of the product...” 21 USC § 360bbb-
3 3(e)(1)(A)(ii)(III).

4 869. “Nothing in this section provides the [HHS] Secretary any authority to
5 require any person to carry out any activity that becomes lawful pursuant to an authorization
6 under this section...” 21 USC § 360bbb-3(l).

7 870. The Court should hold unlawful and set aside the FTMM because it violates
8 the FDCA, making it “in excess of statutory jurisdiction, authority, or limitations, or short of
9 statutory right.” 5 USC § 706(2)(C).

10
11 **Q. SEVENTEENTH CAUSE OF ACTION: VIOLATION OF THE**
12 **ADMINISTRATIVE PROCEDURE ACT AGAINST DEFENDANTS CDC**
13 **AND HHS: The International Traveler Testing Requirement does not comply**
14 **with the International Covenant on Civil & Political Rights.**

15 871. Plaintiffs Uri and Yvonne Marcus, who are American and Israeli dual
16 citizens, have been restricted from flying to the United States because of the ITTR.

17 872. In carrying out all federal aviation laws, the Executive Branch “shall act
18 consistently with obligations of the United States Government under an international
19 agreement.” 49 USC § 40105(b)(1)(A).

20 873. “2. Everyone shall be free to leave any country, including his own. 3. The
21 above-mentioned rights shall not be subject to any restrictions except those which are
22 provided by law... 4. No one shall be arbitrarily deprived of the right to enter his own
23 country.” ICCPR Art. 12.

24 874. Congress has never passed a law mandating virus testing before boarding a
25 fight to the United States.

26 875. As dual citizens of the United States and Israel, the ITTR interferes with the
27 Marcuses’ freedom to leave any country and arbitrarily deprives them of the right to enter
28 their own country of citizenship.

29

1 876. The Court should hold unlawful and set aside the ITTR because it violates the
2 ICCPR, making it “in excess of statutory jurisdiction, authority, or limitations, or short of
3 statutory right.” 5 USC § 706(2)(C).

4
5 **R. EIGHTEENTH CAUSE OF ACTION: VIOLATION OF THE FIRST**
6 **AMENDMENT AGAINST DEFENDANTS TRANSPORTATION SECURITY**
7 **ADMINISTRATION AND JULIE CARRIGAN IN HER OFFICIAL**
8 **CAPACITY.**

9 877. TSA and Ms. Carrigan revoked Mr. Marcus’ Pre-Check status. Ex. 25.

10 878. TSA acknowledges that its “security screening policies, procedures and
11 practices must comply with all applicable civil liberties and civil rights laws, regulations,
12 executive orders and policies and must not discriminate against travelers on the basis of ...
13 disability...” Ex. 73.

14 879. Mr. Marcus is concerned that by revoking his TSA Pre-Check eligibility, the
15 agency might have placed him on the terrorist watchlist because he sued the agency to
16 vacate the FTMM and has associated with others to protest the FTMM.

17 880. “The Terrorist Screening Center, a multi-agency center administered by the
18 FBI, is the U.S. Government’s consolidated counterterrorism watchlisting component and is
19 responsible for the management and operation of the Terrorist Screening Database,
20 commonly known as ‘the watchlist.’” Ex. 74.

21 881. TSA is not permitted by law to place anyone in the Terrorist Screening
22 Database because of constitutionally protected rights such as protesting an *ultra vires* policy
23 such as the FTMM: “The TSC is dedicated to ensuring watchlisting and screening activities
24 are conducted in a manner consistent with protecting privacy and civil liberties. Individuals
25 are included in the watchlist when there is reasonable suspicion to believe that a person is a
26 known or suspected terrorist. Individuals are not watchlisted based solely on ... any First
27 Amendment-protected activities such as free speech ... freedom of peaceful assembly, and
28 petitioning the government for redress of grievances.” *Id.*

1 882. TSA’s revocation of Mr. Marcus’ Pre-Check benefit clearly represents illegal
2 retaliation against him for suing TSA to stop the FTMM and participating in discussions
3 about how to protest the mandate. Because he has not flown in the United States since Dec
4 9, 2020, there is no other reason TSA would suddenly revoke his Pre-Check eligibility
5 except for blatant retaliation for his First Amendment-protected activities.

6 883. Mr. Marcus has not been arrested or charged with any crimes. He has not
7 even been in the United States since December 2020 (due to the FTMM and ITTR
8 prohibiting him from flying to the USA).

9 884. TSA’s action annulling Mr. Marcus’ Pre-Check eligibility because he is suing
10 the agency and is an outspoken critic of the FTMM represents the absolute worst form of
11 vengeance against a citizen exercising his First Amendment rights to petition the
12 government for a redress of grievances as well as to freedom of speech and to associate.

13 885. Suing TSA in the Court of Appeals does not in any way mean that Mr.
14 Marcus no longer “pose[s] a sufficiently low risk to transportation and national security.”
15 Ex. 25.

16 886. TSA’s enabling act is the Aviation & Transportation Security Act, P.L. 107–
17 71, 115 Stat. 597, codified at 49 USC § 114. TSA’s function is limited by law to address
18 security threats. In no way has Congress authorized TSA to declare passengers litigating
19 against its orders a “risk to transportation and national security,” potential terrorists, or
20 otherwise subject them to additional security screening.

21 887. TSA may not conceal its unlawful act of revoking my Pre-Check eligibility
22 by claiming the “comprehensive background check” it did on me is secret Sensitive Security
23 Information. The law specifically exempts any information used to retaliate against a litigant
24 from being classified as SSI. “Nothing in this subsection, or any other provision of law,
25 shall be construed to authorize the designation of information as sensitive security in-
26 formation (as defined in section 1520.5 of title 49, Code of Federal Regulations) – (A) to
27 conceal a violation of law, inefficiency, or administrative error; (B) to prevent
28 embarrassment to a person, organization, or agency...” 49 USC § 114(r)(4).
29

1 888. This Court has not only the constitutional authority but also statutory
2 authority to issue a writ compelling TSA to reinstate my Pre-Check eligibility. “The
3 Supreme Court and all courts established by Act of Congress may issue all writs necessary
4 or appropriate in aid of their respective jurisdictions and agreeable to the usages and
5 principles of law.” 28 USC § 1651(a).

6
7 **S. NINETEENTH CAUSE OF ACTION: BIVENS ACTION FOR VIOLATING**
8 **FIRST AMENDMENT RIGHTS AGAINST DEFENDANT JULIE**
9 **CARRIGAN IN HER INDIVIDUAL CAPACITY.**

10 889. Ms. Carrigan signed the letter revoking Mr. Marcus’ Pre-Check status despite
11 knowing the action was being taken in violation of his First Amendment rights to protest,
12 speak out against illegal government mandates, associate with other FTMM opponents, and
13 petition the government for a redress of grievances by filing a lawsuit against TSA’s mask
14 mandate in the Court of Appeals. Ex. 25.

15 890. Under the *Bivens* doctrine. Ms. Carrigan is liable to Mr. Marcus for monetary
16 damages in her individual capacity for violating his constitutional rights.

17
18 **T. TWENTIETH CAUSE OF ACTION: CONSPIRACY TO INTERFERE WITH**
19 **CIVIL RIGHTS AGAINST THE AIRLINE DEFENDANTS, THE MEDICAL**
20 **DEFENDANTS, AND THE YET-TO-BE-NAMED INDIVIDUAL**
21 **DEFENDANTS.**

22 891. All plaintiffs have been restricted from flying because of the airlines’ mask
23 policies and the decisions made by STAT-MD and MedAire to arbitrarily deny mask
24 exemptions, when the airlines aren’t even permitted to require medical consultations.

25 892. The disabled are a class Congress has designated for protection against civil-
26 rights violations. In adopting the RA, the ACAA, and the Americans with Disabilities Act,
27 *inter alia*, Congress has made unmistakably clear that the national policy of the United
28 States to protect the disabled as a class from discrimination in all facets of American life.

1 893. The Airline Defendants conspired to deprive disabled Americans, a protected
2 class, of our civil rights by adopting policies in Summer 2020 that banned anyone medically
3 unable to wear a face mask from using the nation’s air-transportation system.

4 894. Only Delta and Hawaiian declined to participate in the conspiracy to totally
5 ban disabled flyers, but partook partially by forcing an illegal medical-consultation process
6 at the airport during check-in.

7 895. STAT-MD and MedAire have participated in the conspiracy by denying
8 mask-exemption demands for their airline clients submitted by disabled passengers without
9 speaking to the passenger or his/her doctor.

10 896. Since the ACAA prohibits airlines from forcing disabled passengers to
11 undergo medical consultations except in a few specific circumstances, STAT-MD and
12 MedAire are prohibited from offering such services except for the few types allowed by
13 regulation. Force masking is not an exception.

14 897. All Americans, especially the disabled, have a statutory right to use
15 commercial air transportation. “A citizen of the United States has a public right of transit
16 through the navigable airspace. To further that right, the Secretary of Transportation shall
17 consult with the Architectural and Transportation Barriers Compliance Board established
18 under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792) before prescribing a
19 regulation or issuing an order or procedure that will have a significant impact on the
20 accessibility of commercial airports or commercial air transportation for handicapped
21 individuals.” 49 USC § 40103.

22 898. After the FTMM took effect Feb. 1, 2021, the Airline Defendants continued
23 to conspire against disabled Americans by making mask exemptions nearly impossible to
24 obtain by requiring applicants to jump through numerous illegal hoops in violation of the
25 RA, ACAA, and California law.

26 899. Congress has declined numerous times to amend the ACAA during the
27 pandemic to allow the defendants to impose mask mandates on the disabled. Congress has
28 also declined to enact a mask mandate for any traveler. The only floor vote taken on
29

1 masking in the transportation sector was the Senate’s 57-40 decision to kill the FTMM. Ex.
2 108.

3 900. The Airline Defendants are not required to enforce the FTMM because it was
4 issued illegally by the Executive Branch and is unconstitutional. *See* Counts 1-10.

5 901. The Airline Defendants’ conspiracy continues today as millions of disabled
6 Americans who can’t safely wear masks are banned from our statutory right to use the
7 nation’s airspace solely because of our disability that precludes us from safely wearing a
8 mask.

9 902. “If two or more persons in any State or Territory conspire ... for the purpose
10 of depriving, either directly or indirectly, any person or class of persons of the equal
11 protection of the laws, or of equal privileges and immunities under the laws... in any case of
12 conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be
13 done, any act in furtherance of the object of such conspiracy, whereby another is injured in
14 his person or property, or deprived of having and exercising any right or privilege of a
15 citizen of the United States, the party so injured or deprived may have an action for the
16 recovery of damages occasioned by such injury or deprivation, against any one or more of
17 the conspirators.” 42 USC § 1985(3).

18 903. The essential elements of a § 1985 claim are: 1) a conspiracy; 2) to deprive
19 plaintiffs of equal protection or equal privileges and immunities; 3) an act in furtherance of
20 the conspiracy; and 4) an injury or deprivation resulting therefrom.

21 904. We have presented facts above, and expect to further prove through
22 discovery, that the Airline Defendants conspired – with each other, with other air carriers,
23 within their own companies, and with STAT-MD and MedAire – to ban disabled flyers
24 because of a discriminatory motive. The conspiracy is not driven by public-health
25 considerations since masks are totally worthless in reducing the transmission of respiratory
26 viruses such as COVID-19 and harm human health. Rather the defendants are motivated by
27 a class-based, invidiously discriminatory animus resulting in an unfounded, ridiculous fear
28 that healthy, uninfected disabled travelers who can’t wear a face mask are somehow a grave
29 danger.

1 905. The conspiracy applies to both inter-corporate and intra-corporate actions.

2
3 **U. TWENTY-FIRST CAUSE OF ACTION: NEGLECTING TO PREVENT**
4 **INTERFERENCE WITH CIVIL RIGHTS AGAINST THE YET-TO-BE-**
5 **NAMED INDIVIDUAL DEFENDANTS.**

6 906. All plaintiffs have been restricted from flying because of the airlines' mask
7 policies.

8 907. Mr. Marcus' Pre-Check status was revoked by Julie Carrigan because he's a
9 disabled American who has spoken out against the FTMM. Ex. 25.

10 908. The yet-to-be-named Individual Defendants (whose names will be obtained
11 during discovery) were aware of the conspiracy to interfere with the civil rights of the
12 disabled by banning us from all flights but did nothing to stop it.

13 909. These Individual Defendants possess the power to stop the conspiracy today
14 but have not taken any action to do so. This claim is thus ongoing and the one-year statute
15 of limitations does not apply.

16 910. "Every person who, having knowledge that any of the wrongs conspired to be
17 done, and mentioned in section 1985 of this title, are about to be committed, and having
18 power to prevent or aid in preventing the commission of the same, neglects or refuses so to
19 do, if such wrongful act be committed, shall be liable to the party injured, or his legal
20 representatives, for all damages caused by such wrongful act, which such person by
21 reasonable diligence could have prevented; and such damages may be recovered in an action
22 on the case; and any number of persons guilty of such wrongful neglect or refusal may be
23 joined as defendants in the action..." 42 USC § 1986.

24 911. Section 1986 creates a remedy against persons whose acquiescence make
25 conspiracies to interfere with civil rights possible.

26 912. Designed to provide private remedies to individuals deprived of their civil
27 rights, these statutes were written in general terms that have been interpreted broadly to
28 protect individuals from a wide range of discriminatory conduct.

29

1 **V. TWENTY-SECOND CAUSE OF ACTION: VIOLATION OF THE**
2 **REHABILITATION ACT AGAINST THE AIRLINE DEFENDANTS.**

3 913. All plaintiffs have been restricted from flying because of the airlines’ mask
4 policies.

5 914. The Airline Defendants have accepted federal financial assistance during the
6 COVID-19 pandemic, subjecting them to the Rehabilitation Act.

7 915. Recipients of federal funds are prohibited from discriminating against the
8 disabled. But the Airline Defendants have banned from their aircraft all passengers with
9 medical conditions that prohibit us from safely covering our faces.

10 916. “No otherwise qualified individual with a disability in the United States ...
11 shall, solely by reason of her or his disability, be excluded from the participation in, be
12 denied the benefits of, or be subjected to discrimination under any program or activity
13 receiving Federal financial assistance...” 29 USC § 794(a).

14 917. “[T]he term ‘program or activity’ means all of the operations of ... an entire
15 corporation, partnership, or other private organization, or an entire sole proprietorship — (i)
16 if assistance is extended to such corporation, partnership, private organization, or sole
17 proprietorship as a whole...” 29 USC § 794(b).

18 918. “The remedies, procedures, and rights set forth in title VI of the Civil Rights
19 Act of 1964 (42 U.S.C. 2000d *et seq.*) (and in subsection (e)(3) of section 706 of such Act
20 (42 U.S.C. 2000e-5), applied to claims of discrimination in compensation) shall be available
21 to any person aggrieved by any act or failure to act by any recipient of Federal assistance or
22 Federal provider of such assistance under section 794 of this title.” 29 USC § 794a(2).

23 919. The rights of the disabled to be free from discrimination in all facets of
24 society were later articulated by Congress in the Americans with Disabilities Act. Although
25 the ADA does not apply to airlines, its statutory purpose should be used in interpreting the
26 RA and ACAA.

27 920. “Congress finds that — (1) physical or mental disabilities in no way diminish
28 a person’s right to fully participate in all aspects of society, yet many people with physical
29 or mental disabilities have been precluded from doing so because of discrimination; others

1 who have a record of a disability or are regarded as having a disability also have been
2 subjected to discrimination; (2) historically, society has tended to isolate and segregate
3 individuals with disabilities, and, despite some improvements, such forms of discrimination
4 against individuals with disabilities continue to be a serious and pervasive social problem;
5 (3) discrimination against individuals with disabilities persists in such critical areas as ...
6 transportation ... (4) ... individuals who have experienced discrimination on the basis of
7 disability have often had no legal recourse to redress such discrimination; (5) individuals
8 with disabilities continually encounter various forms of discrimination, including outright
9 intentional exclusion... (6) census data, national polls, and other studies have documented
10 that people with disabilities, as a group, occupy an inferior status in our society, and are
11 severely disadvantaged socially, vocationally, economically, and educationally; (7) the
12 Nation's proper goals regarding individuals with disabilities are to assure equality of
13 opportunity, full participation, independent living, and economic self-sufficiency for such
14 individuals; and (8) the continuing existence of unfair and unnecessary discrimination and
15 prejudice denies people with disabilities the opportunity to compete on an equal basis and to
16 pursue those opportunities for which our free society is justifiably famous, and costs the
17 United States billions of dollars in unnecessary expenses resulting from dependency and
18 non-productivity.” 42 USC § 12101(a).

19 921. “It is the purpose of this chapter — (1) to provide a clear and comprehensive
20 national mandate for the elimination of discrimination against individuals with
21 disabilities...” 42 USC § 12101(b).

22 922. “[M]ajor life activities include, but are not limited to, ... breathing ... a major
23 life activity also includes the operation of a major bodily function, including but not limited
24 to, ... neurological, brain, respiratory ... functions. ... The definition of disability in this
25 chapter shall be construed in favor of broad coverage of individuals under this chapter...”
26 42 USC § 12102.

27 923. A recipient of federal funds is subject to suit under the RA for compensatory
28 damages, which traditionally includes damages for both pecuniary and non-pecuniary
29

1 injuries. Examples of non-pecuniary damages include pain and suffering, emotional
2 trauma/distress, deprivation of constitutional and legal rights, and diminished quality of life.

3
4 **W. TWENTY-THIRD CAUSE OF ACTION: VIOLATION OF THE**
5 **REHABILITATION ACT AND AIR CARRIER ACCESS ACT AGAINST**
6 **THE AIRLINE DEFENDANTS: Requiring passengers not known to have a**
7 **communicable disease to wear a face covering, refusing to provide mask**
8 **exemptions to the disabled, and banning passengers who need to remove their**
9 **masks to breathe.**

10 924. All plaintiffs have been restricted from flying because of the airlines’ mask
11 policies.

12 925. The Airline Defendants require passengers who do not have a communicable
13 disease to don a face mask or be refused transportation.

14 926. The ACAA, 49 USC § 41705, and its accompanying regulations, 14 CFR
15 Part 382, spell out specific procedures for dealing with airline passengers who are *known* to
16 have a communicable disease. The Airline Defendants’ mask policies violate these
17 regulations by assuming that every passenger has a communicable disease such as COVID-
18 19.

19 927. Airlines are prohibited from requiring that a passenger wear a face covering
20 or refuse him/her transportation unless they determine that the passenger “has” a
21 communicable disease and poses a “direct threat” to other passengers and the flight crew. 14
22 CFR § 382.21.

23 928. The Airline Defendants’ rules illegally assume every single traveler is
24 infected with COVID-19. This violates the regulation that “In determining whether an
25 individual poses a direct threat, you must make an individualized assessment.” 14 CFR §
26 382.19(c)(1).

27 929. The Airline Defendants’ mask policies don’t provide for making an
28 “individualized assessment” of whether someone is known to have COVID-19 or another
29 communicable disease. They do not use the federal government’s Do Not Board and

1 Lookout systems to identify passengers who have tested positive for corona virus or another
2 communicable disease to prevent them from boarding a flight, using the knowledge from
3 these databases that a person “has” a virus. The defendants instead impose a blanket policy
4 that every single traveler must wear a face covering, even though more than 99% of
5 passengers every day are virus-free.

6 930. According to DOT, “If a person who seeks passage *has an infection or*
7 *disease* that would be transmittable during the normal course of a flight, and that has been
8 deemed so by a federal public health authority knowledgeable about the disease or infection,
9 then the carrier may: ... *Impose on the person a condition or requirement not imposed on*
10 *other passengers (e.g., wearing a mask).*” Ex. 148 (emphasis added). This is the only
11 scenario airlines are permitted to force any passenger to don a face covering.

12 931. The Airline Defendants have since Summer 2020 illegally discriminated
13 against disabled passengers with medical conditions who seek exemptions from the illegal
14 blanket mask requirements. They (except Delta and Hawaiian) first banned all disabled
15 flyers entirely, then modified their policies in February/March 2021 to supposedly permit
16 exceptions but make it nearly impossible to obtain them. Even if obtained, numerous illegal
17 provisions are attached as conditions.

18 932. “In providing air transportation, an air carrier ... may not discriminate against
19 an otherwise qualified individual on the following grounds: (1) the individual has a physical
20 or mental impairment that substantially limits one or more major life activities. (2) the
21 individual has a record of such an impairment. (3) the individual is regarded as having such
22 an impairment.” 49 USC § 41705(a).

23 933. DOT found Southwest violated the law by refusing to grant any medical
24 exemptions. Ex. 147.

25 934. The Airline Defendants all have policies of banning from future flights any
26 passenger who has to remove his/her mask to breathe properly. Ex. 325.

27 935. Some courts have determined that a private right of action does not exist
28 under the ACAA because aggrieved passengers may file a complaint with DOT.
29

1 936. Even if this Court determines that in normal circumstances, there is not a
2 right of private action for the disabled to enforce the ACAA, none of the prior caselaw is
3 relevant to this lawsuit because never before has DOT put out a Notice of Enforcement
4 Policy (Ex. 101) telling airlines they may violate the law. This creates an issue of first
5 impression, which the Court must resolve by deciding a private right of action exists when
6 the administrative agency tasked with enforcing a statute blatantly abdicates its legal duty
7 by telling the companies it regulates that they don't have to obey the law.

8 937. Congress passes civil-rights laws to protect classes of people subject to
9 discrimination – including the disabled. If the executive department tasked with enforcing
10 the statute neglects its duty, Congress intends for those illegally discriminated against to
11 have a remedy – and in this case, the only remedy is a private lawsuit.

12 938. Because DOT hasn't sanctioned the Airline Defendants for their illegal
13 discrimination – and actually put out a notice telling airlines they may violate numerous
14 ACAA regulations – the only remedy for us is this lawsuit.

15 939. Even if the Court fails to allow a private right of action under the ACAA, it
16 should enforce the statute and its underlying regulations via the Rehabilitation Act, which
17 has a clearly defined private right to sue for monetary damages and injunctive relief as well
18 as the conspiracy statutes and California anti-discrimination law.

19 940. Even if this Court upholds the FTMM, it still must enjoin the Airline
20 Defendants' illegal mask-exemption procedures. The FTMM itself states that passengers
21 with medical conditions who can't tolerate wearing a face mask are exempt from the order,
22 but the defendants have put into place numerous illegal onerous requirements that make
23 obtaining an exemption virtually impossible – essentially banning all Americans who
24 medically can't wear a mask from utilizing the nation's air-transportation system, which we
25 have a statutory right to. 49 USC § 40103.

26 941. In considering congressional intent, this Court has to review actions Congress
27 has taken during the COVID-19 pandemic. Airline mask policies – and especially their
28 discriminatory refusal to follow the law in granting exemptions to those with disabilities –
29 without any doubt go against the express wishes of Congress. The Legislative Branch has

1 explicitly failed to mandate masks in any setting. This shows clear, unambiguous
2 congressional intent.

3 942. No law passed by Congress during the COVID-19 pandemic has waived the
4 legal requirement that the Airline Defendants shall not discriminate against passengers with
5 disabilities.

6 943. “No otherwise qualified individual with a disability in the United States ...
7 shall, solely by reason of her or his disability, be excluded from the participation in, be
8 denied the benefits of, or be subjected to discrimination under any program or activity
9 receiving Federal financial assistance...” 29 USC § 794(a).

10 944. The Airline Defendants refuse to carry disabled passengers who can’t safely
11 wear a mask. The only alternative is to wear a mask to the detriment of our health.

12 945. “As a carrier, you must not refuse to provide transportation to a passenger
13 with a disability on the basis of his or her disability, except as specifically permitted by this
14 part.” 14 CFR § 382.19(a).

15 946. Even if an airline determines “that the passenger does pose a direct threat,
16 you must select the least restrictive response from the point of view of the passenger ... For
17 example, you must not refuse transportation to the passenger if you can protect the health
18 and safety of others by means short of a refusal.” 14 CFR § 382.19(c)(2).

19

20 **X. TWENTY-FORTH CAUSE OF ACTION: VIOLATION OF THE**
21 **REHABILITATION ACT AND AIR CARRIER ACCESS ACT AGAINST**
22 **DEFENDANTS ALASKA, ALLEGIANT, AMERICAN, FRONTIER,**
23 **SOUTHWEST, AND UNITED: Requiring passengers seeking mask exemptions**
24 **do so in advance.**

25 947. All plaintiffs have been restricted from flying because of these six airlines’
26 policies mandating that passengers seeking mask exemptions do so in advance.

27 948. These defendants require passengers asking for a mask exemption to do so in
28 advance (three days for Alaska, three days for American, 10 days for Allegiant, 10 days for
29 Frontier, seven days for Southwest, and seven days for United).

1 949. These six defendants’ advance-notice policy discriminates against the
2 disabled by forcing us to book a ticket a certain number of days in advance, a policy that
3 doesn’t apply to nondisabled customers. This precludes the disabled who can’t safely wear a
4 mask from having the ability to book a ticket within a few days of departure, which limits
5 the ability to travel for work obligations and emergencies such as a death in the family.

6 950. “May a carrier require a passenger with a disability to provide advance notice
7 that he or she is traveling on a flight? As a carrier, you must not require a passenger with a
8 disability to provide advance notice of the fact that he or she is traveling on a flight.” 14
9 CFR § 382.25.

10 951. “No otherwise qualified individual with a disability in the United States ...
11 shall, solely by reason of her or his disability, be excluded from the participation in, be
12 denied the benefits of, or be subjected to discrimination under any program or activity
13 receiving Federal financial assistance...” 29 USC § 794(a).

14
15 **Y. TWENTY-FIFTH CAUSE OF ACTION: VIOLATION OF THE**
16 **REHABILITATION ACT AND AIR CARRIER ACCESS ACT AGAINST**
17 **DEFENDANTS ALASKA, ALLEGIANT, AMERICAN, FRONTIER,**
18 **SOUTHWEST, AND UNITED: Requiring a medical certificate from disabled**
19 **passengers who ask for a mask exemption.**

20 952. All plaintiffs have been restricted from flying because of these six airlines’
21 policies mandating that passengers who ask for a mask exemption submit a medical
22 certificate, also known as a doctor’s letter or form.

23 953. “Except as provided in this section, you must not require a passenger with a
24 disability to have a medical certificate as a condition for being provided transportation.” 14
25 CFR § 382.23(a).

26 954. “You may ... require a medical certificate for a passenger if he or she *has* a
27 communicable disease or condition that could pose a direct threat to the health or safety of
28 others on the flight.” 14 CFR § 382.23(c)(1) (emphasis added).

1 955. This requirement does not include *speculation* that a person *might* have a
2 communicable disease such as COVID-19; evidence is required that the passenger *has* a
3 communicable disease, i.e. has tested positive for the corona virus.

4 956. “No otherwise qualified individual with a disability in the United States ...
5 shall, solely by reason of her or his disability, be excluded from the participation in, be
6 denied the benefits of, or be subjected to discrimination under any program or activity
7 receiving Federal financial assistance...” 29 USC § 794(a).

8
9 **Z. TWENTY-SIXTH CAUSE OF ACTION: VIOLATION OF THE**
10 **REHABILITATION ACT AND AIR CARRIER ACCESS ACT AGAINST**
11 **DEFENDANTS DELTA, HAWAIIAN, AND SOUTHWEST: Requiring**
12 **disabled passengers needing a mask exemption to undergo a medical screening.**

13 957. Plaintiffs Uri and Yvonne Marcus have been restricted from flying because of
14 these three airlines’ policies mandating that passengers needing a mask exemption undergo
15 a medical screening with vendors such as STAT-MD and MedAire.

16 958. Since airlines may not require a medical certificate for a passenger unless
17 he/she has a communicable disease, they may also not require a third-party medical
18 consultation.

19 959. “As a carrier, you may require that a passenger with a medical certificate
20 undergo additional medical review by you if there is a legitimate medical reason for
21 believing that there has been a significant adverse change in the passenger’s condition since
22 the issuance of the medical certificate ...” 14 CFR § 382.23(d).

23 960. “No otherwise qualified individual with a disability in the United States ...
24 shall, solely by reason of her or his disability, be excluded from the participation in, be
25 denied the benefits of, or be subjected to discrimination under any program or activity
26 receiving Federal financial assistance...” 29 USC § 794(a).

27
28 **AA. TWENTY-SEVENTH CAUSE OF ACTION: VIOLATION OF THE**
29 **REHABILITATION ACT AND AIR CARRIER ACCESS ACT AGAINST**

DEFENDANTS ALASKA, ALLEGIANT, AMERICAN, FRONTIER, SOUTHWEST, AND UNITED: Requiring disabled passengers who seek a mask exemption to submit a negative COVID-19 test for each flight when nondisabled customers aren't subject to this same requirement.

961. All plaintiffs have been restricted from flying because of these six airlines' policies mandating that passengers needing a mask exemption submit a negative COVID-19 test for each flight.

962. Nondisabled customers are not required to submit a corona virus test.

963. No provision of the ACAA or its accompanying regulations promulgated by DOT (nor the RA or any other law enacted by Congress) permits airlines to require passengers submit a negative test for any communicable disease.

964. Mandating disabled flyers submit an expensive COVID-19 test before checking in but not requiring the same of nondisabled travelers is illegal discrimination. The only legal way airlines could possibly impose a testing requirement is if ALL customers, regardless of disability, were forced to submit virus test results.

965. "You must not discriminate against any qualified individual with a disability, by reason of such disability, in the provision of air transportation..." 14 CFR § 382.11(a)(1). *See also* 49 USC § 41705.

966. "[Y]ou must not subject passengers with a disability to restrictions that do not apply to other passengers..." 14 CFR § 382.33(a).

967. "No otherwise qualified individual with a disability in the United States ... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance..." 29 USC § 794(a).

BB. TWENTY-EIGHTH CAUSE OF ACTION: VIOLATION OF THE REHABILITATION ACT AND AIR CARRIER ACCESS ACT AGAINST DEFENDANTS SOUTHWEST AND UNITED: Banning mask-exempt passengers from flying if a plane is more than a certain percentage full.

1 968. Plaintiffs Uri and Yvonne Marcus have been restricted from flying by
2 Defendants Southwest and United.

3 969. Southwest and United refuse to board a disabled mask-exempt passenger (if
4 he/she somehow obtained an exception) if a flight is over a set percentage full.

5 970. Southwest even states “Passengers may be required to travel on a different
6 date than their scheduled itinerary.” Ex. 447.

7 971. “As a carrier, you must not limit the number of passengers with a disability
8 who travel on a flight.” 14 CFR § 382.17.

9 972. “You must not discriminate against any qualified individual with a disability,
10 by reason of such disability, in the provision of air transportation...” 14 CFR § 382.11(a)(1).
11 *See also* 49 USC § 41705.

12 973. “[Y]ou must not subject passengers with a disability to restrictions that do not
13 apply to other passengers...” 14 CFR § 382.33(a).

14 974. “No otherwise qualified individual with a disability in the United States ...
15 shall, solely by reason of her or his disability, be excluded from the participation in, be
16 denied the benefits of, or be subjected to discrimination under any program or activity
17 receiving Federal financial assistance...” 29 USC § 794(a).

18
19 **CC. TWENTY-NINTH CAUSE OF ACTION: VIOLATION OF THE**
20 **REHABILITATION ACT AND AIR CARRIER ACCESS ACT AGAINST**
21 **DEFENDANTS AMERICAN, ALASKA, HAWAIIAN, SOUTHWEST, AND**
22 **UNITED: Changing the seat assignment of a mask-exempt passenger without**
23 **his/her consent.**

24 975. Plaintiffs Cindy Russo and Uri and Yvonne Marcus have been restricted from
25 flying by these five airlines.

26 976. American, Alaska, Hawaiian, Southwest, and United have a policy
27 instructing gate agents and/or flight attendants to move a mask-exempt passenger to the
28 back of the aircraft or other alternate seats he/she did not select.

1 977. American requires mask-exempt passengers sit in the last row of Economy
2 Class or the first row of First Class. They must sit in a window seat even if they select an
3 aisle seat.

4 978. “As a carrier, you must not exclude any passenger with a disability from any
5 seat or require that a passenger with a disability sit in any particular seat, on the basis of
6 disability, except to comply with FAA or applicable foreign government safety
7 requirements.” 14 CFR § 382.87(a).

8 979. “[Y]ou must not subject passengers with a disability to restrictions that do not
9 apply to other passengers...” 14 CFR § 382.33(a).

10 980. “No otherwise qualified individual with a disability in the United States ...
11 shall, solely by reason of her or his disability, be excluded from the participation in, be
12 denied the benefits of, or be subjected to discrimination under any program or activity
13 receiving Federal financial assistance...” 29 USC § 794(a).

14
15 **DD. THIRTIETH CAUSE OF ACTION: VIOLATION OF THE**
16 **REHABILITATION ACT AND AIR CARRIER ACCESS ACT AGAINST**
17 **DEFENDANT SOUTHWEST: Limiting the number of disabled passengers on**
18 **a flight.**

19 981. Plaintiffs Uri and Yvonne Marcus have been restricted from flying by
20 American and Southwest.

21 982. “Only **one** passenger per flight can have a mask exemption.” Ex. 17.

22 983. “Southwest requires that Passenger obtaining a mask exemption travel on a
23 flight with ... no other Passengers on board approved for a mask exemption.” Ex. 447.

24 984. As a married couple, the Marcuses would not be allowed to travel together on
25 a Southwest flight if they somehow obtained mask exemptions after referrals to STAT-MD.

26 985. “As a carrier, you must not limit the number of passengers with a disability
27 who travel on a flight.” 14 CFR § 382.17.

28 986. “No otherwise qualified individual with a disability in the United States ...
29 shall, solely by reason of her or his disability, be excluded from the participation in, be

1 denied the benefits of, or be subjected to discrimination under any program or activity
2 receiving Federal financial assistance...” 29 USC § 794(a).

3
4 **EE. THIRTY-FIRST CAUSE OF ACTION: VIOLATION OF THE CALIFORNIA**
5 **UNRUH CIVIL RIGHTS ACT AGAINST THE AIRLINE DEFENDANTS**
6 **AND THE YET-TO-BE-NAMED INDIVIDUAL DEFENDANTS.**

7 987. All plaintiffs have been discriminated against because of our disabilities on
8 flights in and out of airports located in California.

9 988. “All persons within the jurisdiction of this state are free and equal, and no
10 matter what their ... disability, medical condition ... are entitled to the full and equal
11 accommodations, advantages, facilities, privileges, or services in all business establishments
12 of every kind whatsoever.” Calif. Civil Code § 51(b).

13 989. “No business establishment of any kind whatsoever shall discriminate
14 against, boycott or blacklist, or refuse to buy from, contract with, sell to, or trade with any
15 person in this state on account of any characteristic listed or defined in subdivision (b) or (e)
16 of Section 51 ... because the person is perceived to have one or more of those
17 characteristics...” Calif. Civil Code § 51.5(a).

18 990. “Whoever denies, aids or incites a denial, or makes any discrimination or
19 distinction contrary to Section 51, 51.5, or 51.6, is liable for each and every offense for the
20 actual damages, and any amount that may be determined by a jury, or a court sitting without
21 a jury, up to a maximum of three times the amount of actual damage but in no case less than
22 four thousand dollars (\$4,000), and any attorney’s fees that may be determined by the court
23 in addition thereto, suffered by any person denied the rights provided in Section 51, 51.5, or
24 51.6.” Calif. Civil Code § 52(a).

25 991. “Whenever there is reasonable cause to believe that any person or group of
26 persons is engaged in conduct of resistance to the full enjoyment of any of the rights
27 described in this section, and that conduct is of that nature and is intended to deny the full
28 exercise of those rights, ... any person aggrieved by the conduct may bring a civil action in
29 the appropriate court by filing with it a complaint.” Calif. Civil Code § 52(c).

1 992. “Individuals with disabilities shall be entitled to full and equal access, as
2 other members of the general public, to facilities, ... privileges of all common carriers,
3 airplanes, ... and other places to which the general public is invited, subject only to the
4 conditions and limitations established by law, or state or federal regulation, and applicable
5 alike to all persons.” Calif. Civil Code § 54.1(a)(1).

6 993. “‘Full and equal access,’ for purposes of this section in its application to
7 transportation, means access that meets the standards of Titles II and III of the Americans
8 with Disabilities Act of 1990 (Public Law 101-336) and federal regulations adopted
9 pursuant thereto, except that, if the laws of this state prescribe higher standards, it shall
10 mean access that meets those higher standards.” Calif. Civil Code § 54.1(a)(3).

11 994. All counts against the Airline Defendants based on the Air Carrier Access
12 Act may be enforced via California law since it adopts federal regulations as the standards
13 the transportation sector must adhere to.

14 995. “Any person or persons, firm or corporation who denies or interferes with
15 admittance to or enjoyment of the public facilities as specified in Sections 54 and 54.1 or
16 otherwise interferes with the rights of an individual with a disability under Sections 54, 54.1
17 and 54.2 is liable for each offense for the actual damages and any amount as may be
18 determined by a jury, or the court sitting without a jury, up to a maximum of three times the
19 amount of actual damages but in no case less than one thousand dollars (\$1,000), and
20 attorney’s fees as may be determined by the court in addition thereto, suffered by any
21 person denied any of the rights provided in Sections 54, 54.1, and 54.2.” Calif. Civil Code §
22 54.3(a).

23 996. “The remedies in this section are nonexclusive and are in addition to any
24 other remedy provided by law, including, but not limited to, any action for injunctive or
25 other equitable relief available to the aggrieved party...” Calif. Civil Code § 54.3(b).

26 997. “Any person who is aggrieved or potentially aggrieved by a violation of
27 Section 54 or 54.1 of this code ... may bring an action to enjoin the violation. The
28 prevailing party in the action shall be entitled to recover reasonable attorney’s fees.” Calif.
29 Civil Code § 55.

1
2 **FF. THIRTY-SECOND CAUSE OF ACTION: BREACH OF CONTRACT**
3 **AGAINST THE AIRLINES DEFENDANTS: Alaska, Allegiant, American,**
4 **Delta, Hawaiian, and Southwest force passengers to wear masks when we never**
5 **agreed to do so in the contract of carriage. Frontier and United’s contract terms**
6 **requiring face coverings are legally unenforceable.**

7 998. Alaska’s contract of carriage contains no mention of “mask” or “face
8 covering.” Passengers who book a ticket with Alaska do not agree to obstruct our breathing
9 as a condition of carriage. [https://www.alaskaair.com/content/legal/contract-of-carriage/
10 english-COC](https://www.alaskaair.com/content/legal/contract-of-carriage/english-COC)

11 999. Allegiant’s contract of carriage contains no mention of “mask” or “face
12 covering.” Passengers who book a ticket with Allegiant do not agree to obstruct our
13 breathing as a condition of carriage. Ex. 452.

14 1000. American’s contract of carriage contains no mention of “mask” or “face
15 covering.” Passengers who book a ticket with American do not agree to obstruct our
16 breathing as a condition of carriage. Ex. 453.

17 1001. Delta’s contract of carriage contains no mention of “mask” or “face
18 covering.” Passengers who book a ticket with Delta do not agree to obstruct our breathing as
19 a condition of carriage. Ex. 454.

20 1002. Hawaiian’s contract of carriage contains no mention of “mask” or “face
21 covering.” Passengers who book a ticket with Hawaiian do not agree to obstruct our
22 breathing as a condition of carriage. Ex. 455.

23 1003. Southwest’s contract of carriage contains no mention of “mask” or “face
24 covering.” Passengers who book a ticket with Southwest do not agree to obstruct our
25 breathing as a condition of carriage. Ex. 456.

26 1004. Frontier’s contract of carriage contains this paragraph: “2019 Novel Corona
27 virus (COVID-19) – Frontier may screen passengers during the check-in and boarding
28 process, and may deny boarding to passengers who Frontier reasonably believes do not meet
29 Frontier’s COVID-19 screening measures. Screening will include, but is not be limited to:

1 completion of a health acknowledgment, *required wearing of facial coverings*, and
2 submission to a temperature check. Notwithstanding Section 11 above, *a passenger who*
3 *presents a medical certificate dated within 10 days of the date of the flight for which it is*
4 *being presented may be denied boarding* if, on the planned date of travel, the passenger
5 fails to meet Frontier’s COVID-19 screening measures. Ex. 457 (emphasis added).

6 1005. Frontier’s contract of carriage mandating passengers wear masks is legally
7 unenforceable because the FDCA doesn’t allow any company to mandate use of
8 unauthorized or EUA medical devices. 21 USC § 360bbb-3(e)(1)(A)(ii)(III).

9 1006. Frontier’s contract of carriage requiring at least 10 days advance notice for
10 mask exemptions is legally unenforceable because the ACCA doesn’t allow airlines to
11 demand advance notice from a disabled passenger. 14 CFR § 382.25.

12 1007. United’s contract of carriage states “UA shall have the right to refuse
13 transport on a permanent or temporary basis or shall have the right to remove from the
14 aircraft at any point, any Passenger for the following reasons: ... Passengers who refuse to
15 wear a mask or face covering while at the airport and/or onboard UA and United Express
16 flights if UA or United Express believe, in their sole discretion, that a failure to wear such a
17 mask or facial covering may pose a risk to the health or safety of others... UA has the right
18 to refuse transport, on a permanent basis, any passenger who engages in any of the activities
19 in this Rule.” Ex. 458.

20 1008. United’s contract does not include any procedures for the disabled to demand
21 mask exemptions.

22 1009. United’s contract giving it “sole discretion” to refuse to transport anyone who
23 can’t wear a mask is legally unenforceable because the ACCA doesn’t allow airlines to
24 decline transportation to a disabled passenger except in very limited circumstances. 14 CFR
25 Part 382.

26 1010. United’s contract of carriage mandating passengers wear masks is legally
27 unenforceable because the FDCA doesn’t allow any company to mandate use of
28 unauthorized or EUA medical devices. 21 USC § 360bbb-3(e)(1)(A)(ii)(III).

29

1 1011. Forcing passengers – especially the disabled who are protected by federal
2 anti-discrimination laws – to wear a mask constitutes a breach of contract.

3 1012. “[P]rovisions in the carriers’ Contracts of Carriage [are] void if they
4 conflict[] with federal law or regulation.” Ex. 529.

5 1013. “[A] contract of carriage that conflicts with federal laws or regulations may
6 not be enforceable by the airline.” Ex. 158.

7 1014. “Consumers may sue airlines for damages or breach of contract in a state or
8 local court.” A “source of airline passengers’ rights is each air carrier’s ‘Contract of
9 Carriage,’ the legal agreement between an airline and its ticket holders. ... Passengers may
10 take legal action in federal courts based on the contracts.” *Id.*

11 1015. “A contract of carriage is the agreement between the passenger and the
12 airline that encompasses all contractual rights, liabilities, and duties of the two parties. ...
13 Any term or condition of this contract is legally binding on the airline and the passenger and
14 may be enforced in state court.” Ex. 159.

15 1016. Contracts of carriage must “reflect federal regulations requiring airlines to
16 provide specific services and facilities for passengers with disabilities.” *Id.*

17 1017. Airline contracts of carriage are subject to applicable laws and regulations
18 imposed by governmental agencies such as DOT.

19 1018. The Airline Deregulation Act does not pre-empt breach-of-contract claims.

20
21 **GG. THIRTY-THIRD CAUSE OF ACTION: RECKLESSNESS AGAINST THE**
22 **AIRLINE DEFENDANTS: Their mask policies have created chaos in the skies,**
23 **recklessly endangering aviation safety; and they ignore the massive evidence**
24 **showing masks have proven totally ineffective at reducing COVID-19 spread**
25 **but harm human health, recklessly endangering the well-being of all**
26 **passengers.**

27 1019. All plaintiffs have been forced by the Airline Defendants to mask against our
28 will or be refused transportation.

1 1020. California law defines recklessness as a subjective state of culpability greater
2 than simple negligence, which has been described as a “deliberate disregard” of the “high
3 degree of probability” that an injury will occur. Recklessness rises to the level of a
4 “conscious choice of a course of action with knowledge of the serious danger to others
5 involved in it.”

6 1021. Compensatory and punitive damages are available for the victims of
7 recklessness.

8 1022. Masks have been shown by the global scientific and medical communities for
9 decades to be ineffective at reducing transmission of respiratory viruses such as COVID-19,
10 yet they cause dozens of harms to human health. <https://bit.ly/masksarebad>. It is reckless for
11 the Airline Defendants to require muzzling of passengers when the known risks of oxygen
12 deprivation are severe – especially at high altitude.

13 1023. Because of this obstructed breathing by forced masking, the Airline
14 Defendants have created chaos in the skies with numerous oxygen-starved passengers taking
15 off their masks to breathe and being met with hostility and battery by flight attendants and
16 pilots, not to mention other passengers.

17 1024. The Airline Defendants’ mask policies endanger the health and safety of their
18 passengers by causing thousands of incidents of customers and flight crews battling over
19 mask enforcement in violation of their legal “duty ... to provide service with the highest
20 possible degree of safety in the public interest...” 49 USC § 44702(b)(1)(a).

21
22 **HH. THIRTY-FORTH CAUSE OF ACTION: PRACTICING MEDICINE**
23 **WITHOUT A LICENSE AGAINST THE AIRLINE DEFENDANTS:**
24 **Prescribing the mandatory use of medical devices unauthorized or approved**
25 **under an Emergency Use Authorization by the Food & Drug Administration.**

26 1025. The Airline Defendants have adopted policies prescribing the forced use of a
27 medical device (face mask), most of which are approved by FDA under EUA or have no
28 authorization at all, against the will of all plaintiffs.

29

1 1026. Mandating the use of uncertified medical devices without the consent of the
2 passenger means the Airline Defendants are practicing medicine without a license.

3 1027. Practicing medicine without a license is illegal in every state.

4 1028. Airline employees are not individuals with the appropriate ethics and
5 scientific education, training, and qualifications to order passengers to use experimental
6 medical devices unauthorized by FDA or issued under an EUA only.

7 1029. Airline employees are not competent and appropriately qualified physicians
8 or other healthcare professionals able to evaluate who can't medically tolerate covering their
9 nose and mouth.

10 1030. The Airline Defendants provide unauthorized and/or EUA masks to
11 passengers, introducing these experimental medical devices into interstate commerce.

12 1031. The Airline Defendants violate the FDCA by not giving passengers our legal
13 option to refuse administration of an FDA unauthorized or EUA medical device (face
14 mask).

15 1032. The Airline Defendants provide illegal and/or EUA masks to their passengers
16 without informing us use of the device is optional and we must give informed consent.

17 1033. “The principle that individuals should not be coerced to receive an unlicensed
18 medical product is also codified in the law of at least 84 countries and is an accepted
19 principle of international common law. *See, e.g., Abdullahi v. Pfizer, Inc.*, 562 F.3d 163, 184
20 (2nd Cir. 2009) (‘We have little trouble concluding that a norm forbidding nonconsensual
21 human medical experimentation is every bit as concrete – indeed even more so – than the
22 norm prohibiting piracy... The Nuremberg Code, Article 7 of the ICCPR, the Declaration of
23 Helsinki, the Convention on Human Rights and Biomedicine, the Universal Declaration on
24 Bioethics and Human Rights, the 2001 Clinical Trial Directive, and the domestic laws of at
25 least 84 States all uniformly and unmistakably prohibit medical experiments on human
26 beings without their consent, thereby providing concrete content for the norm.’)” Ex. 509.

27 1034. It’s a “longstanding principle that it is not permissible to coerce anyone to
28 receive an unlicensed medical product.” *Id.*

29

1 1035. Legislative history of Section 564 of the FDCA indicates that “any authority
2 to actually use experimental drugs or medical devices in emergency situations has to be
3 defined and wielded with nothing less than surgical precision. Prior informed consent in
4 connection with the administration of experimental therapy is a basic human right, a right no
5 one should be asked to surrender...” *Id.*

6 1036. “[T]he authorization for the emergency use of unapproved products also
7 includes strong provisions on informed consent for patients.” *Id.*

8 1037. “Congress specifically carved out only one exception for when an individual
9 would not have ‘the option to accept or refuse administration of the product.’ Congress
10 permitted required use of an EUA product when the President of the United States finds that
11 providing an individual in the military with the option to accept or refuse the product would
12 not be in the interests of national security.” *Id.*; *see also* 10 USC § 1107a.

13 1038. “Congress so highly valued the right to individual choice that it allowed only
14 a threat to national security to trump that right, and even then, only with regard to military
15 personnel.” *Id.*

16 1039. Individuals to whom any EUA product is offered must be informed “of the
17 option to accept or refuse administration of the product...” 21 USC § 360bbb-
18 3(e)(1)(A)(ii)(III).

19 1040. Congress’ prohibition of mandatory mask use is consistent with Defendant
20 HHS’ regulations requiring that participants in trials of experimental medical devices must
21 be informed that “participation is voluntary, refusal to participate will involve no penalty...”
22 45 CFR § 46.116(a)(8).

23 1041. Likewise FDA regulations state that no human shall participate in research
24 trials of uncertified medical devices unless “the investigator has obtained the legally
25 effective informed consent of the subject...” 21 CFR § 50.20.

26 1042. There’s good reason for the law prohibiting forced use of EUA medical
27 devices. Requirements for EUA products are waived for, among other things, “current good
28 manufacturing practice otherwise applicable to the manufacture, processing, packing ... of
29 products subject to regulation under this chapter...” 21 USC § 360bbb-3(e)(3)(A).

1 1043. The Airline Defendants have no authority to require any passenger wear a
2 mask authorized under EUA. But most masks being used by Americans to comply with the
3 defendant’s muzzling requirements meet the legal definition of an EUA “eligible product”
4 that is “intended for use to prevent ... a disease...” 21 USC § 360bbb-3(a).

5 1044. A person may freely choose to accept medical risks for the benefit of others;
6 they cannot be compelled by the Airline Defendants. We don’t harvest organs without
7 consent, even if doing so would save many lives. Those who make such sacrifices for others
8 must truly be volunteers, not conscripts.

9 1045. Airline employees have no medical license to order passengers to obstruct
10 our breathing, causing numerous harms, to perhaps spare another customer from catching a
11 virus. Passengers willingly take on the risk of catching a communicable disease when they
12 buy an airline ticket, knowing they will be squeezed into a metal tube like sardines in a can.
13 If they don’t want to take that risk, they have the option not to fly – but the Airline
14 Defendants lack a medical license to demand others suffer to mitigate the fear and anxiety
15 of those paranoid about catching COVID-19.

16 1046. “Protection of others” does not relieve the Airline Defendants from the
17 central canon of medical ethics requiring voluntary and informed consent.

18 1047. The right to refuse medical treatment, including experimental medical
19 devices such as face masks provided by the Airline Defendants, is a constitutionally
20 guaranteed right in California that must not be abridged. *Bartling v. Superior Court*, 163
21 Cal.App. 3rd 186, 195 (1984). *See* Calif. Const. Art. I § 1.

22
23 **II. THIRTY-FIFTH CAUSE OF ACTION: INVASION OF PRIVACY AGAINST**
24 **THE AIRLINE DEFENDANTS: Forcing a disabled passenger to disclose**
25 **his/her medical conditions as a condition of transportation.**

26 1048. All plaintiffs have been asked to disclose their medical conditions to the
27 Airline Defendants as a condition of carriage.

28 1049. The Airline Defendants require disabled passengers seeking mask
29 exemptions to provide sensitive, intimate details of our medical conditions to airline

1 personnel, usually in writing and sometimes verbally in hearing range of other passengers
2 and workers at busy airport check-in counters and boarding gates.

3 1050. The Airline Defendants state they may share our medical information with all
4 sorts of other parties.

5 1051. The law protects people against many types of harms, including harm to
6 one's personal space and private life. Infringing on these interests is known as invasion of
7 privacy. Invasion of privacy has been divided into four distinct categories. Each category
8 covers a different aspect of the right to privacy and personal identity but they are all geared
9 towards protecting the right "to be left alone."

10 1052. The category at issue here is public disclosure of private facts. Airline
11 passengers do not have to disclose our private medical history to airline employees, who are
12 not medical professionals, just to be able to board a flight without obstructing our breathing.

13 1053. "May I ask an individual what his or her disability is? Only to determine if a
14 passenger is entitled to a particular seating accommodation... *Generally, you may not make*
15 *inquiries about an individual's disability or the nature or severity of the disability,*"
16 according to DOT. Ex. 149. (emphasis added).

17 1054. Medical information is confidential and private under Calif. Const. Art. I § 1:
18 "All people are by nature free and independent and have inalienable rights. Among these are
19 enjoying and defending life and liberty, acquiring, possessing, and protecting property, and
20 pursuing and obtaining safety, happiness, and privacy."

21
22 **JJ. THIRTY-SIXTH CAUSE OF ACTION: DECEPTIVE & MISLEADING**
23 **TRADE PRACTICES AGAINST THE AIRLINE DEFENDANTS.**

24 1055. All plaintiffs have been subjected to deceptive and misleading trade practices
25 by the Airline Defendants, who are deceiving their customers regarding masks, misleading
26 us into believing face coverings are good for our health when the reality is they cause more
27 than 60 documented harms and create havoc in the sky due to oxygen deprivation.

28 1056. "Intent is not an element of either unfairness or deception." 85 Fed. Reg.
29 78,707 (Dec. 7, 2020); Ex. 160. However, it's clear the Airline Defendants had an intent to

1 deceive passengers that face masks are effective in reducing COVID-19 spread, are
2 authorized by FDA, etc. They clearly mislead customers that masks may be forced on
3 passengers without our consent in violation of the FDCA.

4 1057. DOT defines an unfair trade practice by airlines as “demonstrating that the
5 harm to consumers is (1) substantial; (2) not reasonably avoidable; and (3) not outweighed
6 by offsetting benefits to consumers or competition.” *Id.*

7 1058. DOT defines a practice as “deceptive” by showing that: “(1) The practice
8 actually misleads or is likely to mislead consumers; (2) who are acting reasonably under the
9 circumstances; (3) with respect to a material matter.” *Id.*

10 1059. The airlines have a statutory duty not to deceive and mislead their customers.
11 49 USC § 41712. *See also* 14 CFR § 399.79.

12
13 **KK. THIRTY-SEVENTH CAUSE OF ACTION: FRAUDULENT**
14 **MISREPRESENTATION AGAINST THE AIRLINE DEFENDANTS.**

15 1060. All plaintiffs have been defrauded by the Airline Defendants.

16 1061. The Airline Defendants provide FDA unauthorized or EUA face masks
17 without disclosing that: 1) the masks (if authorized at all) are only designated for emergency
18 use; 2) that there are “significant known and potential benefits and risks of such use” (or
19 “the extent to which such benefits and risks are unknown”); or 3) flyers have the “option to
20 accept or refuse administration of the product.”

21 1062. The Airline Defendants have falsely represented on their websites, in e-mails
22 to passengers, signage at airports, etc. that “federal law” requires airline passengers wear
23 face masks. But Congress has never enacted such a law. There is no statute in the U.S. Code
24 requiring airline passengers to cover our faces. This is a fraudulent misrepresentation of the
25 law.

26 1063. The Airline Defendants also haven’t told their passengers of the dozens of
27 health risks of covering our sources of oxygen or that the scientific consensus is that masks
28 are totally worthless in reducing COVID-19 spread. [https:// bit.ly/masksarebad](https://bit.ly/masksarebad).

1 1064. Failing to disclose this information pursuant to the FDCA and the Airline
2 Defendants’ other legal obligations is a fraudulent misrepresentation.

3 1065. This tort consists of: 1) There was a material representation made that was
4 false; 2) The person who made the representation knew the representation was false or made
5 it recklessly as a positive assertion without any knowledge of its truth; 3) The person who
6 made the representation intended to induce another to act upon the representation; and 4)
7 The person to whom the material representation was made actually and justifiably relied on
8 the representation, which caused the injury.

9
10 **LL. THIRTY-EIGHTH CAUSE OF ACTION: INFRINGEMENT ON THE**
11 **CONSTITUTIONAL RIGHT TO TRAVEL AGAINST DEFENDANTS**
12 **AMERICAN, JETBLUE, SOUTHWEST, AND UNITED.**

13 1066. All plaintiffs have been restricted from flying interstate by the Airline
14 Defendants. Plaintiffs Uri and Yvonne Marcus have also been restricted from flying
15 internationally to/from Israel and the United States – the only form of transportation
16 available between their two nations of citizenship.

17 1067. The Constitution protects Americans against infringement on our freedom of
18 movement by government actors and common carriers.

19 1068. The Airline Defendants deprive disabled Americans and those who refuse to
20 wear masks for health reasons of the ability to fly.

21 1069. By banning travelers who can’t wear face masks, the Airline Defendants
22 deprive Americans of our constitutional right to freedom of movement.

23 1070. “As a fundamental right inherent in American citizenship and the nature of
24 the federal union, the right to travel in the United States is basic to American liberty. The
25 right precedes the creation of the United States and appears in the Articles of Confederation.
26 The U.S. Constitution and Supreme Court recognize and protect the right to interstate travel.
27 The travel right entails privacy and free domestic movement without governmental
28 abridgement.” Ex. 530.

1 1071. “The original conception of the right to travel embodies it as a broadly based
2 freedom that encompasses all modes of transport. Its explicit articulation in the Articles of
3 Confederation became implicit in the Privileges and Immunities Clause of the Constitution.
4 ... abridgement of any mode of transportation undermines the constitutionally enshrined
5 travel right.” *Id.*

6 1072. “Travel embodies a broadly based personal, political, and economic right that
7 encompasses all modes of transportation and movement. ... The right to travel, inherent in
8 intercourse among the states, is one of the implied and unenumerated rights reserved to the
9 People.” *Id.*

10 1073. The Supreme Court has held that private companies can also be held liable
11 for interfering with a person’s constitutional right to travel: “[T]he decision reaffirmed the
12 right to travel, as ‘a right broadly assertable against private interference as well as
13 governmental action.’ In short, the travel right protects against both restrictive public and
14 private actions, and it empowers those availing themselves of the right’s protections.” *Id.*;
15 *see Shapiro v. Thompson*, 394 U.S. 618 (1969).

16 1074. *United States v. Guest*, 383 U.S. 745 (1966), affirmed the “constitutional
17 right to travel from one State to another, and necessarily to use the highways and other
18 instrumentalities of interstate commerce [such as commercial airlines] in doing so, occupies
19 a position fundamental to the concept of our Federal Union. It is a right that has been firmly
20 established and repeatedly recognized.” *Id.*

21 1075. Congress affirmed the constitutional right to fly for disabled Americans by
22 enshrining it into statute. 49 USC § 40103.

23 1076. “[T]he right to travel is not tied to any specific mode of transportation.
24 Consequently, it encompasses all means of travel. ... From the perspective of individual
25 rights, the ability to move freely in the United States is a personal liberty, inherent by birth
26 and U.S. citizenship. The travel right is essential to guaranteeing equality of opportunities,
27 and the pursuit of happiness for citizens of the federal union. Freedom of personal
28 movement is a natural liberty that citizens exercise among fundamental rights and
29 privileges.” Ex. 530.

1 1077. “The travel right also includes the right to movement on common carriers. ‘A
2 carrier becomes a common carrier when it ‘holds itself out’ to the public, or to a segment of
3 the public, as willing to furnish transportation within the limits of its facilities to any person
4 who wants it.’ That means that any individual or corporation becomes a common carrier by
5 promoting to the public the ability and willingness to provide transportation service,
6 including air travel. Air transport providers operating in, to, or from the United States act
7 under common carrier rules. ‘An air carrier ... may not subject a person in air transportation
8 to discrimination...’ If there are available places, the charge is paid, and there are no
9 reasonable grounds to refuse the service to an individual, the air carrier is legally bound to
10 provide the transportation of passengers or goods. Denying someone passage violates
11 federal law.” *Id.*

12 1078. “The air travel network is a part of the public infrastructure open for wide use
13 and enjoyment. The national government advances these goals by ensuring by law that all
14 citizens have adequate access to the air system. ... Therefore, under not only general U.S.
15 sovereignty but also the public right of transit, freedom of travel includes air travel.” *Id.*

16 1079. “Commercial air service is the only mode of passenger common carrier
17 transportation available between many U.S. locations, especially American states and
18 territories outside the continental union.” *Id.*

19 1080. “The impact on a citizen who cannot use a commercial aircraft is profound.
20 He is restricted in his practical ability to travel substantial distances within a short period of
21 time, and the inability to fly to a significant extent defines the geographical area in which he
22 may live his life. ... An inability to travel by air also restricts one’s ability to associate more
23 generally, and effectively limits educational, employment and professional opportunities.”
24 *Id.*; see *Mohamed v. Holder*, 2014 WL 243115 (E.D. Va. Jan. 22, 2014).

25 1081. “Traveling long distances within the contiguous United States relies on only
26 one mode of travel: commercial airlines. Therefore, restricting this single mode of travel, by
27 air, abridges the right to travel and the right to exercise political and personal liberties.” *Id.*

28 1082. The right to travel includes the right to move from state to state and abroad
29 without burdens on a person’s body such as obstructing his/her breathing: “An individual’s

1 liberty may be harmed by an act that causes or reasonably threatens a loss of physical
2 locomotion or *bodily control*.” *Id.* (emphasis added).

3
4 **MM. THIRTY-NINTH CAUSE OF ACTION: MEDICAL MALPRACTICE**
5 **AGAINST DEFENDANTS STAT-MD AND MEDAIRE.**

6 1083. All plaintiffs have been subjected to illegal medical consultations with
7 STAT-MD and/or MedAire.

8 1084. STAT-MD and MedAire, with no legal authority, reviews mask-exemption
9 demands submitted by its airline clients without ever talking to the passenger and/or his/her
10 physician.

11 1085. STAT-MD and MedAire make arbitrary determinations denying mask
12 exemptions without providing any rationale for their decision-making.

13 1086. The Air Carrier Access Act does not allow STAT-MD and MedAire to
14 provide medical consultations to airlines for disability accommodation requests except in
15 very limited circumstances. Those situations do not include mask waivers.

16 1087. STAT-MD and MedAire are therefore guilty of medical malpractice.

17
18 **VI. PRAYER FOR RELIEF**

19
20 **WHEREFORE**, plaintiffs pray for relief as follows:

21 1. Declare Defendants CDC and HHS’ Feb. 1, 2021, Federal Transportation Mask
22 Mandate order “Requirement for Persons to Wear Masks While on Conveyances & at
23 Transportation Hubs” (86 Fed. Reg. 8,025 (Feb. 3, 2021)) contrary to statute and
24 unconstitutional, vacate the order, and permanently enjoin its enforcement worldwide.

25 2. Issue a permanent injunction directing Defendants CDC and HHS to
26 immediately order all federal agencies, transportation hubs, and transportation operators to
27 remove all signs informing passengers of the requirement to wear a mask from all airports,
28 transportation hubs, conveyances, and other locations worldwide as well as to remove from
29 their websites and publications any references to the Federal Transportation Mask Mandate.

1 3. Issue a permanent injunction that Defendants CDC and HHS shall not issue any
2 other orders requiring any person wear a face mask unless such specific authority is enacted
3 into law by Congress.

4 4. Declare Defendants CDC and HHS' International Traveler Testing
5 Requirement order effective Dec. 6, 2021, "Requirements for Negative Pre-Departure
6 COVID-19 Test Result or Documentation of Recovery from COVID-19 for All Airline or
7 Other Aircraft Passengers Arriving into the United States from Any Foreign Country" (86
8 Fed. Reg. 69,256 (Dec. 7, 2021)) contrary to statute and unconstitutional, vacate the order,
9 and permanently enjoin its enforcement worldwide.

10 5. Issue a permanent injunction directing Defendants CDC and HHS to
11 immediately order all federal agencies and all airlines flying into the United States to remove
12 all signs informing passengers of the requirement to obtain a negative COVID-19 test before
13 flying to the United States from all airports and other locations worldwide as well as to
14 remove from their websites and publications any references to the International Traveler
15 Testing Requirement.

16 6. Issue a permanent injunction that Defendants CDC and HHS shall not issue any
17 other orders requiring any person to present a negative COVID-19 or other virus test to
18 board an airplane unless such authority is enacted into law by Congress.

19 7. Declare that Defendants TSA and Julie Carrigan's actions rescinding Mr.
20 Marcus' Pre-Check eligibility violates his First Amendment rights and 49 USC § 114(r).

21 8. Issue a permanent injunction ordering TSA to reinstate Mr. Marcus' Pre-Check
22 eligibility and never suspend or terminate it again for engaging in constitutionally protected
23 activities.

24 9. Declare that the Airline Defendants, the yet-to-be-named Individual
25 Defendants, STAT-MD, and MedAire conspired to interfere with the civil rights of the
26 disabled by refusing to transport the disabled solely because we can't safely wear face masks
27 and rescinding Mr. Marcus' Pre-Check eligibility for protesting the FTMM.

1 10. Declare that Defendant Julie Carrigan and the yet-to-be-named Individual
2 Defendants neglected to prevent interference with the civil rights of the disabled by refusing
3 to stop policies that decline to transport us solely because we can't safely wear face masks.

4 11. Declare that the Airline Defendants' mask policies violate the Rehabilitation
5 Act by discriminating against the disabled and issue a permanent injunction prohibiting them
6 from engaging in such future conduct.

7 12. Declare that DOT has failed its statutory obligation to enforce the Air Carrier
8 Access Act, thereby creating a private right of action in this Court for the disabled to enforce
9 the anti-discrimination law as Congress intended, and/or declare that the ACAA may be
10 enforced via the Rehabilitation Act against any airline that receives federal financial
11 assistance, and/or declare that the ACAA may be enforced via the California Unruh Civil
12 Rights Act.

13 13. Declare that the Airline Defendants' policies requiring passengers not known to
14 have a communicable disease to wear a face covering violate the Air Carrier Access Act and
15 issue a permanent injunction prohibiting them from engaging in such future conduct.

16 14. Declare that the Airline Defendants' policies of refusing to provide mask
17 exemptions to the disabled violate the Rehabilitation Act and Air Carrier Access Act and
18 issue a permanent injunction prohibiting them from engaging in such future conduct.

19 15. Declare that the Airline Defendants' policies refusing transportation solely on
20 the basis of a passenger's disability violate the Rehabilitation Act and Air Carrier Access Act
21 and issue a permanent injunction prohibiting them from engaging in such future conduct.

22 16. Declare that the Airline Defendants' policies requiring passengers seeking
23 mask exemptions to do so in advance violate the Rehabilitation Act and Air Carrier Access
24 Act and issue a permanent injunction prohibiting them from engaging in such future conduct.

25 17. Declare that the Airline Defendants' policies requiring a medical certificate
26 from disabled passengers who ask for a mask exemption violate the Rehabilitation Act and
27 Air Carrier Access Act and issue a permanent injunction prohibiting them from engaging in
28 such future conduct.

29

1 18. Declare that the Airline Defendants’ policies requiring disabled passengers
2 needing a mask exemption to undergo a medical screening with STAT-MD, MedAire, or any
3 other medical vendor violates the Rehabilitation Act and Air Carrier Access Act and issue a
4 permanent injunction prohibiting them from engaging in such future conduct.

5 19. Declare that the Airline Defendants’ policies requiring disabled passengers
6 who seek a mask exemption to submit a negative COVID-19 test for each flight when
7 nondisabled customers aren’t subject to this same requirement violate the Rehabilitation Act
8 and Air Carrier Access Act and issue a permanent injunction prohibiting them from engaging
9 in such future conduct.

10 20. Declare that all Airline Defendants that maintain policies of banning mask-
11 exempt passengers from flying if a plane is more than a certain percentage full violate the
12 Rehabilitation Act and Air Carrier Access Act and issue a permanent injunction prohibiting
13 them from engaging in such future conduct.

14 21. Declare that the Airline Defendants’ policies of changing the seat assignment
15 of a mask-exempt passenger without his/her consent violate the Rehabilitation Act and Air
16 Carrier Access Act and issue a permanent injunction prohibiting them from engaging in such
17 future conduct.

18 22. Declare that the Airline Defendants’ policies limiting the number of disabled
19 passengers on a flight violate the Rehabilitation Act and Air Carrier Access Act and issue a
20 permanent injunction prohibiting them from engaging in such future conduct.

21 23. Declare that the Airline Defendants’ policies forcing passengers to wear masks
22 when they never agreed to do so in the contract of carriage constitute a breach of contract
23 and/or the contracts contain provisions that are unenforceable because they violate federal
24 law and regulations.

25 24. Declare that the Airline Defendants’ mask policies constitute recklessness by
26 creating chaos in the skies, imperiling aviation safety; and ignoring the massive evidence
27 showing masks have proven totally ineffective at reducing COVID-19 spread but harm
28 human health, hurting the wellbeing of all passengers.

29

1 25. Declare that the Airline Defendants’ mask policies constitute practicing
2 medicine without a license, including violating federal law prohibiting the mandatory use of
3 any medical device unauthorized or approved under an Emergency Use Authorization by the
4 Food & Drug Administration, and issue a permanent injunction prohibiting them from
5 engaging in such future conduct.

6 26. Declare that the Airline Defendants’ mask policies constitute an invasion of
7 privacy by forcing disabled passengers to disclose our medical conditions as a condition of
8 transportation and issue a permanent injunction prohibiting them from engaging in such
9 future conduct.

10 27. Declare that the Airline Defendants’ mask policies constitute deceptive and
11 misleading trade practices and issue a permanent injunction prohibiting them from engaging
12 in such future conduct.

13 28. Declare that the Airline Defendants’ mask policies constitute fraudulent
14 misrepresentation and issue a permanent injunction prohibiting them from engaging in such
15 future conduct.

16 29. Declare that the Airline Defendants’ mask policies infringe on the
17 constitutional right to travel and issue a permanent injunction prohibiting them from
18 engaging in such future conduct.

19 30. Issue a permanent injunction prohibiting all Airline Defendants from creating
20 and enforcing any future rules that require any passenger to cover his/her face unless the
21 person is known to be infected with a communicable disease as alerted by the federal
22 government’s Do Not Board and Lookout systems or other public-health authorities.

23 31. Declare that Defendants STAT-MD and MedAire’s performance of medical
24 consultations for airlines constitutes medical malpractice and issue a permanent injunction
25 barring them from consulting with any airline or other transportation provider regarding any
26 issue related to passenger use of face masks.

27 32. For all causes of action in which monetary damages are available, award
28 Plaintiff Uri Marcus compensatory and punitive damages against Defendant Julie Carrigan in
29

1 the amount of \$100,000 for rescinding his Pre-Check eligibility in violation of his First
2 Amendment rights.

3 33. For all causes of action in which monetary damages are available, award each
4 plaintiff compensatory and punitive damages against all Airline Defendants in the amount of
5 \$100,000 per offense.

6 34. For Mr. and Mrs. Marcus, there are two instances where Defendant Alaska
7 discriminated against them. Their demand against Alaska is \$200,000.

8 35. For Mr. and Mrs. Gordon there are two instances where Defendant Allegiant
9 discriminated against them. Their demand against Allegiant is \$200,000.

10 36. For Mr. and Mrs. Marcus, there are four instances where Defendant American
11 discriminated against them. Their demand against American is \$400,000.

12 37. For Mr. and Mrs. Gordon there are 10 instances where Defendant American
13 discriminated against them. Their demand against American is \$1,000,000.

14 38. For Ms. Russo there are two instances where Defendant American
15 discriminated against her. Her demand against American is \$200,000.

16 39. For Mr. and Mrs. Marcus, there are seven instances where Defendant Delta
17 discriminated against them. Their demand against Delta is \$700,000.

18 40. For Mr. and Mrs. Gordon there are four instances where Defendant Frontier
19 discriminated against them. Their demand against Frontier is \$400,000.

20 41. For Mr. and Mrs. Marcus, there are four instances where Defendant Hawaiian
21 discriminated against them. Their demand against Hawaiian is \$400,000.

22 42. For Mr. and Mrs. Marcus, there are 14 instances where Defendant Southwest
23 discriminated against them. Their demand against Southwest is \$1,400,000.

24 43. For Mr. and Mrs. Marcus, there are 13 instances where Defendant United
25 discriminated against them. Their demand against United is \$1,300,000.

26 44. For Ms. Russo there are six instances where Defendant United discriminated
27 against her. Her demand against United is \$600,000.

1 45. For all causes of action in which monetary damages are available, award
2 plaintiffs compensatory and punitive damages against each yet-to-be named Individual
3 Defendant in the amount of \$10,000 per offense.

4 46. For all causes of action in which monetary damages are available, award
5 plaintiffs compensatory and punitive damages against STAT-MD and MedAire in the
6 amount of \$125,000 each per plaintiff for a total of \$625,000 each per plaintiff.

7 47. Award all plaintiffs all costs and fees incurred during the prosecution of this
8 lawsuit from all defendants pursuant to 28 USC § 2412, 29 USC § 794a, 42 USC § 1988,
9 Calif. Civil Code §§ 52(a), 54.3(a), & 55, and/or any other applicable statute or authority.

10 48. Award all plaintiffs attorney's fees (if they later hire an attorney to represent
11 them in this lawsuit) incurred during the prosecution of this lawsuit from any defendant
12 found to have acted outside its legal and/or constitutional authority pursuant to 28 USC §
13 2412, 29 USC § 794a, 42 USC § 1988, Calif. Civil Code §§ 52(a), 54.3(a), & 55, and/or any
14 other applicable statute or authority; or, if they continue representing themselves, award
15 them in lieu of attorney's fees reimbursement at the rate of \$50 per hour for the time they
16 have spent litigating this matter.

17 49. Grant such other and further relief as the Court may deem just and proper under
18 the circumstances.

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1 **Certification:** Pursuant to Fed.R.Civ.P. 11, by signing below, I certify to the best of my
2 knowledge, information, and belief that this Complaint: (1) is not being presented for an
3 improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the
4 cost of litigation; (2) is supported by existing law or by a non-frivolous argument for
5 extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary
6 support or, if specifically so identified, will likely have evidentiary support after a
7 reasonable opportunity for further investigation or discovery; and (4) otherwise complies
8 with the requirements of Rule 11.

9 Respectfully submitted this 8th day of April 2022.

10 *Uri Marcus*

11 Uri Marcus, lead plaintiff
12 P.O. Box 126
13 Ojai, CA 93024
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15 E-Mail: uri@ntcf.org

16 *Yvonne Marcus*

17 Yvonne Marcus, plaintiff
18 P.O. Box 126
19 Ojai, CA 93024
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22 *Avrohom Gordon*

23 Avrohom Gordon, plaintiff
24 2251 State Route 222
25 New Richmond, OH 45157
26 Telephone: 513-734-1770
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28 *Devorah Gordon*

29 Devorah Gordon, plaintiff
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Cindy Russo

Cindy Russo, plaintiff
22485 Breakwater Way
Santa Clarita, CA 91350
Telephone: 908-797-8066
cjrz123@gmail.com

1 **CERTIFICATE OF SERVICE**

2 In addition to formal service of process, I hereby certify that on April 8th, 2022, I e-mailed
3 courtesy copies of this Complaint to the U.S. Department of Justice attorneys who are
4 defending CDC and HHS in other lawsuits over the FTMM and ITTR as well as attorneys
5 for the Airline Defendants and STAT-MD.

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Uri Marcus
Uri Marcus, lead plaintiff