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NORTHERN DISTRICT OF CALIFORNIA

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10 UNITED STATES DISTRICT COURT

EMC

11 NORTHERN DISTRICT OF CALIFORNIA

12 NATIONAL FEDERATION OF THE
13 BLIND, on behalf of its members and itself;
and MICHAEL MAY, MICHAEL HINGSON,
14 and CHRISTINA THOMAS, on behalf of
15 themselves and all others similarly situated,

CV 10 Case No. 4816

CLASS ACTION

COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF AND
DAMAGES FOR VIOLATIONS OF THE
UNRUH CIVIL RIGHTS ACT, CAL. CIV.
CODE § 51, AND THE CALIFORNIA
DISABLED PERSONS ACT, CAL. CIV.
CODE § 54

16 Plaintiffs,

17 v.

18 UNITED AIRLINES, INC.,

19 Defendant.

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INTRODUCTION

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2 Plaintiffs complain of Defendant and allege herein as follows:

3 1. This class action seeks to put an end to systemic civil rights violations committed
4 by defendant United Airlines, Inc. (“United”) in California against the blind. By deploying
5 automated ticketing kiosks (“Kiosks”) in California airports that are inaccessible to blind
6 customers, United is denying blind persons the use of Kiosks it offers non-disabled customers.
7 United thus excludes the blind from full and equal access to mainstream technology used by
8 countless airline passengers each day.

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10 2. This case arises under the Unruh Civil Rights Act, Cal. Civ. Code §§ 51 et seq.;
11 the Disabled Persons Act, Cal. Civ. Code §§ 54 et seq.; and the federal Declaratory Judgment
12 Act, 28 U.S.C. § 2201 et seq.

JURISDICTION

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14 3. This Court has diversity jurisdiction in this action pursuant to 28 U.S.C. § 1332.

VENUE

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16 4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a). Defendant
17 United regularly conducts business in the state of California and maintains offices in the state of
18 California. Moreover, Defendant has been and is committing the acts that give rise to this action
19 in this District, has been violating the rights of consumers in this District, and has been and is
20 causing injury to the consumers in this District. A substantial part of the acts and omissions
21 giving rise to Plaintiffs’ claims has occurred in this District.

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23 5. Plaintiff Hingson and some members of the class reside in this District.

PARTIES

24
25 6. The National Federation of the Blind (“NFB”), the oldest and largest national
26 organization of blind persons, is a non-profit corporation duly organized under the laws of the
27 District of Columbia with its principal place of business in Baltimore, Maryland. It has affiliates
28

1 in all 50 states, Washington, D.C. and Puerto Rico. The vast majority of its approximately
2 50,000 members are blind persons who are recognized as a protected class under California and
3 federal laws. The NFB is widely recognized by the public, Congress, executive agencies of
4 government and the courts as a collective and representative voice on behalf of blind Americans
5 and their families. The purpose of the NFB is to promote the general welfare of the blind by (1)
6 assisting the blind in their efforts to integrate themselves into society on terms of equality and (2)
7 removing barriers and changing social attitudes, stereotypes and mistaken beliefs that sighted
8 and blind persons hold concerning the limitations created by blindness and that result in the
9 denial of opportunity to blind persons in virtually every sphere of life. The NFB and many of its
10 members have long been actively involved in promoting accessible technology for the blind, so
11 that blind persons can live and work independently in today's technology-dependent world.
12 NFB members reside throughout the United States, including California. Many NFB members
13 would use United's Kiosks in California if they were made independently accessible by the
14 blind. The NFB sues on behalf of its members, as well as in furtherance of its extensive efforts
15 and expenditure of resources in promoting two of its principal missions: independence of the
16 blind and equal access to technology for the blind. United's discriminatory use of inaccessible
17 Kiosks frustrates these missions of the NFB and results in the diversion of its resources to
18 address the discriminatory practices of United.

19 7. Plaintiff May is a citizen of California and a resident of Davis, California. Mr.
20 May is blind and is a member of a protected class under both the Disabled Persons Act and the
21 Unruh Civil Rights Act. Mr. May owns Sendero Group, a company that makes Global
22 Positioning System devices that are accessible to the blind. Mr. May flies into and out of
23 airports throughout California using United and has been unable to use the Kiosks independently
24 because they require sight to operate. Mr. May is faced with the dilemma of having to wait for a
25 United employee to assist him with the check-in process, or having to provide sensitive, private
26 information to a sighted stranger who can access the Kiosks for him. Both of these options are
27 undesirable.

1 8. Plaintiff Hingson is a citizen of California and a resident of Novato, California.
2 Mr. Hingson is blind and is a member of a protected class under both the Disabled Persons Act
3 and the Unruh Civil Rights Act. Mr. Hingson owns The Michael Hingson Group, Inc. which is a
4 motivational speaking and consulting organization and which also sells certain blindness-related
5 technologies throughout the United States. Mr. Hingson regularly flies United in and out of
6 several California airports and is unable to use the Kiosks independently because they require
7 sight to operate. Although all Mr. Hingson needs to do is check-in for a flight he has already
8 purchased, he is faced with the dilemma of having to wait up to an hour for a United employee in
9 the ticketing line to assist him with the check-in process, or having to provide sensitive, private
10 information to a sighted stranger who can access the Kiosks for him. Both of these options are
11 undesirable. Mr. Hingson normally opts to wait in the long line at the ticketing desk rather than
12 attempt to use the inaccessible Kiosks.

13 9. Plaintiff Thomas is a citizen of California and a resident of Los Angeles,
14 California. Ms. Thomas is blind and is a member of a protected class under both the Disabled
15 Persons Act and the Unruh Civil Rights Act. Ms. Thomas is a student at California State
16 University, Los Angeles, and is employed as a special education instructor with the Los Angeles
17 Unified School District. Ms. Thomas is also an accomplished athlete and a member of the U.S.
18 Paralympic Judo team. Ms. Thomas flies into and out of various California airports using United
19 and has been unable to use the Kiosks independently because they require sight to operate. Ms.
20 Thomas is forced either to wait for a United employee to assist her with the check-in process, or
21 to provide sensitive, private information to a sighted stranger who can access the Kiosks for her.
22 Both of these options are undesirable.

23 10. Plaintiffs May, Hingson, and Thomas are hereinafter referred to as the “individual
24 named Plaintiffs.”

25 11. Defendant United is an Illinois corporation with its principal place of business in
26 Chicago, Illinois. United is a public air carrier engaged in the business of providing air
27 transportation to the general public in California, including at San Francisco, Oakland, and San
28 Jose International Airports located in the District. United proclaims and publicizes that it is the

1 official airline of the U.S. Paralympic Team of which Plaintiff Thomas is a member. United
2 provides and encourages the use of Kiosks for customers to access information about flights,
3 check in for flights, print tickets and boarding passes, select seats, upgrade to its business or first
4 class cabins, check baggage, and perform other transactions relevant to their air travel plans.

5 12. This action is brought by the NFB on behalf of its members and itself. NFB has
6 approximately 50,000 members, hundreds of whom fly out of California airports. This action is
7 also brought by the individual named Plaintiffs on behalf of themselves and a class of all other
8 persons who are similarly situated, as set forth below.

9 13. Plaintiffs' Counsel signing this complaint are authorized to do so on behalf of
10 Plaintiff NFB and the individual named Plaintiffs.

11 CLASS ACTION ALLEGATIONS

12 14. The individual named Plaintiffs bring this case as a class action pursuant to Fed.
13 R. Civ. P. 23(a), (b)(2), and alternatively, (b)(3), on behalf of all legally blind individuals in the
14 United States who have flown on United from an airport located in the state of California and
15 have been unable to use United's Kiosks at those airports because of a visual disability,
16 hereinafter referred to as the "Kiosk Class".

17 15. The persons in this class are so numerous that joinder of all such persons is
18 impractical and the disposition of their claims in a class action is a benefit to the parties and to
19 the Court. According to U.S. Census Bureau data from 2002, there are approximately 1.8
20 million blind persons in the United States. On information and belief, many of these individuals
21 fly each year on United from airports located in the state of California.

22 16. There is a well-defined community of interest in the questions of law and fact
23 involved affecting the parties to be represented in that they all have been and/or are being denied
24 their civil rights to full and equal access to, and use and enjoyment of, United's products,
25 technology, and flights due to the lack of access to its Kiosks required by law for persons with
26 disabilities.

27 17. Common questions of law and fact predominate.
28

1 18. The claims of the individual named Plaintiffs are typical of those of the class and
2 the individual named Plaintiffs will fairly and adequately represent the interests of the class.

3 **FACTUAL ALLEGATIONS**

4 19. Kiosks are automated machines, most often located in airport terminals and
5 concourses, and are owned, operated, and controlled by airlines such as United. On information
6 and belief, United owns, operates, and controls more than Seventy (70) Kiosks in airports in the
7 District and more than One Hundred (100) Kiosks in airports throughout California.

8 20. United's sighted customers may use a United Kiosk to access information about
9 flights, check in for flights, print tickets and boarding passes, select seats, upgrade to its business
10 or first class cabins, check baggage, and perform other transactions relevant to their air travel
11 plans. On information and belief, United did or does offer bonus Mileage Plus air miles to
12 customers who used the Kiosks.

13 21. United's Kiosks are inaccessible to blind individuals because the machines use
14 exclusively visual computer screen prompts and touch-screen navigation to guide a customer
15 through a transaction without translating the prompts into a medium accessible to the blind, such
16 as audio output. Accordingly, vision is required to successfully use touch-screen technology in
17 United's Kiosks.

18 22. United relies on its Kiosks to perform the administrative tasks for nearly every air
19 travel customer at airports in the District and throughout California. On information and belief,
20 one of United's Kiosks performs an average of several hundred transactions per day. Because
21 one Kiosk costs an average of approximately eight thousand dollars (\$8,000.00) and has an
22 operational lifetime of several years, the labor savings provided to United by its fleet of Kiosks is
23 significant. Before the adoption of Kiosks, United was required to employ ticket agents to
24 perform every function required of customers. On information and belief, now, one United
25 ticket agent can manage between five and seven Kiosks, yielding significant operating savings
26 for United.

27 23. Technology exists for United's Kiosks to be accessible to the blind, including but
28 not limited to an audio interface, a tactile keyboard, and/or interactive screen reader technology

1 for use with touch screens. Companies other than United have incorporated such technology to
2 make their touch-screen kiosks and related products accessible to the blind.

3 24. On information and belief, United is and has been long aware of the access
4 barriers that prevent blind consumers from accessing United's Kiosks.

5 25. On information and belief, United is and has been long aware of means by which
6 its Kiosks could be made accessible and/or accessible Kiosk models commercially available for
7 purchase. Nevertheless, United has refused to make its Kiosks accessible or to purchase
8 accessible Kiosks.

9 26. California Civil Code § 54.9 requires that manufacturers of touch-screen devices
10 such as Kiosks offer for availability devices that are accessible to blind individuals.

11 27. On information and belief, United and/or its agents sought to restrict the scope of
12 California Civil Code § 54.9 to prevent the law from imposing on United and other airlines an
13 additional legal obligation to make its Kiosks accessible to the blind.

14 28. On April 30, 2010, Plaintiffs' counsel notified United of the unlawful
15 accessibility barriers to the use of its Kiosks in California airports and urged that United explore
16 with the NFB a cooperative resolution of the barriers. United responded via facsimile on May
17 14, 2010, the parties held conference calls on May 20, June 9 and August 6, 2010, and
18 exchanged letter correspondence. During these negotiations, United refused to commit firmly to
19 comply with its obligations under current law to make its Kiosks accessible. United reiterated
20 that position in an October 12, 2010 email to Plaintiffs' counsel and stated that that it "cannot
21 give [Plaintiffs] a timeline, nor enter into any Structured Negotiations Agreement."

22 **FIRST CAUSE OF ACTION**

23 **(Violation of California Civil Code §§ 51, et seq. on behalf of the NFB, the Individual**
24 **Named Plaintiffs, and the Kiosk Class)**

25 29. The allegations contained in the previous paragraphs are incorporated by
26 reference.

27 30. The Unruh Civil Rights Act, California Civil Code §§ 51 *et seq.*, guarantees equal
28 access for people with disabilities to the accommodations, advantages, facilities, privileges and

1 services of all business establishments of any kind whatsoever. United is systematically
2 violating the Unruh Civil Rights Act.

3 31. Various members of the NFB who have experienced United's inaccessible
4 Kiosks, as well as the individual named Plaintiffs and the Kiosk Class, are legally blind and are
5 recognized as people with disabilities under California Government Code § 12926 and California
6 Civil Code § 51.

7 32. United is a business establishment under California Civil Code § 51. United
8 generates over \$16 billion dollars in revenue from the sale of airfare and other accommodations.
9 On information and belief, multiple millions of dollars of United's revenue is generated in
10 California, if not in the District alone.

11 33. Kiosks are an accommodation or facility provided by United which are
12 inaccessible to patrons who are blind. This inaccessibility denies blind patrons full and equal
13 access to the accommodations, advantages, facilities, privileges, and services that United makes
14 available to the non-disabled public. United is violating the Unruh Civil Rights Act, in that
15 United is denying blind customers the accommodations, advantages, facilities, privileges, and
16 services provided by Kiosks. These violations are ongoing.

17 34. United's actions constitute intentional discrimination on the basis of a disability in
18 violation of the Unruh Civil Rights Act, in that: United has offered Kiosks that are inaccessible
19 to members of the NFB, to the individual named Plaintiffs, and to the Kiosk Class and has failed
20 to take actions to correct access barriers even after being notified of the discrimination that such
21 barriers cause.

22 35. As a result of United's wrongful conduct, the NFB, the individual named
23 Plaintiffs, and the Kiosk Class are entitled to injunctive relief pursuant to California Civil Code §
24 52(c) requiring Defendant to remedy the discrimination.

25 36. In addition, as a result of United's wrongful conduct, the individual named
26 Plaintiffs and the Kiosk Class are entitled to statutory minimum damages pursuant to California
27 Civil Code § 52(a) for each and every offense.

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F. Such other and further relief as the Court deems just and proper.

Dated: October 25, 2010



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