

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

CENTER FOR INDEPENDENCE OF THE
DISABLED, NEW YORK, a nonprofit
organization, BROOKLYN CENTER FOR
INDEPENDENCE OF THE DISABLED, a
nonprofit organization, BRONX
INDEPENDENT LIVING SERVICES, a
nonprofit organization, HARLEM
INDEPENDENT LIVING CENTER, a nonprofit
organization, DISABLED IN ACTION OF
METROPOLITAN NEW YORK, a nonprofit
organization, NEW YORK STATEWIDE
SENIOR ACTION COUNCIL, a nonprofit
organization, SASHA BLAIR-GOLDENSOHN,
an individual, and DUSTIN JONES, an
individual, on behalf of themselves and all others
similarly situated,

Plaintiffs,

-against-

METROPOLITAN TRANSPORTATION
AUTHORITY, a public benefit corporation,
VERONIQUE HAKIM, in her official capacity as
interim executive director of the Metropolitan
Transportation Authority, NEW YORK CITY
TRANSIT AUTHORITY, a public benefit
corporation, and DARRYL C. IRICK, in his
official capacity as acting president of the New
York City Transit Authority,

Defendants.

Case No. 1:17-cv-2990-GBD

**PLAINTIFFS' RESPONSE TO
DEFENDANTS' LOCAL RULE 56.1
STATEMENT AND STATEMENT OF
ADDITIONAL MATERIAL FACTS**

Pursuant to Rule 56.1(b) of the Local Civil Rules of the United States District Court for the Southern District of New York, Plaintiffs submit the following responses to Defendants' Statement of Material Undisputed Facts Pursuant to Local Rule 56.1, ECF No. 258, and statement of additional material facts.

I. Responses to Defendants' Rule 56.1 Statement of Facts

New York City's Transportation System

1. The New York City Transit Authority operates the largest public transportation agency in North America, and one of the largest in the world. The system operates 24 hours per day, 7 days per week. <https://new.mta.info/agency/new-york-city-transit>; <https://new.mta.info/guides/riding-the-subway>.

Response: Undisputed.

2. The subway network covers 693 miles of track, served by 473 stations. <https://new.mta.info/guides/riding-the-subway>.

Response: Partially disputed. The website cited does not support the statement and instead states that there are 493 stations, not 473, in the subway system. Rachel Cohen, Deputy Chief Accessibility Officer for the MTA, in turn, testified that there are 472 stations in the New York City subway system. Ex. 1 to Declaration of Chloe Holzman (“Holzman Decl.”), Transcript of Rachel Cohen May 2022 Deposition (“Cohen May 2022 Dep.”) at 22:2–:6. The MTA’s other website, in turn, lists 472 stations and 665 miles of track. <https://new.mta.info/agency/new-york-city-transit>.

3. 114 of those stations are ADA accessible, and another 45 provide accessible transfer points. <https://new.mta.info/accessibility/stations>.

Response: Partially disputed, as the website cited lists 113 “ADA-accessible” stations. Regardless of the number, Plaintiffs clarify that not all of the stations listed as ADA accessible on this website are accessible for all subway lines or platforms available at those stations. <https://new.mta.info/accessibility/stations> (specifying that numerous “ADA-accessible stations” have train lines or platforms that are “not accessible”). For

example, Canal St. is listed as an “ADA-accessible station,” but the website clarifies that the J, N, Q, R, W, and Z train platform(s) at the station are not accessible. *Id.* Similarly, the downtown platform of the 86 St. station is not accessible, despite the station being designated an “ADA-accessible station.”

Plaintiffs also clarify that some neighborhoods have far fewer ADA-accessible stations than others. For example, the New York City Council has reported that just over 25% of subway stations are fully accessible, with even lower percentages in low-income communities. Ex. 2 to Holzman Decl., Report by New York City Council Majority Leader Keith Powers et al., (“City Council Rep.”) at 3. In addition, the distance between stations can exceed 30 blocks and several miles on some subway lines.

<https://new.mta.info/map/5256> (maps showing that, of the 122 New York City neighborhoods served by the subway system, 47 do not have an accessible subway stop). For example, some subway lines can feature as many as 18 inaccessible stops in a row. Cohen May 2022 Dep. at 26:12–:18, 29:13–30:24 (admitting to the fact that, on certain train lines, there are between five and 18 inaccessible stations in between accessible ones).

4. NYCT’s bus fleet is entirely accessible, and the bus network goes everywhere the subway goes and more. <https://new.mta.info/guides/riding-the-bus>; Exhibit 1 (Declaration of Rachel Cohen, dated April 27, 2022 (“Cohen Decl.”)) ¶¶ 11-12.

Response: Disputed. Plaintiffs dispute that the bus network can go “everywhere the subway goes and more,” because buses do not offer the same service or same routes as the subway, including for interborough travel. <https://new.mta.info/map/5256>; ECF 163-28, Reply Memorandum of Law in Further Support of Motion to Dismiss Defendants

(Index No.: 153765/2017) at 5 (Defendants arguing that New York state legislature “settled on an integrated system consisting of certain key accessible subway stations at important locations (for inter-borough transit) intermeshed with a system of accessible buses (primarily for intra-borough transit) and supplemented by paratransit for certain types of trips”); ECF 163-28, Reply Memorandum of Law in Further Support of Motion to Dismiss Defendants (Index No.: 153765/2017) at 5 (admitting that subways were intended for “inter-borough transit” while buses were intended “primarily for intra-borough transit”); Ex. 3 to Holzman Decl., Declaration of Arielle Rausin (“Rausin Decl.”) at ¶ 18 (class member declaring that buses “provide significantly fewer options for interborough travel”); Ex. 4 to Holzman Decl., Declaration of Jean Ryan (“Ryan Decl.”) at ¶ 20 (noting that the interborough bus line that she and other wheelchair users had used near her home was discontinued in 2010); *see also* Ryan Decl. at ¶ 21 (describing barriers she has experienced when boarding express buses). In addition, interborough routes are, by and large, served by express buses, which cost more and are not eligible for reduced fare rates during weekday rush hours.

<https://new.mta.info/fares/reduced-fare>; Cohen May 2022 Dep. 167:3–169:3.

Further, in practice, riding the NYCT’s buses is not “entirely accessible” for people with mobility disabilities. Cohen May 2022 Dep. at 171:8–174:5 (Deputy Chief Accessibility Officer for the MTA, admitting that the MTA receives complaints from customers regarding seating, shelters, snow removal, problems with curbing the bus or deploying ramps, problems with bus operators securing wheelchairs, and problems with buses bypassing customers with disabilities). Plaintiffs’ expert, Sylvia Morse, found that, in real world conditions, riders with mobility disabilities face myriad accessibility

barriers when attempting to ride the bus. Ex. 5 to Holzman Decl., Report by Sylvia Morse (“Morse Rep.”) at 6–13, 16–20. For example, Ms. Morse calculated that, between 2014 and 2019, the MTA received 24,589 complaints on issues in the bus system that were either directly or indirectly related to accessibility barriers and service denial for passengers with mobility disabilities. Morse Rep. at 6. Bus accessibility barriers faced by people with mobility disabilities include:

- buses that bypass wheelchair users, refuse to let customers with disabilities board, or abandon passengers at stops, Morse Rep. at 6 (finding that between 2014–2019, MTA received 1,164 complaints that buses “bypassed wheelchair” users, 27 complaints that bus drivers “did not let disabled customer board”; and 367 complaints that the MTA “failed to provide satisfactory service to persons with disabilities,” as well as 7,068 complaints that the bus “abandoned customer at station/stop”; 7,307 that the bus “closed door before customer could board”; 351 complaints that the customer was “unable to exit at station/stop” or faced “difficulty leaving/exiting”; and 164 complaints of “difficulty boarding/entering”);
- failures or refusals to deploy bus lifts or ramps successfully, Morse Rep. at 6 (finding that, between 2014–2019, MTA received 962 complaints that bus drivers refused to deploy lifts); 7–8 (concluding that service denial, including bus drivers’ refusal or inability to deploy bus lifts and ramps, as well as disrespectful behavior or bypassing riders with mobility disabilities, pose accessibility barriers for riders with mobility disabilities); Ex. 6 to Holzman Decl., Transcript of Sylvia Morse Deposition (“Morse Dep.”) at 60:7–:21, 80:7–:16 (discussing accessibility barrier of equipment breakdown, such as lifts malfunctioning); Ex. 7 to Holzman Decl., Declaration of

- Jennifer Bartlett (“Bartlett Decl.”) at ¶ 27 (class member declaring that it takes time for operators to lower ramps, and some are “reluctant to do so,” with one operator even refusing to do so); Ryan Decl. at ¶ 21 (class member declaring that express bus drivers “frequently do not know how to use bus lifts or, even if they do, are reluctant to put their knowledge into practice,” and she has experienced passengers on the express bus yelling at her to take AAR or a cab “because they thought the driver was taking too long to board me and my wheelchair” and that, at times, she could not board or exit express buses because the lift was broken and she had to have road crews or firefighters to take her off the bus); Ex. 8 to Holzman Decl., Transcript of Jean Ryan Deposition (“Ryan Dep.”) at 82:15–83:12 (class member declaring that waits for road crew to take her off the bus could be up to an hour);
- waiting for the bus in unsheltered conditions without cover, regardless of the weather, difficulties often prolonged due to bus delays, service unreliability, and long wait times, Morse Rep. at 11 (finding that only 22% of bus stops are sheltered); *id.* at 12 (concluding that “[w]eather-related conditions often pose particular problems for people with disabilities” waiting for the bus); Ex. 9 to Holzman Decl., NYC Comptroller Report: Bus Route Profiles 2017 at 15; Cohen May 2022 Dep. at 169:10–:21, 170:11–:20; Rausin Decl. at ¶ 19 (class member declaring that she has a “major problem” waiting for a bus outside because, due to her disability, she struggles with temperature regulation and “exposure to the cold can be detrimental to my health”);
 - accessibility barriers to navigating from the bus stop to the bus, including failures to maintain sidewalk infrastructure, illegal parking (such that bus drivers are unable to

- curb the bus and deploy the ramp), construction next to bus stops, and adverse weather, such as snow and ice, Morse Rep. at 6 (finding that, between 2014 to 2019, MTA received 1,212 complaints of “illegal parking” and 517 complaints of “snow/ice”), 9–11, 19; Morse Dep. at 30:18–31:22, 32:10–33:2; Ex. 10 to Holzman Decl., Letter from Manhattan Community Board Four at 2; NYC Streets Plan, 2021 at 63 (acknowledging currently inaccessible bus stops and barriers preventing the safe deployment of wheelchair ramps at stops); Ex. 11 to Holzman Decl., Existing Conditions Report: A Better Way Forward at 24; Bartlett Decl. at ¶¶ 24–26 (class member declaring that “buses do not always pull up to the curb to allow me to board easily with my walker”); Ex. 12 to Holzman Decl., Supplemental Declaration of Sasha Blair-Goldensohn (“Blair-Goldensohn Suppl. Decl.”) at ¶ 18 (class member declaring that accessing the bus is particularly difficult in inclement weather because “taking the bus requires exposure to the elements, unlike the subway,” and because wheeling in snow “ranges from difficult to impossible”); *id.* at ¶ 20 (class member declaring that he has “come close to tipping out of my chair while attempting to push over a snowbank in order to navigate to the bus ramp”);
- failures or inability to properly secure passengers with wheelchairs in bus securement areas, Morse Rep. at 6 (finding that, between 2014 and 2019, MTA received 241 complaints that the bus driver “failed to secure [the] wheelchair” or “departed before [the] mobility customer was secure”); Blair-Goldensohn Suppl. Decl. at ¶ 19 (class member declaring that he has been unable to ride the bus because securement areas were full); *see* Ex. 13 to Holzman Decl., Transcript of Sasha Blair-Goldensohn June 2022 Deposition (“Blair-Goldensohn June 2022 Dep.”) at 72:6–74:5; Rausin Decl. at

- ¶ 20 (class member declaring that “many bus drivers also don’t know how to properly secure my chair,” leaving her feeling unsafe); *see also* ECF 144-15, NYCT Guide to Accessible Transit on Buses and Subways at 18 (wheelchair users who take MTA buses cannot secure themselves on the bus independently); and
- crowding—a top concern for riders on buses, which can sometimes run at 100% or more capacity—which poses accessibility barriers to navigating through the bus or securing the wheelchair in the securement area, Morse Rep. at 6 (finding that, between 2014 and 2019, MTA received 4,699 complaints of “crowding”), 12; Ex. 14 to Holzman Decl., Existing Conditions Report: Brooklyn Bus Network Redesign at 80–81; Existing Conditions Report: A Better Way Forward at 124–125; Ex. 15 to Holzman Decl., NYC Transit Key Performance Metrics (July 2022) at 8; Ex. 16 to Holzman Decl., NYC Transit Key Performance Metrics (Sept. 2022) at 8; Rausin Decl. at ¶ 19 (class member declaring that the bus “gets very crowded” and she “hate[s] having to force others to move from their spots, especially the elderly and other people with disabilities (like those with canes), to allow me to board and occupy the area designated for wheelchairs”); Ryan Decl. at ¶ 21 (class member declaring that she’s experienced seats on express buses getting “stuck, making it extremely hard or impossible to park” in securement areas); *id.* at ¶ 23 (explaining that local bus has “significant capacity limitations that the subway does not face,” and, if two wheelchair users are already on a bus, she is unable to board and must wait for the next bus, “possibly for over an hour”); ECF 176, Declaration of Dustin Jones in Support of Plaintiffs’ Opposition to Defendants’ Motion for Summary Judgement and Plaintiffs’ Opposition to Defendants’ Motion to Preclude Plaintiffs’ Experts (“Jones

Sept. 2019 Decl.”) at ¶ 7 (“NYCT buses can only accommodate two passengers in wheelchairs, as opposed to the subway which can accommodate many wheelchairs. There have been times in which I was not able to board a bus because it already contained the maximum number of wheelchair passengers.”).

5. NYCT also offers Access-A-Ride (“AAR”), a paratransit service which provides demand-responsive trips to qualifying customers with disabilities. Exhibit 2 (Declaration of Diane McFarlane, dated April 27, 2022 (“McFarlane Decl.”)) ¶ 2.

Response: Disputed. The phrase “demand-responsive” does not accurately reflect the limited nature of the transportation services provided by AAR for people with mobility disabilities. For example, customers cannot make reservations more than two days or less than one day in advance of the AAR trip, Ex. 17 to Holzman Decl., Transcript of Diane McFarlane Deposition (“McFarlane Dep.”) at 26:10–:13, 117:11–118:2, 126:23–127:19; ECF 256-2, Declaration of Diane McFarlane (“McFarlane Decl.”) at ¶ 4; *see infra* ¶ 57; reservations for AAR cannot be made by telephone after 5pm, McFarlane Dep. at 115:19–116:2, 116:20–117:10, *see infra* ¶ 57; because of the advance-reservation requirement, AAR generally cannot be used for spontaneous trips, such as rerouting after encountering an elevator outage, McFarlane Dep. at 118:13–:19; *see also* Ex. 18 to Holzman Decl., Declaration of Bryanna Copeland (“Copeland Decl.”) at ¶ 20; Rausin Decl. at ¶ 17 (class member declaring that her need for spontaneous travel cannot be met by “a system [like AAR] that requires a minimum of one-day notice to go anywhere”); Ryan Decl. at ¶ 13 (class member declaring that AAR cannot be used for spontaneous trips like errands and instead requires her “to carefully plot out when I plan to leave, as well as return to, my neighborhood”); an AAR customer may be given a pickup time up

to an hour earlier or an hour later than requested, McFarlane Dep. at 142:24–144:9; Bartlett Decl. at ¶ 28 (class member declaring that, with AAR, “you have to account for a huge window of time for when the ride will actually show up”); Ex. 19 to Holzman Decl., Deposition of Jennifer Bartlett (“Bartlett Dep.”) at 38:22–39:17; Ryan Decl. at ¶ 14 (class member discussing “unwieldy pick-up and drop-off windows” that force her to “adopt a rigid schedule”), AAR drivers can arrive up to 30 minutes after the scheduled pick up time and still be considered “on time” by NYCT, McFarlane Dep. at 145:18–146:12; 148:22–149:9; Ex. 20 to Holzman Decl., Plaintiffs’ Exhibit 2 to McFarlane Dep., Guide to Access-A-Ride at 29; *see also* <http://aardashboard.mta.info/> (“on-time performance” website subpage measuring “on-time” AAR pick-ups in 15- and 30-minute windows), and AAR drivers, in turn, must wait for customers for only five minutes after the scheduled pickup time before leaving, Ex. 20, Guide to Access-A-Ride at 30; *see also infra* ¶¶ 54–60.

On October 17, 2022, the U.S. Attorney’s Office for the Southern District of New York (USAO) reported the results of its investigation on AAR, initiated after it had “received numerous complaints.” Ex. 21 to Holzman Decl., Dep’t of Justice Letter of Findings at 1. The USAO concluded that AAR failed to provide “a level of service comparable to the level of service provided to individuals who use the fixed-route system,” namely the city’s subway and bus service, as required by the Americans with Disabilities Act and federal regulations. *Id.* at 3. The USAO reported that AAR operates in a manner “that significantly limit[s] the availability of service to ADA paratransit eligible persons”; that AAR suffers capacity constraints that limit the availability of the service to eligible people, including “substantial numbers” of untimely pickups, untimely

drop offs, trip denials, missing trips, and “excessively long trips”; and that AAR relies on a travel time standard that “allow[s] too much travel time for many trips” and that “fails to identify the true extent of excessive travel times.” *Id.* at 2–6; *see also* Ryan Decl. at ¶¶ 14, 16 (class member describing how, she has at times “been stranded for extended periods of time and [has] even had to stand outside in cold, rain or heat for 60 to 90 minutes because AAR was running late or had dropped [her] off too early,” and, conversely, has been forced to leave engagements early because AAR arrived well before the scheduled pick-up time and noting that “in pre-pandemic times, a route of under 25 miles could take four to five hours to traverse”); Ryan Dep. at 59:2–63:12 (recounting AAR trips that lasted between 4–6 hours, one way). The USAO found that a sample of AAR travel times were “excessive for 78% of trips originating in Brooklyn, 91% of trips originating in Manhattan, and 72% of trips originating in Queens.” Dep’t of Justice Letter of Findings at 5.

Operations of NYCT’s Elevator & Escalator Division

6. As of April 1, 2022, there were 294 NYCT-owned passenger elevators in the subway system. 272 of those elevators are on the ADA path of travel and consist of the following elevators: 247 hydraulic elevators, 25 traction elevators, and six machine-room-less (“MRL”) elevators. Exhibit 3 (Declaration of Robert Thompson, dated April 27, 2022 (“Thompson Decl.”)) ¶ 5.

Response: Partially disputed. The MTA has reported that there are 353 elevators in the system’s fleet, 297 of which are maintained by the MTA and 56 by third parties, but that 284 escalators serve the subway system, 234 of which are maintained by the MTA and 50 of which are managed by third parties. City Council Rep. at 3.

7. As of April 1, 2022, there were 57 additional elevators that are part of the NYCT elevator network that are owned and maintained by third parties (e.g., Amtrak, the Port Authority of NY & NJ, private real estate developers) located adjacent to or above NYCT subway stations pursuant to real estate contracts with the MTA. NYCT is not responsible for the maintenance or repair of these elevators. 49 out of the 57 third party elevators are on the ADA path of travel. *Id.* ¶ 6.

Response: Partially disputed. *See supra* ¶ 6. Plaintiffs also clarify that Janno Lieber, Chair and CEO of the MTA, admitted at the March 29, 2023 MTA Board Meeting that he has asked staff to look into whether the MTA could take over administration of the agreements for third parties to maintain elevators. MTA Board Meeting (March 2023), <https://new.mta.info/transparency/board-and-committee-meetings/march-2023> at 1:10:16–:47, 3:56:35–3:57:03. In addition, Mr. Lieber admitted that the public is “in many cases” being “shortchang[ed]” when third parties fail to keep elevators operational “as much as they should be.” *Id.* at 1:09:31–:39; *see also* 3:56:01–:39.

Regardless, when third parties are contracted to maintain and repair certain elevators, Defendants retain the ultimate responsibility to ensure that the subway system, a public service, program, or activity, is accessible for people with disabilities. 28 C.F.R. § 35.130(b)(1); *see also* 28 C.F.R. pt. 35, App’x B, § 35.102 (“[T]itle II applies to anything a public entity does All governmental activities of public entities are covered, even if they are carried out by contractors.”); *Henrietta D. v. Bloomberg*, 331 F.3d 261, 286 (2d Cir. 2003) (holding that New York State was liable to guarantee that those it delegates to carry out its programs comply with the Rehabilitation Act).

8. E&E now uses an Enterprise Asset Management (“EAM”) system to record elevator performance metrics, status reports, work orders, and for material management.¹ EAM records all elevator maintenance and repairs, including the date and time any defect is identified and corrected. EAM also includes a checklist for elevator inspections and scheduled maintenance. In the event a defect is identified, a work order is “opened” and a repair is scheduled through EAM, taking into account component part availability. Once a repair is made, EAM is updated and the work order is closed. *Id.* ¶ 8.

Response: Undisputed.

9. EAM also reports inventory stock information at the E&E warehouse in Queens and each maintenance facility spread across New York City. This information improves estimates for returning elevators to service and can decrease time needed to close a work order based on component availability. *Id.* ¶ 9.

Response: Partially disputed. Defendants rely solely on a conclusory statement by their declarant, Mr. Thompson, that the EAM is an improvement over the prior database, EERMS, that is belied by his deposition testimony. During his deposition, Mr. Thompson was unable to (a) estimate the amount of time it takes to handle a work order under the new system; (b) ascertain whether the old system had the capacity to track and generate information about spare parts like the new one does; or (c) state whether the new system runs or records pertinent data more efficiently relative to the old system. Ex. 22 to Holzman Decl., Transcript of Robert Thompson Deposition (“Thompson Dep.”) at 75:2–:10 (deponent unable to estimate the difference between the amount of time a work order

¹ As of April 1, 2022, EAM replaced the previous database used to track elevator and escalator status information, known as the Elevator and Escalator Repair and Maintenance System (“EERMS”). All of the historical data from EERMS has been migrated over to the EAM system.

takes to close under the new system in comparison to the old system); 74:15–:25 (deponent unaware of whether the old system, like the new system, had the capacity to report inventory stock information); 59:6–:11 (deponent unaware of whether the new system records data more efficiently than the old system); 60:15–:22 (deponent unaware of whether the new system runs data more efficiently than the old system. When asked if the EAM allows the NYCT to “record outages faster to customers relative to the older system,” Mr. Thompson admitted that he does “not know exactly which runs faster, ERMS or EAM.” *Id.* at 60:23–61:7. *See also infra* ¶ 22 (return-to-service times are set by default to 8 hours).

10. The E&E Control Desk, located at NYCT’s headquarters in downtown Brooklyn, is the operational center for E&E’s maintenance and repair program. It is operational 24 hours per day, 365 days per year. Among other functions, the Control Desk receives reports of suspected or confirmed elevator outages, investigates and verifies the outage reports, and coordinates the dispatch of maintenance crews as appropriate to make repairs. When the Control Desk confirms and records changes in elevator operability, the elevator status is simultaneously reported to the public. *Id.* ¶ 10.

Response: Partially disputed as to whether elevator status is “simultaneously reported” to the public when the Control Desk confirms and records changes in elevator operability. There is a delay between the moment in which the Control Desk receives report of an outage and the moment in which the notice about the outage is posted on MTA’s website. Thompson Dep. at 150:14–:21 151:9–:16, 151:25–152:8, 152:9–:17. *See also* Cohen May 2022 Dep. at 174:11–:23, 175:20–176:9, 176:23-177:12 (discussing possibility that there is “some lag time” between when elevator goes out of service and when info gets posted

to the MTA’s website, and standard projections that can be initially posted); Ex. 23 to Holzman Decl., Transcript of Antonio Suarez Deposition (“Suarez Dep.”) at 80:25–81:04 (describing lag time between when an elevator goes out-of-service and when a customer receives notification); ECF No. 144-53, Report by Defendants’ Expert Dennis W. Olson, CEI at 17–18 (noting that “most outages are verified and posted to the MTA website within 45 minutes of receipt of notification of an outage.”).

11. A suspected elevator outage can be reported into the Control Desk through several sources: All NYCT-owned and operated elevators on the ADA path of travel are outfitted with a technological monitoring product known as LiftNet. *Id.* ¶ 11.

Response: Undisputed.

12. LiftNet is a remote monitoring system that provides data to the Control Desk regarding the operational status of an elevator, as well as certain diagnostic messaging regarding the possible cause for an elevator disruption. LiftNet is connected to the Control Desk via internet, with 182 elevators operating on an upgraded high-speed “LiftNet Galaxy” ethernet connection. The remaining passenger elevators on LiftNet’s legacy server are scheduled to be upgraded to the Galaxy ethernet connection as part of the 2020–2024 five-year Capital Program. *Id.* ¶ 12.

Response: Undisputed. Plaintiffs note that a third-party consultant, AECOM, found in December 2018 that LiftNet was in need of overhaul, meaning the physical wires that take the signal from the station and send it to wherever it needs to go are old equipment and overdue for modernization. ECF No. 144-35, AECOM NYCT Vertical Transportation Assessment Elevator Report (Part 1) at D0002077122-23; *see also* ECF No. 144-36, AECOM NYCT Vertical Transportation Assessment Elevator Report (Part

2) at D0002077146-47 (noting problems with Lift-Net factory testing, quality assurance, and inconsistency in software upgrades across stations); Thompson Dep. at 114:23–116:10; 117:15–118:5; 119:2–120:2 (testifying that he is unaware of how frequently updates are made to LiftNet).

13. LiftNet can detect a mechanical or operational irregularity—including but not limited to suspected elevator outages—and automatically sends this information to the Control Desk for further investigation. Elevator status changes are also communicated to the Control Desk by subway station personnel including customer service agents and station cleaners who regularly monitor elevator status. NYCT Stations personnel utilize a web-based portal application to report observed elevator status conditions to the E&E Control Desk. Stations personnel and customers may also report elevator status to the Control Desk using in-station communication devices known as “Help Points.” Customers can also report outages to stations personnel or over the internet using MTA’s website and social media channels such as Facebook and Twitter.² *Id.* ¶ 13.

Response: Disputed. LiftNet does not reliably and consistently detect mechanical or operational irregularities. LiftNet cannot detect passenger entrapments, meaning Defendants depend on passersby to report ongoing entrapments. Thompson Dep. at 120:13–121:4. There are also times when LiftNet alerts the Control Desk of purported operational irregularities but, upon investigation, the Control Desk determines that the elevator is in fact operational. ECF No. 256-3, Declaration of Robert Thompson (“Thompson Decl.”) at ¶¶ 15, 17. LiftNet makes these errors due to failing or outdated

² Upon receipt, the MTA’s social media team forwards the customer reports to the Control Desk for investigation and a response. The Control Desk has dedicated personnel to immediately investigate and respond to the customer report.

components, or because the system needs a reboot. Thompson Dep. at 109:3–111:21; 113:23–114:22. Plaintiffs also dispute that customers can report outages using the Help Points because agents do not, in practice, always answer. *See* Rausin Decl. at ¶ 10 (class member declaring that, after encountering malfunctioning elevators, she always presses the help button to get assistance with rerouting or a status update, but no one ever answers). Finally, Defendants fail to provide admissible evidentiary support to support a statement that outages reported by customers are, in fact, investigated or that subway station personnel in fact monitor elevator status or report elevator status to the Control Desk.

14. Upon notification of an inoperable elevator, Control Desk personnel will conduct a preliminary investigation by initially assessing the status of the elevator, which includes attempting to remotely operate the elevator. *Id.* ¶ 14.

Response: Undisputed, but Plaintiffs note that Defendants’ declarant, Mr. Thompson, provided conflicting statements regarding the duration of this preliminary investigative step. *Compare* Thompson Decl. at ¶ 14 (“Typically this will take one or two minutes, if not fewer.”) *with* Thompson Dep. at 176:1–:23 (testifying that this phase alone can take longer than ten minutes). Defendants’ witnesses also admit that the MTA delays public notifications until this investigation has been concluded. Thompson Dep. at 169:2–:12; Cohen May 2022 Dep. at 174:11–:23 (discussing the possibility of “some lag time” between the moment the elevator goes out of service and when that information gets posted to Defendants’ website).

15. After a preliminary investigation, the Control Desk may determine that the elevator is in fact operable. In those circumstances, no additional steps are necessary and no

outage will be reported.

Response: Undisputed.

16. When an outage is recorded, the Control Desk will open a work order in the EAM database, and a notification is sent to personnel in charge of the maintenance zone responsible for the station at which the elevator outage occurred. The zone supervisor will then dispatch a crew of Maintainers to the station to investigate the outage and return the elevator to service as quickly as possible. Until a Maintainer arrives at the elevator and can make an in-person assessment, the Control Desk reports elevator status as “Under Investigation.” *Id.* ¶ 16.

Response: Partially disputed. Defendants do not return the elevator to service “as quickly as possible.” Defendants’ witness, Mr. Thompson, admitted that the E&E department’s “goal” is to try to arrive at the elevator within an hour and a half of receiving report of an elevator outage. Thompson Dep. at 182:5–7; *see also id.* at 169:2–12 (deponent testifying that the MTA’s website is not updated to reflect an elevator outage while an investigation into that outage is pending); 179:20–180:2 (admitting that he is personally aware of instances where it took more than 30 minutes for personnel to arrive for an elevator inspection); 181:9–14 (admitting that he is personally aware of instances where it took an hour for personnel to arrive for elevator inspection); 181:20–182:10 (reiterating that the goal is for personnel to arrive within an hour and a half and unable to say whether personnel has taken longer than that on occasion). Once maintenance personnel arrive on site, there is further delay during the repair process. Consultants hired by Defendants concluded that basic spare parts were missing from machine rooms, slowing down repairs, and that manuals required for proper maintenance were missing from a majority

of job sites. ECF No. 144-26, Vertical Systems Analysis On-Site Inspection Findings at 2–3.

17. In some instances, Maintainers will find the elevator is operable when they arrive at the elevator at issue. If it is not, Maintainers perform a visual inspection of the elevator equipment and elevator controller, which may help diagnose the reason for the outage. *Id.* ¶ 17.

Response: Undisputed.

18. Often, Maintainers can make adjustments or repairs and return the elevator to service on the spot. In such instances, Maintainers will contact the Control Desk to update the status of the elevator. If not, Maintainers report to the Control Desk that the elevator needs to be repaired, and they will provide an anticipated repair time. The Control Desk updates the status of the elevator from “Under Investigation” to “Repair” and notes the Maintainer’s estimated return time. After a repair is completed, the Maintainer will advise the Control Desk. The work order will then be closed and the Control Desk will update the elevator status to “Good Service.” *Id.* ¶ 18.

Response: Partially disputed. Defendants have not provided any admissible evidence to support the statement that maintainers “often” return the elevator to service “on the spot.” By contrast, Mr. Thompson admitted that there have “absolutely” been instances where an unplanned outage turned into a long-term outage (i.e., an outage of three days or longer). Thompson Dep. at 24:8–25:12, 26:8–:18. Some outages have lasted three or more months. *Id.* at 32:3–:19. This delay may be due, in part, to the fact that maintenance personnel must wait up to a month—and possibly longer—at times in order to receive the components necessary to repair elevators that are out of order. *Id.* at 65:21–:25; 67:2–:10; 67:16–68:6 (deponent testifying that “I can’t give you an estimate in regards to whether

it's . . . two months, six months. I just don't know exactly" in response to being asked whether he could recollect an instance where a spare part took two months to arrive).

19. In addition to unplanned outages, the Control Desk approves outages and updates the status of elevators for planned outages, such as preventative maintenance, inspections, scheduled repairs, and capital replacement. Once these scheduled activities are completed and the elevator can be returned to service, the Control Desk updates the status accordingly. *Id.* ¶ 19.

Response: Partially disputed. Plaintiffs dispute that the MTA's website provides accurate information regarding the expected duration of outages or the timing of planned outages. *Infra* ¶ 22. The New York City Council found that, during a period in January 2023, "the MTA planning tool and equipment status page fail[ed] to list planned outages in advance." City Council Rep. at 1, 5.

20. The Control Desk also receives and enters status updates for elevators that are not operated or maintained by NYCT. Third parties who own and operate these elevators report elevator outages to the Control Desk directly. In addition, NYCT's Department of Stations assigns personnel responsible for maintaining each subway station. Stations personnel inspect the third party-owned elevators at least three times per day, and report elevator outages through an internal web portal. Since NYCT does not maintain these elevators, it relies on third parties to repair the elevators and return them to service. When these elevators go out of service, the Control Desk does not dispatch any repair crews. Instead, they await further updates from the third-party owners regarding the elevator's return to normal service. *Id.* ¶¶ 20, 24.

Response: Partially disputed. Robert Thompson, Manager of Control Desk Operations in the NYCT's Elevator and Escalator Division, does not have the personal knowledge regarding the frequency with which third parties inspect elevators sufficient to support

that portion of the statement. Thompson Dep. at 22:5–22; 27:16–28:14; 28:15–29:8 (testifying that he is unaware of whether third-party elevators receive inspections mandated by industry standards). Plaintiffs also clarify that Janno Lieber, Chair and CEO of the MTA, admitted at the March 29, 2023 MTA Board Meeting that he has asked staff to look into whether the MTA could take over administration of the agreements for third-parties to maintain elevators. MTA Board Meeting (March 2023), <https://new.mta.info/transparency/board-and-committee-meetings/march-2023> at 1:10:16–1:10:47, 3:56:35–3:57:03. In addition, Mr. Lieber admitted that the public is “in many cases” being “shortchang[ed]” when third parties fail to keep elevators operational “as much as they should be.” *Id.* at 1:09:31–39; *see also id.* at 3:56:01–3:56:39.

Sources of Elevator Outage Information

21. NYCT has in place a robust information and notification system to keep passengers with disabilities apprised of the status of the elevators they plan on using, as well as guidance on alternative routes when an elevator along their path of travel is out of service.

Exhibit 1 (Cohen Decl.) ¶ 3.

Response: Disputed. The declaration cited, and quoted verbatim, does not support the statement that Defendants’ system for notifications and information on elevator outages is “robust” or that it is effective at apprising people with disabilities of elevator status updates or alternative routes that they can travel in the event of an elevator outage. As detailed *infra* ¶¶ 22–36, Defendants’ system is not “robust”; rather the tools utilized by Defendants are ineffective, often inaccurate, and frequently confusing. Plaintiffs also clarify that it is Defendants’ policy and practice not to notify the public about the elevator outage until the outage has been manually verified by the Control Desk. Thompson Decl.

at ¶ 4 (explaining that “a notification is transmitted to the MTA’s public information website advising customers of the outage” *after* the Control Desk “verifies that the elevator is in fact out of service”); *id.* at ¶ 22; Thompson Dep. at 169:2–:16.

22. The MTA has information available on its website which identifies each ADA accessible station, describes the location of elevators at the station entrances, and includes information about connecting bus service at each accessible station. The website also provides the status of each of the subway system’s elevators at any given time, the lines impacted in case of an elevator outage (if the station has multiple lines), the reason for the outage, and the expected duration of the outage. The elevator status page also identifies possible alternate accessible routes from the affected station, including bus connections, and provides a hyperlink to the MTA’s trip planning feature, which customers can use to re-route themselves and complete their intended trip. *Id.* ¶ 13; Exhibit 3 (Thompson Decl.) ¶ 22-23.

Response: Partially disputed. Plaintiffs dispute that the MTA’s website provides accurate information regarding the expected duration of outages or the timing of planned outages. In the event of an elevator outage, the elevator’s estimated return-to-service time is posted to the MTA’s website at the same time that the outage is posted, indicating that the return-to-service time is automatically generated and thus not meaningful. Thompson Dep. at 153:4–:13. Further, Robert Thompson, Manager of Control Desk Operations in the NYCT’s Elevator and Escalator Division, testified that outage reports can either be created manually by the personnel at the Control Desk or automatically by LiftNet, but, in either case, the estimated return to service will be set at a default estimate of eight hours. *Id.* at 153:14–154:6; 155:2–:11. The MTA will further adjust the estimated return to service to the eight-hour default if no update about the status of the inoperable elevator

has been received. *Id.* at 201:16–202:18; 203:7–:12. Thus, the update is not meaningful to class members. *See* Bartlett Decl. at ¶ 10 (declaring on April 21, 2022 that, “since about November 2021, one elevator at Grand Central that I have needed for my commute, the one connecting the mezzanine to the uptown 4/5/6 platform, has been out of service for planned rehabilitation that the MTA had stated would be completed on March 31, 2022, but now states is scheduled to be completed on April 30, 2022”); *id.* at ¶ 17 (describing signage stating an elevator would be back in service in several weeks, but the return to service date was then repeatedly pushed back). For planned outages, the New York City Council found that, during a period in January 2023, “the MTA planning tool and equipment status page fail[ed] to list planned outages in advance.” City Council Rep. at 1, 5. For example, while users may select “Show Future Outages” on the status page of the MTA’s website, the report found that this provided no results despite other pages frequently reflecting outages that were designated as “planned.” *Id.* at 5. This included short-term planned or warranty repair outages. *Id.* at 5–6. These inaccuracies render the status webpage useless for advanced trip planning.

Moreover, alternative itineraries offered by the MTA are provided with no regard for the length of the alternative route. Cohen May 2022 Dep. at 67:18–:24; 68:19–69:4 (testifying that MTA does not consider the length of time an alternative route might take when identifying available alternative routes); 73:14–:21 (testifying that there is no limit to the amount of time Defendants consider acceptable for a customer with mobility disability to spend traveling along an alternative route in the event of an elevator outage); 102:5–:10 (testifying that, in instances where a customer would have to go back a few stops to take an alternative route, MTA places no limit on the amount of time a customer

would have to spend going back in the direction they came from).

Class members also report that the MTA’s website and mobile applications are frequently inaccurate and confusing, rendering them useless. Bartlett Decl. at ¶ 17 (class member declaring that she usually does not check the MTA webpage or mobile application because “I find its information so unreliable, it’s practically useless,” and she often encounters outages that “are not listed on the status page” and she has “learned from experience that I cannot rely on the estimated timeframes provided for when the elevator is expected back in service”); *see* Bartlett Dep. at 22:12–23:11 (testifying that “[i]t’s well known in the [MTA] system that the app doesn’t work”); Blair-Goldensohn Suppl. Decl. at ¶ 12 (class member estimating that about one-quarter of the outages he encounters are not listed on the MTA’s website or mobile application and, for roughly half that are, “the notification for the elevator gets listed while I’m in transit, and I therefore cannot plan my trip around the outage”); *see* Blair-Goldensohn June 2022 Dep. at 46:6–48:9; Copeland Decl. at ¶ 17 (class member declaring that she always checks the MTA’s mobile application before taking the subway, but “[m]uch of the time” she finds that elevators that appear to be working on the application are not working or no longer working, and she “sometimes struggle[s] to determine which elevator is being referred to on the app and if it’s one I need for my journey”); *see* Ex. 24 to Holzman Decl., Transcript of Bryanna Copeland Deposition (“Copeland Dep.”) at 25:6–:13, 38:18–:22; Rausin Decl. at ¶ 15 (class member declaring that she “just as often” encounters a malfunctioning elevator whose status is not accurately updated on the MTA’s mobile application); *see also* Ex. 25 to Holzman Decl., Transcript of Arielle Rausin Deposition (“Rausin Dep.”) at 39:10–:25; ECF 148, Declaration of Monica Bartley (“Bartley Decl.”)

at ¶¶ 8, 13 (describing hour-long detours for what should have been “routine” subway trips despite checking the MTA’s website for elevator outages before taking the subway); Ex. 26 to Holzman Decl., Transcript of Monica Bartley Deposition (“Bartley Dep.”) at 72:7–74:13; Ex. 27 to Holzman Decl., Transcript of Edith Prentiss Deposition (“Prentiss Dep.”) at 47:15–:17; 48:23–49:9 (describing incidents when information on the MTA’s website did not match actual outages); Ex. 28 to Holzman Decl., Transcript of April Coughlin (“Coughlin Dep.”) at 30:10–:25; Ex. 29 to Holzman Decl., Transcript of Dustin Jones Deposition (“Jones Dep.”) at 13:22–14:24 (explaining that he used to regularly check the MTA’s website but stopped because he found it inaccurate).

23. Customers may also sign up for an alert service which will advise them by email and/or text message of changes in the status of the customer’s selected elevators. Exhibit 1 (Cohen Decl.) ¶ 13; Exhibit 3 (Thompson Decl.) ¶ 21.

Response: Partially disputed. As discussed *supra* ¶ 22, MTA status updates are routinely inaccurate and/or untimely. Additionally, to be advised of elevator status changes in this way, a phone and/or an internet connection are necessary to access the notifications, but not all people with mobility disabilities have mobile phones, and not all subway tunnels offer cellphone or internet connectivity such that the passenger would receive the email or text message. Cohen May 2022 Dep. at 107:5–:20, 180:24–181:6. People with mobility disabilities may not, therefore, be able to access elevator status alerts while already in transit. Rausin Decl. at ¶ 11 (class member declaring that encountering a malfunctioning elevator underground is “the worst situation” because she often does not have cell phone service and “there may not be any MTA workers around to ask for rerouting directions”).

24. The Elevator status page also provides outage information and estimated return to service times for elevators maintained by third parties based on information received by the E&E Control Desk. Exhibit 3 (Thompson Decl.) ¶¶ 24-25.

Response: Disputed as to the accuracy of the information provided on the status page.

See supra ¶ 22 (explaining that the MTA website fails to list planned outages in advance, that the return-to-service time posted on the website is automatically generated and therefore commonly inaccurate, and that class members report routinely encountering broken down elevators that were not designated as such on the website).

25. The “Plan a Trip” function on the MTA website allows customers to plan accessible trips, and the trip planning software takes elevator status into account when planning a trip in real time, such that customers will be given routes that are accessible at that particular time. Exhibit 1 (Cohen Decl.) ¶ 13; Exhibit 3 (Thompson Decl.) ¶ 23.

Response: Disputed. The “Plan a Trip” function, also known as Trip Planner, does not allow customers to plan accessible trips in advance due to its failure to accurately reflect planned outages. City Council Rep. at 5. Nor does it allow for accurate trip planning in real time because, as discussed *supra* ¶ 14, there is lag time between when an elevator experiences an outage and when that outage is reported. Defendants’ own estimates reflect that, for passengers who have already begun traveling and must rely on Trip Planner to reroute themselves as the result of encountering an elevator outage, taking an alternative route due to service disruption can take more than 30 or 40 minutes. Exs. 30–32 to Holzman Decl., Exhibits 10–12 to Rachel Cohen Sept. 2022 Deposition. Trip Planner’s estimates, however, do not take into account unscheduled wait time between the time a query is entered and the start time of the itinerary, so in reality, alternative

travel time estimates are often longer than Trip Planner’s estimates. Morse Rep. at 15, 17. Trip Planner also does not account for real-world obstacles faced by people with mobility disabilities, particularly when rerouting a subway trip via bus. *See* Cohen May 2022 Dep. at 121:16–123:4 (admitting that Trip Planner takes into account bus schedules when offering alternative itineraries, which do not necessarily accurately reflect real-world traffic); *id.* at 124:24–125:4 (admitting to not being “familiar” with any method Trip Planner might use to account for the time it takes for a wheelchair-using passenger to navigate crowding); *id.* at 126:1–127:25 (admitting that Trip Planner does not consider the time necessary to secure or release a wheelchair on the bus).

Plaintiffs’ expert Sylvia Morse analyzed an example of an alternative itinerary suggested by Trip Planner—assuming an elevator outage at the 86th Street Station R line and the passenger must reroute using the B37 bus to transfer to 59th Street R station—and concluded that, in real-world conditions, rerouting using this route would involve a delay of approximately 23 minutes, as opposed to the 13-minute difference that Trip Planner calculated. Morse Rep. at 17–18. Ms. Morse further concluded that, “[h]ad the rider been able to take the R train instead of the bus, the trip between 86th Street and 59th Street would have taken less than one quarter of the time.” *Id.* at 18.

Despite the significant limitations inherent to Trip Planner, Defendants have never surveyed riders with disabilities to assess the accuracy of the travel time estimates (including time spent waiting and walking or wheeling) it provides for alternative itineraries in cases where the customer must re-reroute due to subway service disruption, nor have they ever conducted any analysis of differences in walking times between people who are non-disabled and people who use wheelchairs or other mobility aids. Ex.

42 to Holzman Decl., Transcript of Rachel Cohen September 2022 Deposition (“Cohen Sept. 2022 Dep.”) at 37:24–39:6, 78:8–:12, 85:20–90:23.

26. In December 2020, NYCT completed the installation of new signs referred to as Alternate Accessible Travel Information (“AATI”) signs. The AATI signs are posted directly on or adjacent to the ADA elevators throughout the NYCT subway system (except for elevators with a nearby redundant elevator option), and are posted at a height which is readable for customers who use wheelchairs. Exhibit 1 (Cohen Decl.) ¶¶ 14-15.

Response: Undisputed.

27. These signs provide the customer with information about at least one (but usually two) alternate accessible routes that will allow a customer to continue their journey if the elevator they are trying to use is out of service, often with at least one subway and at least one bus option, and some include diagrams illustrating the travel alternatives. *Id.* ¶¶ 14, 17.

Response: Disputed. AATI signs do not always provide customers with alternate accessible routes that will allow them to continue their journey in the event of an elevator outage. The alternate route information on AATI signs is often confusing and unhelpful, merely telling customers to go farther out of their way, turn around, or go outside to a bus. *See* Cohen May 2022 Dep. at 67:13–:24, 103:22–104:5 (testifying that there “[t]here is no specific cutoff [in terms of distance] in those alternate accessible travel directions” and it would be possible for alternative accessible travel to recommend a back-ride of more than 5 stops in one direction); Blair-Goldensohn June 2022 Dep. at 48:10–50:10 (AATI signs “never has [sic] the sufficient information or enough information that I would need—that I do need, at that time, to route the trip and to get where I’m going...”); Bartlett Decl. at ¶ 18 (declaring that she does not find the MTA signage near elevators

helpful because the alternate route provided “usually just says to get back on the train and go to another elevator that might turn out to be five miles out of my way, then double back,” or merely that riders should just take a bus); Bartlett Dep. at 25:5–:22; Rausin Dep. at 46:24–47:15, 48:8–49:15; Copeland Dep. at 36:16–37:9. Moreover, the MTA does not take into account the length of time when proposing alternate trips. *See supra* ¶ 22. Many direct customers with mobility disabilities to walk longer distances than they are able to due to their disabilities. *See* Bartlett Decl. at ¶ 18 (noting, “[i]t is hard for me to walk long distances and the signage does not say how long the distance is to travel the alternate route”).

28. The information contained on the AATI signs is also available to customers on the elevator and escalator status page of the MTA website. *Id.* ¶ 18.

Response: Undisputed, with the clarification provided in response to ¶ 27. *See also* Bartlett Decl. at ¶ 17 (“the travel alternatives listed on the status page do not serve me because they tend to require walking distances longer than I can manage”).

29. Because alternate routes vary depending on the specific elevator that is out of service, the alternate travel instructions are customized for every AATI sign based on location. For example, if a street-to-mezzanine elevator is out of service, the alternate travel instructions at the mezzanine level would tell the customer an alternate way to get to the location the elevator would have taken them to (i.e. the street), usually by riding to another station and then either “back-riding” by subway to another platform at the station, or taking a bus to the station at street level. The alternate travel instructions for this same elevator, at street level, would provide an alternate way for the customer to get to the platform for the subway service they are trying to access, and/or instructions for adjacent bus service. *Id.* ¶ 16.

Response: Partially disputed. The AATI signs are not customized for different customer needs. *See* Blair-Goldensohn June 2022 Dep. at 49:8–50:10 (“But in the event that sometimes you, actually, want to go up to the sidewalk and just get out of the system, and that’s what you’re trying to do, and [the AATI sign] won’t have that option...or you’re in a situation you really need to go right now...”). *See also supra* ¶¶ 27–28; *infra* ¶¶ 41–43, 47–53.

30. Depending on the elevator location and nearby service, the AATI signs may also direct the customer to other elevators at the same station providing access to the same platform, or to an alternate elevator leading to a different platform providing subway service to a different line or in another direction. *Id.* ¶ 17.

Response: Disputed. The declaration cited states that AATI signs are not posted at ADA-accessible elevators with a nearby redundant elevator option. *See* ECF 256-1, Declaration of Rachel Cohen (“Cohen Decl.”) at ¶ 14 (“The AATI signs are posted at ADA elevators (except for elevators with a nearby redundant elevator option) throughout the NYCT subway system.”). *See also supra* ¶¶ 27–28; *infra* ¶¶ 37–38, 41–43. In addition, there are only approximately 10 subway stations with redundant elevators so the ability to reroute using another elevator is rare. *See infra* ¶¶ 44–45.

31. As new elevators are installed and additional stations become accessible, AATI signs are added to the new elevators, and existing AATI signs (both physical and digital versions) are updated to ensure that the most efficient routes are listed. *Id.* ¶¶ 18-19.

Response: Disputed. AATI signs do not list the most efficient routes. *See* Bartlett Decl. at ¶ 18 (“The alternate route information on permanent signage usually just says to get back on the train and go to another elevator that might turn out to be five miles out of my

way, then double back.”); Rausin Dep. at 47:7–:15 (“They’re not helpful. They tell me to either go further out of my way or to go back the direction I came to get to street level, to start over...”); Blair-Goldensohn June 2022 Dep. at 48:21–49:2 (AATI signage “never has the [sic] sufficient information or enough information that I would need...to get where I’m going...”). *See also supra* ¶¶ 27, 29.

32. In addition to the AATI signs, electronic Customer Information Center (CIC) screens have been installed at approximately 370 stations as of April 2022. These screens display real-time service information, including whether any elevators or escalators at the station are currently out of service. *Id.* ¶ 20.

Response: Disputed regarding the extent to which and frequency with which CIC screens display real-time notifications about out-of-service elevators, and as to the number that have been installed in ADA-accessible stations. Rachel Cohen, Defendants’ Deputy Chief Accessibility Officer, testified that CIC screens show “different kinds of information, but so—so there may be a time when that information [about elevator outages] is not there...” Cohen May 2022 Dep. at 206:17–:22. Ms. Cohen also testified that CIC screens may display advertisements that “rotate through” real-time service information, but did not know how frequently they display advertisements. *Id.* at 207:1–:17. Neither did Ms. Cohen know how many ADA-accessible stations have CIC screens. *Id.* at 205:24–206:4.

33. The CIC screens are located throughout the station, with at least one screen at the mezzanine level outside of fare control (turnstiles) at most stations, so a customer can see before paying the fare whether they can use elevators to access their desired platform. *Id.*

Response: Disputed as to the number of ADA-accessible stations with CIC screens at the mezzanine level outside of fare control. In her deposition, Ms. Cohen testified that it was

possible some subway stations do not have CIC screens outside of fare control. Cohen May 2022 Dep. at 206:5–:14. Ms. Cohen also testified that she did not know how many ADA-accessible stations have CIC screens. *Id.* at 205:24–206:4.

34. CIC screens can also be used to display “take-over” messaging in the case of a long-term elevator outage that has broad system impacts, and feature a link to the elevator status page where customers can get more detailed information about relevant outages as described above. *Id.*

Response: Disputed as to the frequency with which CIC screens are used to display “take-over” messaging about long-term elevator outages, and what qualifies as a long-term elevator outage with “broad system impacts.” City Council members, for example, have observed “little on-site signage related to elevator or escalator outages outside of longer-term capital improvements.” City Council Rep. at 5. *See also supra* ¶¶ 32–33 (disputing the number of CIC screens in ADA-accessible stations).

35. When a customer comes upon an out-of-service elevator without prior warning, the customer may also call the MTA’s customer assistance number (511) or use the Help Point communication intercom installed in every NYCT subway station to get instructions regarding alternate routes. *Id.* ¶ 21.

Response: Partially disputed. Calling 511 requires the use of a cellphone and cellphone reception, which may not be available to passengers with mobility disabilities who encounter elevator outages while in transit. *See supra* ¶ 23. Customers may not be able to obtain assistance with rerouting options by using the Help Point intercom because agents do not, in practice, always answer when help is requested. *See supra* ¶ 13. Even when agents do answer, or a passenger tracks them down inside a station to request assistance,

MTA personnel are often unable or unwilling to provide help. *See also infra* ¶ 36.

36. Customers may also use the website’s “Plan a Trip” feature, or consult with MTA Stations personnel for assistance. *Id.*

Response: Disputed. In practice, passengers with mobility disabilities who encounter malfunctioning elevators while in transit are often not able to access the MTA’s “Plan a Trip” website because doing so requires a cellphone with internet connectivity, which may not be available. *See supra* ¶ 23. Consulting with station personnel often requires customers to go to the booth at staffed station entrances (if there is one), find staff in general circulation around the mezzanine, or use Help Point intercoms, which can add additional delays to the customer’s travel. Cohen May 2022 Dep. at 55:19–56:12. To reroute successfully in certain cases, customers may need to speak with train conductors as well. *Id.* at 57:25–59:6.

In addition, MTA personnel are often unavailable, unable, or unwilling to assist. *Id.* at 57:15–:20 (admitting that MTA has received complaints that station agents are unhelpful when asked for advice due to elevator outages disrupting subway service); Bartlett Decl. at ¶¶ 17, 19 (class member declaring that, when she asks about elevator outages, MTA’s responses not helpful); Blair-Goldensohn Suppl. Decl. at ¶ 10 (class member declaring that, when he notifies MTA station agents that elevators are out, they are sometimes “entirely unaware that an elevator at their station is malfunctioning”); Rausin Decl. at ¶ 10 (class member declaring that, after encountering malfunctioning elevators, she always presses the help button to get assistance with rerouting or a status update, but no one ever answers); Rausin Dep. at 30:23–31:18; ECF 146, Declaration of Dustin Jones in Support of Plaintiffs’ Motion for Summary Judgement (“Jones Aug. 2019

Decl.”) at ¶¶ 12–14 (describing approaching MTA agent for assistance, being merely told to travel to the next station and turn around, but when he informed the station agent that the next station was not accessible, the agent replied “what do you want me to do?” and walked away); Coughlin Dep. at 25:05–27:10 (explaining that she often struggles to get the attention of MTA employees and that they often do not know which station to redirect her to); *see also* Blair-Goldensohn Suppl. Decl. at ¶ 8 (declaring that when he encounters a malfunctioning elevator, “typically no one is performing routine maintenance,” “many times there is no signage indicating the elevator is out of service,” and if there is, it is “almost always a haphazard afterthought,” such as a “torn off piece of cardboard written on with Sharpie”); Blair-Goldensohn June 2022 Dep. at 63:2–64:6; Copeland Decl. at ¶¶ 10, 13 (declaring that “[t]he MTA workers I encounter are almost always unable to provide me with useful rerouting information” and describing an instance in which both she and her mother called the MTA help line to request rerouting assistance, but the agents were rude, unhelpful, and hung up on them); Ex. 33 to Holzman Decl., Transcript of Christina Curry Deposition (“Curry Dep.”) at 39:8–:20 (describing struggles with signage about elevator outages because signs are often placed in areas that are both easy to miss and too high for a wheelchair user to read).

In addition, Trip Planner has significant limitations in its ability to provide accessible trips for people with mobility disabilities forced to reroute after encountering an elevator outage. *See supra* ¶ 25.

Alternative Means of Travel

37. Many NYCT subway stations have multiple platforms served by different elevators, so that an outage of an elevator at any given station may not impact a customer with a

disability who needs to use that station, depending on the platform/line they need to access. *Id.*

¶ 4.

Response: Partially disputed. An elevator outage for one line or platform at a station can impact customers with disabilities who need to use another line or platform at that station, for example, by causing the functioning elevator to become more crowded. *See Blair-Goldensohn June 2022 Dep. at 29:5–:8, 29:18–:21* (discussing the effects of commuter congestion on access to elevators due to scarcity of elevators in highly trafficked stations like Times Square). In addition, many subway stations do not have multiple platforms served by different elevators, so that an outage at any given station impacts a customer with a disability who needs to use that station.

38. Some stations are referred to as “complexes,” because they actually contain several interconnecting stations. At these complexes, if an elevator outage prevents access to one line, another elevator at that station may be taken to a different platform serving a different line, which in many cases may enable the customer to proceed to their destination via an alternative route, either entirely within the subway system, or with a connecting bus. *Id.* ¶ 7.

Response: Disputed. Some station complexes are only partially accessible, such as 14th St.-Union Sq. and Borough Hall, so that in the event of an elevator outage impacting one line, customers with disabilities may not be able to access a different platform serving a different line. *See supra* ¶ 3 (according to the MTA’s website, numerous so-called ‘ADA-accessible stations’ contain platforms that are not accessible); *see also* Bartlett Decl. at ¶ 6 (Court Square station only accessible on the 7 train, not the G train); Ex. 34 to Holzman Decl., New York City Accessible Stations Subway Map (Feb. 2023). In addition, customers with disabilities may not be able to proceed to their destinations via alternative

routes in station complexes when there are simultaneous elevator outages impacting the different platform or line. *See* Cohen Sept. 2022 Dep. at 91:23–92:24 (explaining that a station’s elevators can be replaced in pairs); Ex. 31, Exhibit 11 to Rachel Cohen Sept. 2022 Deposition. For example, Ms. Bartlett has experienced outages of two elevators at Grand Central station—one planned and one unplanned—during her commute. Bartlett Decl. at ¶ 11. Further, as detailed *supra* ¶ 4, passengers may not be able to proceed to their destination via a connecting bus because many bus trips are not, in practice, accessible. Moreover, Defendants do not provide any admissible evidence to support the statement that customers can proceed via alternative routes “in many cases,” nor was Defendants’ witness able to do so. *See* Cohen May 2022 Dep. at 74:16–76:1.

39. Examples of such complexes include: 161st Street-Yankee Stadium (with separate elevators serving the B/D and 4 platforms); Times Square-42nd Street (with elevators to many different platforms serving various areas of the system); 34th Street-Herald Square (with separate elevators serving the N/Q/R/W and B/D/F/M platforms); and Jackson Heights/Roosevelt Avenue (with separate elevators serving the 7 and the E/F/M/R lines). *Id.*

Response: Partially disputed, as some station complexes are only partially accessible, and Defendants do not provide any admissible evidence to support the statement that customers can proceed via alternative routes “in many cases.” *See supra* ¶ 38.

40. Outside of complexes, many ADA accessible stations are configured with three elevators. These stations are often configured with a platform on each side of the tracks going in opposite directions. These ADA accessible stations are typically serviced by one elevator from the street to the mezzanine and two elevators at the mezzanine level – one for each platform. *Id.* ¶ 8.

Response: Partially disputed, as Defendants do not provide any admissible evidence to support the statement that “many” ADA-accessible stations have three elevators. Cohen May 2022 Dep. at 95:13–96:10 In addition, Plaintiffs clarify that passengers with mobility disabilities typically require a minimum of four elevators when commuting on the subway between two locations. Cohen May 2022 Dep. at 98:19–:22; *see also* Bartlett Decl. at ¶¶ 7–8 (class member declaring that her regular, roundtrip commute involves 12 elevators); Copeland Decl. at ¶ 7 (class member declaring that her commute to school requires four elevators one way); Rausin Decl. at ¶¶ 7–8 (class member declaring that most trips she takes “require a minimum of five or six elevators to go one way”); *see also infra* ¶ 78.

41. At stations with these configurations, if the customer cannot access their desired platform due to an elevator outage, they may take the other mezzanine to platform elevator for the train going in the opposite direction, board a train heading in the opposite direction to the next available ADA accessible station, and then transfer to a train providing service in the direction they wish to travel. This is often referred to as “back-riding.” *Id.* ¶ 9.

Response: Disputed. Back-riding may be impeded, or impossible, if the mezzanine to platform elevator for the train going in the opposite direction and/or elevators further down the line in the opposite direction are also out of service. *See* Copeland Decl. at ¶¶ 11–12; Copeland Dep. at 23:12–24:3; Rausin Dep. at 50:19–51:7. Back-riding can also add significant delays to class members’ trips. *See* Rausin Decl. at ¶¶ 12–13 (1 hour or longer); Copeland Decl. at ¶¶ 10, 13–14; Copeland Dep. at 34:7–:25 (30 minutes to an hour and a half or longer); Blair-Goldensohn June 2022 Dep. at 25:18–26:10 (half an hour), 44:6–:16 (1 hour); *see also supra* ¶ 3; Cohen May 2022 Dep. at 29:13–30:19

(acknowledging several lines with 5 or more, and in some cases 10 or more, inaccessible stops in a row); Ex. 34, New York City Accessible Stations Subway Map (Feb. 2023). Defendants admit that back-riding can take over 45 minutes and that the MTA does not have a specific threshold of extra travel time that they use to determine whether to recommend back-riding as an alternative route to customers. Cohen May 2022 Dep. at 73:14–:21, 102:5–:10; Ex. 30, Exhibit 10 to Rachel Cohen Sept. 2022 Dep., “New Rubric,” columns I–K.

42. Similarly, if the customer is already en route in the subway system but an out-of-service elevator at the destination station makes that stop unavailable, the customer may proceed to the next accessible station and back-ride to the desired destination. *Id.*

Response: Disputed. *See supra* ¶ 41.

43. Often, such an alternate accessible route will add a short amount of travel time to the customer’s journey. For example, if a customer is trying to exit the system from the Manhattan bound platform at the Eastern Parkway – Brooklyn Museum station but the platform elevator is out of service, the customer can continue riding 3 stops to the Atlantic Avenue station, use the elevators at that station to transfer to a Brooklyn-bound 2 or 3 train, then ride back (approximately 5 minutes in each direction) and exit via the Brooklyn-bound platform at Eastern Parkway. In such a case, if the customer prefers not to back-ride on the subway, or if the outage impacts the street elevator at Eastern Parkway as well, the customer could also exit the station at Atlantic Avenue and take connecting bus service to their destination. *Id.*

Response: Disputed as to whether the travel time added by alternate routes is “often” “short” and as to whether alternate routes are “often” accessible. Rachel Cohen, Defendants’ Deputy Chief Accessibility Officer, testified that the ten minutes of extra

travel time in this hypothetical example does not include the time it takes to exit the train at Eastern Parkway–Brooklyn Museum and encounter the out-of-service elevator, Cohen May 2022 Dep. at 106:9–:14, 108:21–109:6, consider a map or other means of rerouting, which could reasonably take at least 2 minutes, *id.* at 108:14–:19, wait for the next Manhattan-bound train, which could be 3-4 minutes in this example, *id.* at 109:8–:14, 111:8–:10, complete the transfer at the Atlantic Avenue station, *id.* at 111:17–:20, which includes using 2 elevators to reach the platform in the other direction, *id.* at 113:2–:3, and takes “five minutes or less” in her experience, though she could not estimate how long the transfer would take for someone with a mobility disability, *id.* at 112:5–:14, wait for the next Brooklyn-bound train, which could be another 3–4 minutes in this example, *id.* at 113:5–:25—or, if the customer chooses to reroute via bus, the time it takes to exit the train and get to street level at Atlantic Avenue, *id.* at 118:12–:15, navigate to the correct bus stop, *id.* at 118:12–:18, board the bus and have one’s wheelchair secured by the bus driver, *id.* at 126:1–:9, 127:2–:6, and have one’s wheelchair released by the bus driver and exit the bus, *id.* at 127:8–:12, 127:13–:17. Further, Ms. Cohen testified that individual customers’ travel times can vary, *id.* at 107:21–108:7 (“The five minutes is – is train travel time, period. What the customer has to do to get to that we did not account for as that’s completely, you know, variable by the individual situation and experience.”), that the specific examples of unaccounted-for delays involved in subway back-riding provided above add up to more than 10 minutes, *id.* at 115:5–:19, the subway can deviate from Defendants’ timetable, *id.* at 114:6–:23, and bus travel time can depend on traffic, weather, and other surface conditions, *id.* at 129:2–:15. As Ms. Cohen testified, it would also be possible for the elevator(s) needed to complete the alternative trip at the Atlantic

Avenue station to be out-of-service, *id.* at 116:17–117:2. *See also supra* ¶ 41; *infra* ¶¶ 62, 64, 66. Additionally, not only does the example provided not account for numerous delays inherent in transferring to, boarding, and utilizing a “connecting bus” but, as Ms. Cohen acknowledged and Plaintiffs’ expert Sylvia Morse and class members report, travel by bus is often, in reality, not accessible to riders with mobility disabilities. *See supra* ¶ 4.

44. In addition to the flexibility offered by station complexes, certain stations have redundant elevators providing multiple accessible paths of travel through the station, so that an elevator outage may not preclude access at all. *Id.* at ¶ 4.

Response: Partially disputed as to the “flexibility” of station complexes and the accessibility of stations with redundant elevators. Moreover, not all of the redundant elevators in the subway system have “full” redundancy—i.e., redundant elevators to every platform in the station. Cohen May 2022 Dep. at 40:3–:18, 41:5–:13, 42:9–:12. This means that although there are redundant elevators at street level at the Atlantic Avenue-Barclays Center station, for example, there is no redundancy from the mezzanine to any of the platforms serving the 4/5, D/N/R, or Q lines. *Id.* at 40:3–:18.

45. Approximately 10 of NYCT’s ADA accessible stations have “redundant” elevators, i.e., there is more than one elevator that either provides access to and from the street or that serves the same platform. That means that a particular elevator could be out of service at those stations with only a minor impact on travel, i.e., if one elevator is out at that station, another elevator or combination of elevators may be available to bring the customer to the same level or platform. *Id.* ¶ 6.

Response: Disputed to the extent that, system-wide, Defendants do not make available redundant elevators such that customers with mobility disabilities are able to reroute “with only a minor impact on travel” after encountering out-of-service elevators. *See also supra* ¶¶ 37, 44. Additionally, while Rachel Cohen, Defendants’ Deputy Chief Accessibility Officer testified that “[a] station with redundancy would have the least impact” on the travel of a rider with disabilities who encounters an outage, to her knowledge the MTA does not have any policies around redundant elevators. Cohen May 2022 Dep at 60:25–61:1; 42:13–:17.

46. This is the case, for example, at the Atlantic Avenue-Barclays Center station, which provides service for the 2, 3, 4, 5, B, D, N, R and Q lines and has four street elevators at three separate locations; the Lexington Avenue-63rd St station (F and Q lines), which has two accessible entrances at street level and multiple elevators serving the platform from one of these entrances; the 2nd Ave-72nd St. station (Q line), which has a bank of five elevators from the street to the mezzanine; and the Fulton Street station, which provides service for the 2, 3, 4, 5, A, C, J, and Z lines and has multiple accessible street entrances and accessible routes throughout the station. *Id.*

Response: Disputed. *See supra* ¶ 44. In addition, at the March 29, 2023 MTA Board meeting, CEO & Chair Janno Lieber noted that, at Atlantic Avenue-Barclay’s Center station, the “escalator and elevator package is out of service way too frequently and frankly the . . . station entrance is not well maintained,” noting that during a recent visit the station “was kind of a mess.” MTA Board Meeting (March 2023), <https://new.mta.info/transparency/board-and-committee-meetings/march-2023> at 1:09:39–1:10:09; *see also* 3:58:09–:38 (discussing how he was “embarrassed” while

visiting the Atlantic Avenue-Barclay's Center station with the mayor).

47. There will also be occasions when a customer with a disability may not be able to enter a station to begin a subway trip due to an elevator outage. In some cases, alternatives may include traveling a relatively short distance to another nearby ADA accessible station instead. For example, on the 1 line heading up Broadway, there are accessible stations at 59th Street, 66th Street, and 72nd Street. A customer may be able to walk or wheel this distance on their own, or use accessible bus service to reach the next station. Similarly, the Borough Hall station, which is accessible via the 2 and 3 lines in both directions, and the northbound 4 and 5 lines, is only 3/10 of a mile from the fully accessible Jay Street-Metro Tech station, with several bus lines running in close proximity to both stations. *Id.* ¶ 10.

Response: Disputed as to whether the travel alternatives Defendants suggest in the event of elevator outages involve “relatively short distance[s]” to “nearby” ADA-accessible stations, since in some cases, alternatives may include travelling a relatively long distance to another ADA-accessible station. Defendants rely on the statement of Rachel Cohen for this proposition but, during her deposition, she admitted that she was not aware of any specific definition of “relatively short distance,” or any metric the MTA uses to identify what constitutes a “nearby” station to ask a customer to travel to on their own, and could not say how many ADA-accessible stations have another ADA-accessible station “nearby.” Ms. Cohen opined that she would consider 7 blocks or three-tenths of a mile to be a “relatively short distance,” but Plaintiffs dispute whether customers with disabilities can reasonably reach these alternative stations. Cohen May 2022 Dep. at 85:3–:19, 92:7–:16. *See* Bartlett Decl. at ¶¶ 13–14, 17–18 (Defendants’ suggestions for alternate routes tend to require walking longer distances than Ms. Bartlett can manage).

Plaintiffs also dispute whether class members can use bus service to reach these alternative stations. *See* Bartlett Decl. at ¶¶ 13–14, 17–18 (Defendants’ suggestions for alternate routes tend to require walking longer distances than Ms. Bartlett can manage). Conditions like inaccessible sidewalks, snow, and illegal parking can make navigating the public right of way to either the alternative subway station or a bus stop difficult, if not impossible. *See supra* ¶ 4; *infra* ¶¶ 48–49, 51–53, 74; *see also* Blair-Goldensohn Decl. at ¶¶ 18, 20 (snow can make boarding the bus difficult or impossible); Morse Rep. at 6, 9–12 (finding that, between 2014 to 2019, MTA received 1,212 complaints of “illegal parking” and 517 complaints of “snow/ice”); *see also* *Center for Independence of the Disabled New York (CIDNY), et al. v. City of New York, et al.*, 2:14-cv-05884-GBD-KNF, Dkt. 213 (Mar. 19, 2019), available at <https://dralegal.org/wp-content/uploads/2016/07/Settlement-Agreement-and-Release-of-Claims.pdf> (remediation process to make sidewalks throughout New York City accessible, including through installation of curb ramps, to people using mobility devices will take decades). In addition, even “nearby” station may not be able to assist customers in reaching their destination if the “nearby” station does not serve any of the same subway lines as the station at which there was an elevator outage, as in the example of the Borough Hall station and Jay Street-Metro Tech station. <https://new.mta.info/map/5256>.

48. As described above, where alternative subway travel is not feasible, or where the customer does not prefer to travel to an alternate subway station or back-ride to their destination, NYCT offers an alternative means of travel via its vast system of accessible buses. Exhibit 1 (Cohen Decl.) ¶ 11.

Response: Disputed. In reality, the bus system does not provide a comparable, adequate transportation alternative for riders who are unable to access the subway due to elevator outages. *See supra* ¶ 4. In addition, people with mobility disabilities face myriad accessibility barriers when trying to ride the bus. Plaintiffs dispute that the bus system provides an adequate alternative means of travel when subways are inaccessible, as rerouting using buses can involve significant delays to travel time. Plaintiffs’ expert, Ms. Morse, concluded that buses are unreliable and subject to delays, infrequent run times, and slower speeds than subways, particularly for passengers rerouting from a subway trip. Morse Rep. at 13–15; Morse Dep. at 71:13–72:3, 81:11–83:14 (“[b]uses tend to run less frequently [than the subway], are subject to delays and are unreliable and wait times tend to be longer and are cited more often by riders in various MTA rider feedback analyses and studies as a primary concern for the bus system”). For example:

- buses run less frequently than subways and are often delayed, with an estimated 23.1% to 30.9% of bus trips each month not running within five minutes of the scheduled time (the MTA’s standard for on-time performance) leading to longer wait times for riders, Morse Rep. at 13, *id.* at 14 (finding that, in 2019, only 36% of Brooklyn bus lines and 33% of Queens bus lines ran every 15 minutes or more often, while only 7% of Brooklyn bus lines and 6.5% of Queens bus lines ran every 8 minutes or more at various points in the day); Ex. 14, Existing Conditions Report: Brooklyn Bus Network Redesign at 44–45, 59; Ex. 35 to Holzman Decl., Existing Conditions Report: Bronx Bus Network Redesign at 55; Ex. 11, Existing Conditions Report: A Better Way Forward at 43, 66, 73–74; Bartlett Decl. at ¶¶ 6, 23 (class member declaring that waits for the bus can be “more than 15 minutes” and

sometimes “closer to 45 minutes”); Copeland Decl. at ¶ 19 (class member declaring that the bus does not come as frequently as the subway, which means that she then is “stuck waiting for a significantly longer period of time”); Ryan Decl. at ¶ 22 (class member explaining that local buses “[tend] to run on an erratic and unreliable schedule” and she has had to wait for over an hour for some local buses); Jones Aug. 2019 Decl. at ¶¶ 119 (declaring that buses come less frequently than the subway, making him wait sometimes “up to 20 minutes for the next one to arrive”); *see* Ryan Dep. at 55:7–24, 81:2–10.

- Bus travel is further delayed by the time it takes to deploy lifts and ramps and to secure wheelchairs, both when entering and exiting the bus, Morse Rep. at 8 (deploying bus lifts and ramps and securing wheelchairs adds unscheduled delays for riders with mobility disabilities, with some passengers and drivers reporting 10 minutes–20 minutes or more of added travel time for that part of the trip alone); Cohen May 2022 Dep. at 126:1–127:25 (admitting that it takes at least a couple minutes for wheelchair securement on the bus), *id.* at 128:12–18 (admitting that MTA has never conducted analysis regarding the time it takes wheelchair-using passengers to board a bus), *id.* at 157:13–158:3; Blair-Goldensohn Suppl. Decl. at ¶¶ 20–21 (class member declaring that riding the bus and lowering the ramp can be “a lengthy process” and “can take up to ten minutes” to secure wheelchair); Jones Aug. 2019 Decl. at ¶ 18 (having to be secured by the driver “adds time to the trip”); and
- buses are slower than subways—the City’s buses are the slowest in the United States—meaning that traveling by bus instead of subway can lead to much longer trips, Morse Rep. at 14–15; *see also* Cohen May 2022 Dep. at 154:1–9 (testifying

that “it is common knowledge that the subway as the system being underground . . . can move more quickly than traffic on a road in New York City”); Ex. 36 to Holzman Decl., 2019 NYC DOT Better Buses Action Plan at 4; ECF 144-12, NYC Comptroller Report: The Other Transit Crisis; Bartlett Decl. at ¶ 22 (class member declaring that commuting by bus, instead of subway, would involve “at least three transfers and likely several hours longer than taking the subway”); *see* Bartlett Dep. at 30:5–:17; Blair-Goldensohn Suppl. Decl. at ¶ 17 (class member declaring that traveling by bus usually takes twice the time that the subway does and it “can take three times as long, or longer, if I need to take an interborough trip,” which is not feasible given the number of transfers and accessibility barriers to boarding buses); Ryan Decl. at ¶ 24 (class member declaring that buses cannot get to destinations “nearly as quickly as the subway could” because they are subject to traffic that can make a trip slower than walking); Jones Aug. 2019 Decl. at ¶ 18 (buses “almost always take longer than the subway, especially during rush hour, because then I’m forced to sit in traffic”); Curry Dep. at 21:16–22:15 (describing delays when rerouting, including example of needing to board multiple buses after encountering an elevator outage at 23rd Street Station).

Class members report that the City’s bus network does not function as an adequate substitute or alternative for riding the subway. Bartlett Decl. at ¶ 22 (class member declaring that “it’s absolutely not true that the bus can always be a substitute for the subway”); Blair-Goldensohn Suppl. Decl. at ¶ 16 (class member declaring that bus system “is an entirely inadequate alternative to the subway” when he encounters an elevator outage); Copeland Decl. at ¶ 19 (class member declaring that the bus is “not a

substitute for the subway,” because the bus is a “hassle,” “usually overcrowded,” and adds time and stress to her trip because “the driver has to get up and strap me down”); Copeland Dep. at 43:18–25; Rausin Decl. at ¶ 18 (class member declaring that the bus “does not compare to the subway system” because the “bus is much slower than the subway,” “takes much longer than a comparable subway trip,” and is “delayed more often than the subway,” and “more likely to take longer than the estimated travel time,” in addition to other conditions making bus travel less safe for her); *see* Rausin Dep. at 35:23–36:14; Jones Sept. 2019 Decl. at ¶ 4 (“When I am forced to take buses because of elevator outages or because of inaccessible subway stations I often find that the bus route requires me to roll further than if I were to travel along that same route via the subway.”).

49. MTA’s affiliated agency, NYCT, and MTA’s subsidiary, MTA Bus Company, together operate the largest bus fleet in the United States—approximately 5,800 buses—each of which is accessible to customers with mobility disabilities via ramp or lift. *Id.*

Response: Disputed. In reality, the bus fleet in New York City does not always provide an accessible form of transportation for people with mobility disabilities. *See supra* ¶ 4.

50. As of April 2022, NYCT’s Department of Buses and the MTA Bus Company together operate a combined 326 bus routes, covering over 2,800 route miles and over 16,000 bus stops. *Id.*

Response: Partially disputed. According to Defendants’ website, there are 327 bus routes, not 326. *See* <https://new.mta.info/agency/new-york-city-transit/subway-bus-facts-2019?auHash=5VJGjGxafvrHsjkqBLNbf3MLbEW3Ztdz4r-A5puBnM8>; <https://new.mta.info/agency/new-york-city-transit>.

51. Every local and select bus is equipped with a ramp, and every express bus is equipped with a lift. *Id.*

Response: Undisputed, except to clarify that, in real world conditions, bus passengers with mobility disabilities face numerous accessibility barriers to being able to use ramps and lifts to board or exit buses, including drivers refusing or being unable to deploy lifts or ramps, equipment malfunction, and street-level barriers such as construction, snow and ice, and inaccessible sidewalk infrastructure, that impede riders' ability to move from bus stops to the bus and that impede bus drivers' ability to deploy lifts and ramps close enough to bus stops to allow customers with mobility devices to board. *See supra* ¶ 4.

52. Each bus has at least two wheelchair securement areas. Exhibit 4 (Cohen I Tr.) 125:6-25.

Response: Undisputed, except to clarify that people with mobility disabilities may be unable to access wheelchair securement areas because of crowding, because the securement areas are occupied, or because drivers are unable or unwilling to secure the wheelchair. *See supra* ¶ 4. In addition, Plaintiffs clarify that securing wheelchairs in securement areas adds further delay to riding the bus in comparison to the subway, which customers do not need to be secured to use, and can feel demeaning for riders. *See supra* ¶ 48.

53. All of the approximately 140 accessible subway stations offer connecting bus service. Accordingly, if a customer with a disability cannot use a station due to an elevator outage, NYCT and MTA Bus offer bus service that may enable the customer to travel by bus either to the desired destination or to the nearest ADA accessible subway station where the customer can continue traveling by subway. *Id.* ¶ 12.

Response: Disputed. Neither ¶ 53 of Defendants’ Statement of Undisputed Facts nor the declaration from which it quotes in its entirety provide admissible evidence to support, or provide context for, the statement that all accessible subway stations offer connecting bus service, including any details regarding the distance between each accessible subway station and the nearest connecting bus service, the accessibility of the path of travel between each accessible subway station and the nearest connecting bus service, *see supra* ¶ 47 (citing settlement agreement to, over the course of many years, remediate currently inaccessible sidewalks), or the additional delay entailed by rerouting via buses to travel to the nearest accessible subway station or destination. Relying on buses to travel when unable to access the subways can add significant delays, unpredictability, and expense to passengers’ trips. *See supra* ¶¶ 4, 43, 48, 52; *infra* ¶ 94; *see also* Jones Aug. 2019 Decl. at ¶ 21 (“I try and avoid taking busses [sic] when I encounter an elevator outage because I would then have to pay double fare for the same trip.”). In addition, people with mobility disabilities face myriad accessibility barriers in the bus system such that buses do not provide an adequate alternative for riders who encounter elevator outages while attempting to access the subway. *See supra* ¶¶ 4, 48, 51.

54. AAR is a demand-responsive paratransit service offered by NYCT to customers with qualifying disabilities, including mobility disabilities. Exhibit 2 (McFarlane Decl.) ¶ 2.

Response: Disputed. *See supra* ¶¶ 5, 59 (detailing ways in which AAR is not demand-responsive or reliable).

55. AAR provides service 24 hours per day, 7 days per week, to all five boroughs of New York City and across the NYC borderline to nearby areas of Nassau and Westchester counties. *Id.*

Response: Undisputed, except to clarify that AAR customers must make reservations no more than 2 days but no less than 1 day in advance, so if a customer encounters an elevator outage while attempting to ride the subway, the customer cannot reserve a ride through AAR at that time to make up for the elevator outage. *See* McFarlane Dep. at 118:13–:19; *see also supra* ¶ 54, *infra* ¶ 57.

56. To apply for AAR services, a customer must fill out an application and attend an in-person interview and assessment with a trained, licensed healthcare professional. The assessment gauges the customer’s ability to use fixed-route subway and bus service, including whether the passenger is able to access elevated and/or underground stations. *Id.* ¶ 3.

Response: Undisputed, except to clarify that some customers, depending on the type of eligibility they receive, must obtain subsequent in-person assessments every five years, and in some cases more frequently, to use AAR. McFarlane Dep. at 42:2–:10, 42:21–43:4, 44:15–45:4, 59:16–:24, 60:22–61:12, 83:4–:8; Ex. 20, Exhibit 2 to McFarlane Dep. at 7. In addition, Plaintiffs clarify that obtaining in-person assessments can be difficult and time-consuming. McFarlane Dep. at 64:18–:22, 64:23–:24, 64:25–65:1 (McFarlane admitting that there are no assessment centers in Manhattan); *id.* at 70:3–:9, 70:10–:14, 77:6–:13 (McFarlane admitting that, as of her deposition, there were months-long backlogs for customers to receive in-person assessments at some assessment centers); Blair-Goldensohn Decl. at ¶¶ 23–24 (class member declaring that he was at first assigned an assessment center in Brighton Beach which “would have been very difficult to travel to via accessible subway” and that his in-person assessment “took about four and a half hours, including travel time,” which necessitated taking a half-day off from work).

57. To schedule a trip on AAR, a customer can make a reservation by telephone or online one to two days in advance. Exhibit 2 (McFarlane Decl.) ¶ 4.

Response: Partially disputed. Plaintiffs clarify that customers cannot make reservations more than two days or less than one day in advance of the AAR trip. McFarlane Dep. at 26:10–13, 117:11–118:2, 126:22–127:19; McFarlane Decl. at ¶ 4. In addition, reservations for AAR cannot be made by telephone after 5pm. McFarlane Dep. at 115:19–116:2, 116:20–117:10. AAR generally does not provide options for spontaneous travel such as when a customer encounters an elevator outage. *Id.* at 118:13–19; *see* Copeland Decl. at ¶ 20; Rausin Decl. at ¶ 17 (class member declaring that her need for spontaneous travel cannot be met by “a system [like AAR] that requires a minimum of one-day notice to go anywhere”); Ryan Decl. at ¶ 13 (class member declaring that AAR cannot be used for spontaneous trips like errands and instead requires her “to carefully plot out when I plan to leave, as well as return to, my neighborhood”); *see also supra* ¶ 5, *infra* ¶ 59.

58. Customers who travel from the same location to the same destination at the same time of day for each trip at least one day a week, can apply for subscription service, which pre-schedules their trips and eliminates the need to schedule them individually. *Id.*

Response: Partially disputed. While AAR customers are able to pre-schedule trips using subscriptions to AAR, travel by AAR does not provide the reliability suggested by this paragraph, as all AAR service, including subscription service, is highly unreliable. AAR does not limit the number of stops that one customer can expect their driver to make on the way to their destination, which could be in other boroughs. McFarlane Dep. at 137:5–9, 158:8–160:12; Bartlett Decl. at ¶ 28 (class member declaring that “AAR will not tell

you what route you are taking or what order the driving is dropping other passengers off,” so you have “no idea where you are going or how long it will take until you arrive at your destination”); Copeland Decl. at ¶ 20 (class member declaring that, “[w]ith AAR, you go all over the world just to get to your destination,” including “to any of the five boroughs before I’m eventually dropped off at my final destination”); Ryan Decl. at ¶¶ 17–18 (explaining how she was forced to resign from her “beloved job as a teacher at Hunter College because [she] simply could not continue commuting on a daily basis using AAR,” whose pick-ups and drop-offs she describes as “excruciating” and “tortuous” as AAR would often schedule her pick-ups for 5:30 a.m. and drop her off at her school before 7:00 a.m. after 45 minutes of picking up other customers despite not starting work until after 8:00 a.m.; at the end of the day, AAR drivers would often drive to the wrong location and record Ms. Ryan as a “no show,” or arrive 2–3 hours late while she waited outside on crutches in “significant pain”); Jones Aug. 2019 Decl. at ¶ 18 (declaring that “AAR and busses [sic] almost always take longer than the subway, especially during rush hour, because then I’m forced to sit in traffic.”); *see also supra* ¶ 5; *infra* ¶ 59.

59. NYCT recognizes that customers who are eligible for AAR may also be able to use fixed-route bus and subway under certain conditions. For example, a customer who uses a wheelchair may be able to use the subway if traveling to and from accessible subway stations that have elevators or ramps. Except for those with temporary eligibility, AAR customers are provided with an AAR MetroCard upon request, which allows them to use fixed-route subways and buses free of charge. *Id.* ¶ 5.

Response: Partially disputed, as AAR and fixed-route transportation services, such as the subway, are not interchangeable in the manner suggested by ¶ 59 or the declaration from

Diane McFarlane, Eligibility and Compliance Officer for AAR. As Ms. McFarlane explained in her deposition, AAR and the city’s subway system are “not comparable” systems because they are “two different services”—“two different modes of transportation”—and “[y]ou can’t compare apples to oranges.” McFarlane Dep. at 12:10–:13; 125:11–:16; 164:20–165:4; 180:22–181:3; *see* ECF 163-10, Bringing Innovation to Paratransit (NYU Rudin Center study concluding that, “[i]f [subway system] elevators were upgraded and maintained, the city’s public transportation, rather than [AAR], could be used by more passengers”). Class members similarly report that the subway and AAR are not interchangeable. *See* Bartlett Decl. at ¶ 28 (class member declaring that there “is no comparison between AAR travel and the subway”); Ryan Decl. at ¶ 12 (class member declaring that there are no “comparable public transit alternatives” to the subway and explaining how “AAR cannot possibly match the convenience or efficiency of the subway”); Copeland Decl. at ¶ 20 (class member declaring that she prefers “taking the subway and blending into the crowd rather than pulling up . . . in an AAR van”); Blair-Goldensohn Suppl. Decl. at ¶ 22 (class member declaring that AAR is “an even less feasible alternative” to the subway, because it can involve “long wait times, circuitous routes, and difficulties inherent in a system that requires booking trips a day in advance”); Rausin Decl. at ¶ 17 (class member declaring that AAR “cannot compare to the subway and does not meet my transportation needs”); *see also* Rausin Dep. at 44:13–45:12. For example, unlike the subway:

- people with mobility disabilities must receive in-person assessments, sometimes repeatedly, before being able to use AAR, *see supra* ¶ 56;

- the requirement to reserve AAR rides one to two days in advance means that AAR cannot be used for spontaneous travel, such as rerouting when the customer encounters an elevator outage, McFarlane Dep. at 118:13–:19; *see* Copeland Decl. at ¶ 20; Rausin Decl. at ¶ 17 (class member declaring that her need for spontaneous travel cannot be met by “a system [like AAR] that requires a minimum of one-day notice to go anywhere”); Ryan Decl. at ¶ 13 (class member declaring that AAR cannot be used for spontaneous trips like errands and instead requires her “to carefully plot out when I plan to leave, as well as return to, my neighborhood”);
- an AAR customer can be suspended from the service for repeatedly arriving late to the pickup location or for late cancellations, McFarlane Dep. at 121:4–:7, 151:4–:16, 173:24–174:9; Ex. 20, Access-A-Ride Guide at 36–39;
- AAR does not allow customers to make stops when traveling between two locations, McFarlane Dep. at 123:24–124:14; 124:21–125:9;
- AAR limits the number of guests a customer may ride with based on capacity limitations, and guests must be reserved in advance, McFarlane Dep. at 138:7–:21, 139:16–:23; Access-A-Ride Guide at 19; Rausin Decl. at ¶ 17 (class member declaring that AAR does not meet her transportation needs because she “want[s] to travel throughout NYC in groups of friends and not alone”);
- AAR limits the number and weight of bags that customers can bring, McFarlane Dep. at 140:18–141:4; Ex. 20, Exhibit 2 to McFarlane Dep. at 21;
- AAR does not limit the number of stops that a customer can expect their driver to make on the way to their destination or the total time the trip can take, *see supra* ¶ 58; and

- AAR does not allow customers to pay reduced-fare rates that would be available to those same customers on the subway, McFarlane Dep. at 134:6–19, 135:2–8; Ex. 20, Exhibit 2 to McFarlane Dep. at 16; *see* Blair-Goldensohn Suppl. Decl. at ¶ 24 (class member declaring that AAR would cost him twice the amount of a subway trip).

See also supra ¶ 5. Class members report that traveling by AAR takes significantly longer than traveling by subway. Bartlett Decl. at ¶ 28 (class member declaring that AAR trip took her 30 minutes longer than subway would have); Ryan Decl. at ¶ 16 (class member declaring that “AAR trips are often significantly more extended than an equivalent subway trip,” with a trip of shorter than 25 miles taking “four to five hours” on AAR “because there were often multiple people being transported to their chosen destinations and those destinations frequently made for circuitous and lengthy routes, further hampered by traffic and weather conditions”); Ryan Dep. at 59:2–63:12 (recounting AAR trips that lasted between 4–6 hours, one way); *id.* at 63:13–65:11; Bartley Decl. at ¶¶ 4–5 (explaining that she would prefer to take the subway because paratransit requires advance notice and is frequently delayed). While the maximum travel time for an AAR ride on paper is 2 hours and 35 minutes, that maximum can be exceeded. McFarlane Dep. at 160:15–162:2; Ex. 20, Exhibit 2 to McFarlane Dep. at 17; *see also* <http://aardashboard.mta.info/>.

60. Based on their functional abilities, AAR customers may alternate their use of AAR and/or fixed-route subway or bus. *Id.* ¶ 6.

Response: Disputed. While customers may be able to use both AAR and fixed-route transportation depending on their abilities, AAR and fixed-route systems, such as the subway, are not interchangeable in the manner suggested by ¶ 60 or Ms. McFarlane’s

declaration. *See supra* ¶¶ 5, 56–59.

Class Members’ Use of NYCT’s Transit System and Rerouting Tools

61. The Office of Systemwide Accessibility is involved in community outreach efforts, including newsletters, community events, and invitations to join advisory committees. Exhibit 4 (Cohen I Tr.) 14:3-15:10; Exhibit 5 (Ryan Tr.) 16:18-17:9, 40:10-41:11; <https://new.mta.info/accessibility>; <https://new.mta.info/accessibility/ACTA/>.

Response: Undisputed.

62. Arielle Rausin has successfully rerouted herself in the event of an elevator outage by riding the subway to the next station with a functioning elevator. Exhibit 6 (Rausin Tr.) 50:19- 51:7.

Response: Disputed. The term “successfully” misrepresents Ms. Rausin’s ability to reroute when encountering an elevator outage. Rerouting after encountering a malfunctioning elevator often takes Ms. Rausin “substantial” time and is a “serious impediment to [her] plans,” such as when she was over one hour late to meet friends after encountering an out-of-service elevator at the Prospect Park Station in Brooklyn or when a detour took her and her friends an hour after they encountered a malfunctioning platform elevator at Union Square. Rausin Decl. at ¶¶ 12–13. Rerouting has also caused Ms. Rausin to be thirty minutes late to work. Rausin Dep. at 27:19–28:6. Ms. Rausin has also been unable to reroute herself in the event of an elevator outage by riding the subway to the next station with a functioning elevator due to the time and distance such rerouting would take, forcing her to instead ride the escalator in her wheelchair, which is dangerous. Rausin Dep. at 31:24–32:17, 35:15–:22. In addition, Ms. Rausin has found when rerouting that the next accessible station’s elevators are also frequently out of

service, forcing her to travel even farther out of her way. *Id.* at 50:19–51:7.

63. Ms. Rausin was not aware of NYCT’s subway outage alert system. *Id.* 53:5-16.

Response: Partially disputed. While Ms. Rausin was unaware of Defendants’ email and text-based notification system, Ms. Rausin is aware of and regularly checks Defendants’ elevator and escalator status webpage before departing on subway trips, and finds that it is often inaccurate. Rausin Decl. at ¶ 15; Rausin Dep. at 28:14–29:16, 39:10–:25, 53:3–:4.

64. Bryanna Copeland has successfully rerouted herself in the event of an elevator outage by using Google Maps to research alternate accessible routes. Exhibit 7 (Copeland Tr). 32:2-34:6.

Response: Disputed. The term “successfully” misrepresents Ms. Copeland’s ability to reroute when encountering an elevator outage. Rerouting often adds “significant time,” stress, frustration, and confusion to Ms. Copeland’s trips, and often takes a minimum of 30 minutes, or sometimes up to an hour and a half or longer. Copeland Decl. at ¶¶ 10, 13–14; Copeland Dep. at 34:7–:25. Having to reroute has caused Ms. Copeland to be late for appointments; for example, encountering an elevator outage that was not listed on the MTA’s mobile application caused Ms. Copeland to miss her appointment to pick up her graduation cap and gown after her attempt to back-ride failed (due to additional elevator outages) and she was forced to switch to a bus to avoid even more outages. Copeland Dep. at 23:2–25:13. There have also been times when Ms. Copeland was unable to reroute herself on her way home to Long Island late at night and she had to have the Fire Department assist her out of the station. Copeland Decl. at ¶¶ 11–12. In addition, Ms. Copeland does not always have good enough cell phone reception to use Google Maps to

research alternate accessible routes, and the rerouting suggestions offered by Defendants are often confusing or unhelpful. *Id.* at ¶¶ 10, 13; Copeland Dep. at 24:18–25:5, 31:19–32:8, 36:16–37:9.

65. Jean Ryan has not used the subway since 1994, despite an accessible station recently opening near her home, instead using AAR for trips she can plan in advance, and buses for trips that are more spontaneous. Exhibit 8 (Ryan Decl.) ¶¶ 6, 8, 12, 20; Exhibit 5 (Ryan Tr.) 32:24–33:12, 34:6–15, 38:16–40:2.

Response: Partially disputed. Ms. Ryan is deterred from using the subway, even though a station near her home recently became accessible, because of the inconvenience of having to reroute in the event of elevator outages in a system in which fewer than one quarter of stations are accessible, *see supra* ¶¶ 2–3, and the attendant risk of becoming stranded in a subway station with no safe way to exit. Ryan Decl. at ¶¶ 8–9, 11; Ryan Dep. at 29:18–30:3; 55:14–19. Her inability to use the subway has been due to a degenerative condition “that [has] made walking and climbing stairs increasingly painful and difficult.” Ryan Decl. at ¶ 6. Ms. Ryan “really wish[e]s subway elevators were more functional as it would allow me to complete at least some trips using the subway without being worried about becoming trapped due to an unplanned outage.” *Id.* at ¶ 11. It was “incredibly hard” for Ms. Ryan to shift “to a daily life in which the subway was not an option and where no functional alternatives existed,” and she had “to get accustomed to meticulously planning out all my trips in order to make sure some accessible form of transit was available to get me to and from wherever I needed or wanted to go,” which “greatly diminished my opportunities to enjoy the city” *Id.* at ¶ 7; *see also id.* at ¶ 11 (“It is hard for me to even contemplate the many things I have missed throughout these

years because I have had no access to reliable and practical public transportation.”) For example, she will sometimes miss being able to provide childcare for her grandchildren due to the “lack of functional elevators that would enable me to take the subway,” as well as due to the lack of alternative, reliable forms of transportation. Ryan Decl. at ¶ 10. In addition, Ms. Ryan has experienced numerous barriers when attempting to rely on AAR and the city’s local and express buses, and was forced to leave her “beloved job as a teacher at Hunter College because [she] simply could not continue commuting on a daily basis using AAR” due to the unreliability and barriers she experienced. *See id.* at ¶¶ 17–18; *supra* at ¶¶ 5, 57–59. Ms. Ryan has found that New York City buses are a “profoundly inadequate alternative” for the subway, as she encounters numerous barriers while attempting to ride on the city’s bus system, *see* Ryan Decl. at ¶¶ 20–25, and *supra* at ¶¶ 4, 48—accessibility and reliability barriers that people with mobility disabilities frequently encounter while attempting to ride buses, including for spontaneous trips, *see supra* at ¶¶ 4, 48–53.

66. Sasha Blair-Goldensohn has successfully rerouted himself in the event of an elevator outage by riding the subway to the next station with a functioning elevator and doubling back, resulting in a delay of approximately half an hour. Exhibit 9 (Blair-Goldensohn Tr). 22:15–26:10.

Response: Disputed as to “successfully.” Rerouting can be “disconcerting” and “aggravating” to Mr. Blair-Goldensohn, and can mean missing appointments or having to reschedule them. Blair-Goldensohn June 2022 Dep. at 25:18–26:10 (describing half-hour delay on commute to work); 44:6–:16 (describing hour delay on his way to a baseball game near his children’s school). Some transfers necessitated by rerouting are “longer”

and “difficult.” *Id.* at 28:7–:8. Mr. Blair-Goldensohn has also experienced hour-long delays due to rerouting. Blair-Goldensohn Dep. at 44:6–:16. Because rerouting can cause substantial delays, when Mr. Blair-Goldensohn cannot afford to be late for appointments, such as when he is picking up his elementary-aged children from school, he is forced to “rely on strangers to carry [himself] and [his] wheelchair out of the subway system,” which is “unsafe” and “degrading” but his only option in such instances. ECF 149, Declaration of Sasha Blair-Goldensohn in Support of Plaintiffs’ Motion for Summary Judgment at ¶ 13. One example of the many times he has been harmed by broken elevators occurred when he needed to exit the subway system at the Columbus Circle Station to pick up his children from school, but upon encountering a broken elevator, tried asking for help from station personnel only to be provided with “unusable suggestions” and “incorrect information.” *Id.* at ¶¶ 18–19. Since his only rerouting option would have been to take a train to 125 St. Station or Times Square Station, which would make him miss his children’s bus and leave his young children stranded alone in the City, he ended up having to threaten to call 911 in order to convince a police officer and maintenance worker in the station to help him exit the station. *Id.* at ¶¶ 20–21.

67. Susan Dooha, the designated CIDNY representative, was personally aware that it was possible to sign up for elevator status email alerts, but she never did so and never advised anyone else that they could. She had no knowledge of the MTA’s mobile application, or that Help Points within Subway stations could be used to obtain elevator status information. Exhibit 10 (Dooha Tr.) 130:19-131:21.

Response: Undisputed.

68. Ms. Dooha is not aware of any elevator outage that was not communicated to the public. Exhibit 10 (Dooha Tr). 132:7-18.

Response: Undisputed, except to clarify that at the time of Ms. Dooha's deposition, neither was she aware of any elevator outages that *were* communicated to the public. Dooha Dep. at 131:22–132:12.

69. Class member Monica Bartley, who serves as CIDNY's community outreach organizer, was not familiar with the MTA's notification system for elevator outages. She had never heard of the Mymta app and did not know what a Help Point was, or how it could be used. Ms. Bartley sometimes checks the MTA website for elevator outages before leaving her home, but does not check her phone before entering the station because "that time could be spent doing something else." Exhibit 11 (Bartley Tr.) 14:10-12, 67:25-70:13, 71:5-10.

Response: Undisputed as to Ms. Bartley's knowledge of the Mymta app and Help Points, but disputed as to her familiarity with Defendants' notification system for elevator outages and the frequency with which she checks for elevator outages before leaving her home. Ms. Bartley is familiar with Defendants' elevator and escalator status webpage and checks it before most subway trips. Bartley Dep. at 68:7–69:7. While Ms. Bartley does not generally check her phone for elevator outages before entering the system, she checks the webpage on her laptop before departing her home or office. *Id.* at 69:4–70:10 ("For example, if I'm going to take the subway now I would check on my phone if the elevator is working. So when I get there I'm not going to stop again to check it because I checked it just before going."). Even though Ms. Bartley checks the status webpage before most subway trips, her experience is that the website does not provide real-time outage information because she has encountered stations with elevator outages that were not

listed on the website. *Id.* at 68:7–:23.

70. Class member Karin Willison, a frequent visitor to the City, has only ridden the Subway once, and not since May 2010. Exhibit 12 (Willison Tr.) 9:4-10, 12:13-20, 16:5-8.

Response: Undisputed as of September 18, 2018, except to clarify that the reason Ms. Willison had not ridden the subway since May 2010 was because her experience with the subway’s elevators was “so bad” and her fear that future attempts to use them would be unsafe and/or a waste of time. Ex. 37 to Holzman Decl., Transcript of Karin Willison Deposition (“Willison Dep.”) at 16:5–:24. Specifically, Ms. Willison was forced to expend an hour and twenty minutes rerouting herself via subway and bus after encountering an out-of-service elevator and encountered a dirty elevator that “smelled like it had been used for a toilet.” *Id.* at 14:2–15:11, 16:12–:15. However, Ms. Willison would like to take the subway in the future and would do so if the elevators were more reliable and cleaner. *Id.* at 23:25–24:16.

71. Class member Grace Agalo-Os is aware that the MTA website provides elevator status information but she does not check it. Ms. Agalos-Os was not aware that the MTA also provides elevator status information via email and text message alerts. Exhibit 13 (Agalo-Os Tr.) 15:17-17:4.

Response: Undisputed as of September 18, 2018, except to clarify that the reason Ms. Agalo-Os does not check Defendants’ elevator and escalator status webpage before embarking on a subway trip is that her experiences trying to use subway elevators have been “demoralizing.” Ex. 38 to Holzman Decl., Transcript of Grace Theresa Agalo-Os Deposition (“Agalo-Os Dep.”) at 16:18–:22.

72. Plaintiff Dustin Jones was not aware that he could sign up for the MTA's elevator status notification emails. He used to check the MTA's website for elevator outages, but has not done so since January 2018 because he found the process to be time consuming. Exhibit 14 (Jones Tr.) 13:22-16:17.

Response: Disputed to the extent that Mr. Jones stopped checking Defendants' elevator and escalator status webpage not only because he found it to be time consuming, but also because he found the website to be frequently inaccurate. Jones Dep. at 14:5-:16, 15:19-16:12, 33:21-:24. Undisputed to the extent that he found the process to be time consuming except to clarify that the reason he found it to be time consuming is that getting ready to embark on trips takes him longer because of his disability, and because he cannot check the website on his cell phone on the way to the subway while wheeling. *Id.* at 14:25-15:18.

73. Jennifer Bartlett does not check the elevator status along her planned route before leaving her house. Exhibit 15 (Bartlett Tr.) 12:10-23, 21:8-12, 26:11-27:12.

Response: Undisputed except to clarify that Ms. Bartlett does not check Defendants' elevator and escalator status webpage before embarking on a subway trip because she finds it "so unreliable, it's practically useless" and often encounters elevator outages that have not been listed online. Bartlett Decl. at ¶ 17; *see also* Bartlett Dep. at 22:12-23:4, 23:16-:22, 27:9-:12.

74. Ms. Bartlett has not made an effort to modify her routes based on long-term elevator outages of which she became aware. *Id.* 17:4-18, 19:5-12.

Response: Disputed. When Ms. Bartlett commuted to her job in downtown Manhattan, she had to reroute "every trip" on her way home due to elevator outages. Bartlett Dep. at

14:17–15:14, 21:13–22:3. To the extent that Ms. Bartlett does not follow the suggested alternate routes on Defendants’ website or AATI signs, she does not do so because they are “difficult to understand” and unhelpful, *id.* at 25:5–:22, or contain instructions that are “circuitous,” “distant,” “time-consuming,” and “require a lot of walking, which is hard for [her].” Bartlett Decl. at ¶¶ 13–14, 17–18. Ms. Bartlett has been forced to pay for expensive taxi rides because it is too painful and difficult for her to make her way to a distant alternative route. *Id.* at ¶ 14. To the extent that Ms. Bartlett did not reroute her commute to downtown Manhattan using the bus system, she did not do so because the bus is slow, runs infrequently, requires many transfers, and would take several hours longer than if she were able to use the subway. *Id.* at ¶¶ 22–23; Bartlett Dep. at 30:5–:17. Moreover, taking the bus involves other unique challenges and accessibility barriers, including that buses do not always pull up to the curb, making it difficult for her to board with her walker, and that it takes time for bus operators to deploy the bus ramp, with some being reluctant or even refusing to do so. Bartlett Decl. at ¶¶ 24–25, 27; Bartlett Dep. at 29:15–30:17, 31:17–32:14, 34:25–35:11. To the extent that Ms. Bartlett did not reroute her commute to downtown Manhattan using AAR, she did not do so because it is inconvenient, unreliable, slow, and often takes much longer than the subway. Bartlett Decl. at ¶ 28; Bartlett Dep. at 38:22–40:14.

75. When Ms. Bartlett travels to Williamsburg, she takes buses from the stop one block away from her home, rather than the subway station five blocks from her home. *Id.* 20:8-17, 28:20- 29:14.

Response: Undisputed except to clarify that Ms. Bartlett cannot take the subway to Williamsburg because there are no ADA-accessible elevators in the station in which she

would have to transfer from the G train to the L train. Bartlett Dep. at 29:6–:10.

76. Ms. Bartlett does not use the MTA’s website, Trip Planner, station Help Points, or consult with station agents in order to reroute herself in the event of an elevator outage. *Id.* 22:4-23:18, 24:2-25:5.

Response: Undisputed except to clarify that Ms. Bartlett, who used to work for the MTA, explained that “[i]t’s well known in in the [MTA offices] that the app doesn’t work,” Bartlett Dep. at 22:22–23:13, and she does not check the website because she “find[s] its information so unreliable, it’s practically useless.” Bartlett Decl. at ¶ 17. She does not use the signs posted by the MTA with rerouting directions because “they are very difficult to understand,” Bartlett Dep. at 25:5–:11; Bartlett Decl. at ¶ 18, and she does not believe that station agents would have the information necessary to help her reroute. Bartlett Dep. at 24:22–25:4. On numerous occasions, Ms. Bartlett has called the MTA and tweeted to request information about repair times, only to receive limited responsive information, including one instance when the MTA employee replied that Ms. Bartlett would need to call the private company that maintained the elevator about the estimated repair time. Bartlett Decl. at ¶¶ 17, 19. *See also supra* ¶¶ 73-74.

II. Plaintiffs’ Rule 56.1 Statement of Additional Material Facts

Necessity of Accommodations

77. Class members rely on the subway system for countless life activities, including commuting to work and school, traveling to see friends and socialize, and to attend events. Bartlett Decl. at ¶ 4; Blair-Goldensohn Suppl. Decl. at ¶¶ 2, 5, 6; Copeland Decl. at ¶¶ 3, 6, 7, 8; Ryan Decl. at ¶¶ 4, 5.

78. Most one-way trips on the New York City subway require elevator-dependent passengers to use at least four elevators—and more for the return trip—to successfully travel from their origin to their destination point, any one of which (or more) can malfunction in the same trip. Cohen May 2022 Dep. at 98:19–:25; *see also* Bartlett Decl. at ¶¶ 7–8 (class member declaring that her regular, roundtrip commute involves 12 elevators); Copeland Decl. at ¶ 7 (class member declaring that her commute to school requires four elevators one way); Rausin Decl. at ¶¶ 7–8 (class member declaring that most trips she takes “require a minimum of five or six elevators to go one way”).

79. Out of all stations that currently have elevators, all except five require two or more elevators in order to travel from the street to the subway train. ECF 163-5 at 14 (MTA’s expert, Dr. Alan Salzberg, conceding that “it is correct that only five [out of all ADA-accessible] stations have only one elevator.”).

80. Transferring from one train line to another can further increase the number of elevators that the elevator-dependent passenger must use to successfully travel from their origin to their destination point. Cohen May 2022 Dep. at 98:19–99:16.

81. The Chief Officer of Defendants’ E&E Division admitted that Defendants “continue to add equipment and fail to acknowledge the need to replace it at the end of its useful life.” ECF No. 144-41, Emails from Antonio Suarez.

82. For example, while 66 of the system’s hydraulic elevators should be replaced during every 5-year capital program, Defendants admit that the NYCT replaced just 16 during the MTA’s 2015–2019 capital program. ECF No. 144-38, Asset Investment Strategy Form at D111397; ECF No. 144-39, MTA Capital Program 2015–2019 at 117.

83. Robert Thompson, Manager of Control Desk Operations in Defendants' E&E Division, admitted that he did not know whether elevators flagged within their system as having "excessive outages"—which he defined as three or more outages over the course of a single week—are ever replaced. Thompson Dep. at 97:16–:20; 98:12–:15; 99:14–:22, 102:22–103:3.

84. Mr. Thompson was further unable to say (a) whether the 64 elevators scheduled for replacement under the old capital program have in fact been replaced; (b) whether the 109 elevators scheduled for replacement under the new capital program represent the totality of elevators that in fact need replacing; and (c) how many of those 109 elevators are in the ADA path of travel. Thompson Dep. at 226:21–227:3; 227:7–:14; 228:22–:25.

85. Class members report that they routinely encounter elevator outages while attempting to access and navigate the subway system. Bartlett Decl. at ¶ 9 (declaring that she "routinely" encounters outages," which "wreak havoc" on her travel as "it is distressingly common for me to find two to three elevators along the route out of service at the same time"); *id.* at ¶¶ 10–11 (declaring that she generally encounters at least one elevator outage on every subway trip, including elevators that experience planned and unplanned outages for weeks); *id.* at ¶ 12 (declaring that multiple elevators at the same station will sometimes, unexpectedly, go out of service all at once); Bartlett Dep. at 12:24–13:12, 14:17–15:14, 16:2–:23; Blair-Goldensohn Suppl. Decl. at ¶ 7 (declaring that he encounters outages "very frequently" and that the number of outages he encounters has increased since his first declaration submitted in this litigation, dated September 12, 2019, such that he now encounters at least one outage out of two or three round-trip subway rides each week); *id.* at ¶ 8 (estimating that 90% of the elevator outages he encounters are "unplanned breakdowns as opposed to planned maintenance"); Copeland Decl. at ¶ 9 (declaring that she encounters outages "very frequently" and is "routinely

harmful by malfunctioning subway elevators,” including approximately “one or two out of every five subway trips” she takes); Rausin Decl. at ¶¶ 6, 9 (declaring that outages have “frequently derailed” her subway trips and that encountering outages is “a very common occurrence,” and that she encounters at least one outage—and often two to three—per week, and sometimes “multiple elevator outages on a single trip”); Rausin Dep. at 27:2–9, 36:25–37:7; Jones Decl. Aug. 2019 at ¶¶ 9–11 (describing encountering elevator outages); Jones Dep. at 19:5–12; 12:06–13:02 (describing how his home station and alternate station are often rendered unusable by elevator outages); Ex. 39 to Holzman Decl., Transcript of Chris Pangilinan Deposition (“Pangilinan Dep.”) at 32:18–34:7; ECF 145, Declaration of Chris Pangilinan (“Pangilinan Decl.”) at ¶ 12 (explaining that he encountered 301 unplanned elevator outages, or an average of 8.9 outages per month, with outages impacting 14.9% of his subway trips which involved daily commutes to work and traveling throughout the city); *id.* at ¶¶ 16, 19, 22; Curry Dep. at 21:16–22:15; 27:14–17; 33:19–22 (describing being delayed due to and being stuck inside malfunctioning elevators); Bartley Dep. at 74:14–75:09 (describing how she is impacted by outages two to three times per month); Coughlin Dep. at 20:9–21:8, 28:16–29:8 (describing how she encountered seven broken elevators during a single commute).

86. Only 20% of subway elevator outages are attributable to planned preventive maintenance or planned inspections. ECF 144-1, Subway Accessibility Analysis Report by Defendants’ Expert Alan Salzberg at 3.

87. The vast majority of elevator outages (80%) are due to unplanned breakdowns. ECF 144-1, Subway Accessibility Analysis Report by Defendants’ Expert Alan Salzberg at 3.

Rerouting Within the Subway System

88. Having to reroute due to elevator outages can cause customers to run late, including but not limited to missing appointments and work. Cohen May 2022 Dep. at 196:21–197:4; *see also supra* ¶¶ 4-5, 22, 41, 47–48, 58–59, 62–66, 70, 74, 76; *see also infra* ¶¶ 122–24.

89. If an outage occurs after the passenger who requires elevator access has already begun traveling, the MTA’s policy is to direct that customer to the nearest accessible station if one can be accessed on that same train line and, if there is not an accessible station remaining on that line, to direct customers to their station of origin if they can access the train traveling in the opposite direction. ECF 163-57, NYCT Training Guide for Customer Service Personnel at D0000464012; Bartlett Decl. at ¶ 13.

90. If neither option is available, the MTA’s official policy is to contact the New York City Fire Department to assist the customer in exiting the station. ECF 163-57 at D0000464013.

91. Defendants have not conducted any studies to ascertain how long alternative routes can take when a passenger is forced to back-ride in order to reroute themselves after having a subway trip disrupted by an elevator outage. Cohen May 2022 Dep. at 101:20–102:4.

92. Defendants have not conducted any studies regarding the amount of time alternative routes can take in instances where an elevator outage renders the initial itinerary unavailable. Cohen May 2022 Dep. at 70:19–:23 (testifying that MTA has never hired any experts to study the time it can take customers with disabilities to reach their destination through alternative means); Cohen Sept. 2022 Dep. at 79:2–:7.

93. The MTA has never conducted any analysis of the possible differences in estimated travel times for alternative routes in cases of elevator outages based on whether

customers are forced to reroute themselves directly from the street or from somewhere within the subway station. Cohen Sept. 2022 Dep. at 79:8–:13.

The Bus System

94. The MTA has recognized that bus delays, infrequency, and slow speeds are an “equity” issue, including for people with disabilities. Morse Rep. at 15.

95. Studies show that crowding on buses leads to stress and anxiety for riders with disabilities. Morse Rep. at 12.

96. For example, Arielle Rausin hates the feeling of “being stuck” while secured on the bus, whereas on the subway she is free to “enter and exit on [her] own, which [she] prefers,” and which she cannot do on the bus. Because she cannot exit the bus autonomously, she cannot do anything when “bus drivers go past [her] stop.” Rausin Decl. at ¶ 20.

97. In class member Sasha Blair-Goldensohn’s experience, the process of having the bus driver secure his wheelchair “can take up to ten minutes” and is “demeaning.” He “much prefer[s] taking the subway, where [he] can board and disembark entirely independently and at the same pace as [his] nondisabled travel companions.” Blair-Goldensohn Suppl Decl. at ¶ 21. *See also* Jones Aug. 2019 Decl. at ¶ 18 (having to be secured by the driver is “embarrassing”).

Access-a-Ride

98. As class member Jean Ryan declared, AAR “is a highly segregated service” because it is limited to people with qualifying disabilities. Ryan Decl. at ¶ 12.

99. AAR trips are not prioritized, which means that there are no trips (for example, a doctor’s trip) that would be prioritized over others (for example, a trip to the mall). McFarlane Dep. at 38:14–40:10, 139:6–:15; Ex. 20, Exhibit 2 to McFarlane Dep. at 3.

100. In May 2016, the New York City Comptroller reported that 31,492 AAR passengers were left stranded during the 2015 year due to the non-appearance of an AAR contract provider. ECF 163-8, NYC Comptroller Financial Audit Report at 10.

101. In a January 2018 report, the New York City Comptroller found “internal control weaknesses in NYCT’s processes for handling AAR complaints that have led to some complaints not being investigated and others not being investigated within required timeframes” (finding that of the 20,562 non-safety-related complaints received about AAR in 2016, 9,029 were not reviewed on-time and 4,106 were not reviewed within eight weeks). ECF 144-9, NYC Comptroller Management Audit Report at 2, 20.

Lack of Accommodations

102. The assistance available to a passenger who is stranded by an elevator outage and wants to reach their intended destination is limited to seeking rerouting advice from an MTA agent or using Trip Planner to identify a workable alternative itinerary. Cohen Decl. at ¶ 21; Thompson Dep. at 199:21–200:6 (testifying to not being aware of any assistance provided by the MTA to customers stranded by elevator outages excepting the possibility of figuring out alternative trips via Trip Planner); *see also* Copeland Decl. at ¶ 18 (declaring that, when encountering a planned or unplanned elevator outage, she is “forced to figure out my own alternative routing and transportation”); Rausin Decl. at ¶ 10 (class member declaring that she always presses the help button when encountering a malfunctioning elevator to get assistance with rerouting and/or a status update, but no one ever answers); *see also supra* ¶ 25 (detailing the significant limitations in Trip Planner’s ability to provide accessible trips for people forced to reroute).

103. Passengers with mobility disabilities have more limited options for rerouting within the subway system than non-disabled riders given the low number of accessible stations. Cohen May 2022 Dep. at 197:9–15; *see* Ryan Decl. at ¶ 25 (declaring that “neither AAR nor the bus function as true substitutes for the subway,” and “[i]f the MTA offered a real alternative, it would not have been nearly as hard for me to adjust to life in NYC without access to the subway”).

104. The MTA does not have a policy or practice of providing shuttles as a specific accommodation to passengers during elevator outages. ECF 163-73, Rule 30(b)(6) Deposition of Connie Depalma at 39:11–40:16; ECF 114-83, Transcript of Aaron Stern Deposition at 70:12–:18; Cohen May 2022 Dep. at 130:7–133:2, 140:18–150:22 (confirming that elevator outages do not qualify as service disruptions that merit shuttle service under the MTA’s current policies); Bartlett Decl. at ¶¶ 16, 21 (declaring that the MTA does not provide shuttles or other services for people with mobility disabilities who encounter elevator outages such that, instead, she is “forced to figure out [her] own alternative routing and transportation” and that even if there were “more effective announcements,” this would not address the need to do “more to reduce unplanned elevator breakdowns,” such as “providing shuttles when elevators are out of service,” so that she can “get around the city safely and independently”); Copeland Decl. at ¶ 18 (declaring that, in her experience, the MTA does not offer paratransit shuttle or other service for people who require elevators but encounter outages); Rausin Decl. at ¶ 16 (declaring that the “MTA does not offer any sort of paratransit shuttle or other alternative service for people who require elevators in the event of an elevator outage” such that instead she is “forced to figure out [her] own alternative routing and transportation”).

105. By contrast, the MTA routinely offers station-to-station shuttle service for other service disruptions, such as when subway service is not running through a station during weekend repairs. Cohen May 2022 Dep. at 130:7–19; *see also* <https://new.mta.info/alerts>.

106. The MTA does not have a policy or practice of having subway train crews announce elevator outages onboard, except for some elevator outages caused by long-term capital replacement projects that typically last several months, even though train operators announce other kinds of both planned and unexpected service disruptions, including ones with a duration less than several months. Cohen May 2022 Dep. at 187:1–194:6; *See also* Bartlett Decl. at ¶ 20 (MTA does not provide “real-time announcements on trains and station platforms for elevator outages like they do for other service disruptions.”); *see* Blair-Goldensohn Suppl. Decl. at ¶¶ 13–15 (declaring that the MTA “could do significantly more to meaningfully notify me and other class members about outages,” including making onboard announcements when elevators are out of service or, when a mezzanine-to-platform elevator is malfunctioning, providing that information at street level (and vice versa), or providing more accurate “return-to-service time” information for elevators); Blair-Goldensohn June 2022 Dep. at 48:10–50:10.

107. The Washington Metropolitan Area Transit Authority (“WMATA”) provides at least one elevator entrance for 100% of its stations. Ex. 40 to Holzman Decl., Declaration of Carol Lopez (“Lopez Decl.”) at ¶ 5.

108. WMATA adopted a standard to provide two elevators at each station built after 2000, which has resulted in 18 stations with “dual elevator entrances.” Lopez Decl. at ¶ 5.

109. Unlike the MTA, WMATA provides station-to-station shuttle service for customers with mobility disabilities during elevator outages. Lopez Decl. at ¶ 7.

110. WMATA also makes public address announcements about elevator and escalator outages in rail stations. Lopez Decl. at ¶ 9.

111. WMATA makes public address announcements regularly at each station which provides information on outages and the phone number customers can call to request shuttle service. Lopez Decl. at ¶ 9.

112. WMATA informs passengers about how to make free shuttle arrangements when elevators are out of service via Passenger Information Display System signs found on each platform and mezzanine of every rail station. Lopez Decl. at ¶ 10.

113. The Massachusetts Bay Transit Authority (“MBTA”) maintains 181 elevators for its system. Ex. 41 to Holzman Decl., Declaration of Laura Brelsford (Brelsford Decl.) at ¶ 4; Exhibits A and B to Brelsford Decl.

114. Eighty percent of all MBTA subway system stations are accessible. Brelsford Decl. at ¶ 12.

115. Audio announcements are provided on MBTA trains for elevator outages such that passengers have time to exit the train if need be. Brelsford Decl. at ¶ 6; Brelsford Decl. Exhibit B.

116. Unlike the MTA, MBTA provides shuttle service for customers with mobility disabilities during elevator outages if there are no alternate accessible routes already available via a nearby redundant elevator or ramp at the affected station. Brelsford Decl. at ¶ 9.

117. Shuttles provided by MBTA run between the impacted station and the nearest station. Brelsford Decl. at ¶ 9.

118. Shuttles provided by MBTA remain in place during all hours of operation until the affected elevator is returned to service. Brelsford Decl. at ¶ 9.

119. MBTA's Operations Control Center works to ensure that station agents are positioned in such a manner as to assist with these shuttles as needed. *Id.*

120. It is "MBTA practice to provide at least two accessible routes to stations in all newly constructed stations[,]" which often comes in the form of redundant elevators. Brelsford Decl. at ¶ 11. It is also MBTA practice to invest "heavily in the installation of redundant elevators at existing stations." *Id.*

121. Of the 181 public elevators maintained by the MBTA, 59% (106 elevators) have a redundant accessible route provided to the station. Brelsford Decl. at ¶ 13.

Class Members Deterred

122. Class members are deterred from using the subway system due to the lack of functioning elevators. Bartlett Decl. at ¶ 5 (declaring that she would "take the subway more often if more stations were accessible and if subway elevators were more reliable"); Blair-Goldensohn Suppl. Decl. at ¶¶ 2–3 (declaring that, after spinal cord injury, "one of the biggest adjustments [was] navigating NYC's overwhelmingly inaccessible subway system while relying on elevators to access the subway system"); Rausin Decl. at ¶¶ 3–4 (declaring that she would take the subway "even more often if all stations were accessible and if subway elevators were more reliable"); Ryan Decl. at ¶¶ 6–7 (describing the "incredibly hard" transition "to a daily life in which the subway was not an option and where no functional alternatives existed" after her degenerative condition "made walking and climbing stairs increasingly painful and difficult"); Willison Dep. at 12:17–15:11, 16:5–:24, 23:25–24:16 (describing not riding the subway since an incident in which she was forced to back-ride to her starting destination and take an hour-long bus instead, because she considers it too much of a risk and waste of time during her visits to New York City); ECF 149 at ¶¶ 18–25 (describing incident of nearly missing time to pick up children from

school due to elevator outage and that he is “fearful every time I take a subway elevator about getting trapped”).

123. Moreover, class members have declared that the barriers to using AAR have caused them to forego traveling at all, and many avoid using or even signing up for AAR. Ryan Decl. at ¶ 13 (“This continuous need to plan every detail out in advance before going anywhere is exhausting and sometimes renders me without energy to actually go through with the outing and see my friends and family. It is certainly impossible to attend any event I might be interested in last minute, the way I was able to when I was a subway rider.”); *id.* at ¶¶ 14–15, 17–18 (describing how AAR’s challenges have discouraged her from attending “many outings” and that its rigidity and unreliability forced her to give up her career, as AAR could not provide adequate transportation to and from her teaching job); Bartlett Decl. at ¶ 28 (“I try to take AAR as little as possible because it is so inconvenient and nerve-wracking.”); Copeland Decl. at ¶ 20 (“I hate AAR and try not to use it.”); Blair-Goldensohn Supp. Decl. at ¶ 22 (“For many years I avoided even registering as an AAR user because I have heard from other wheelchair users about the long wait times, circuitous routes, and difficulties inherent in a system that requires booking trips a day in advance.”); Rausin Dep. at 44:16–46:13 (describing unwillingness to sign up for AAR because she has “only heard bad things about it from my other friends with disabilities in the city.”)

124. Faced with malfunctioning elevators and Defendants’ failure to provide accommodations, class members are sometimes forced to resort to dangerous ways of accessing the subway. Bartlett Decl. at ¶ 13 (declaring that she often “make[s] do by using the stairs, even though it is painful and dangerous”); *id.* at ¶¶ 14–15 (declaring how “[i]t can be awkward and stressful” to rely on strangers for assistance to navigate stairs, that she “constantly worr[ies]

about injuring herself,” and that she “often observe[s] many other people with mobility disabilities who are forced to use the subway stairs due to elevator outages”), Bartlett Dep. at 21:13–:22 (same); Rausin Decl. at ¶ 14 (declaring how she will “occasionally go down the stairs backwards in my wheelchair, ‘bumping’ down the stairs while holding on to the handrail,” a practice that poses a risk of serious injury and has in fact injured her, and that “take[s] longer to heal” due to her disability); Rausin Dep. at 31:24–32:17 (explaining that, when she encounters elevator outages at Union Square station, she sometimes takes the escalator from the platform to the mezzanine in her wheelchair, which is “dangerous”); Jones Aug. 2019 Decl. at ¶¶ 12–14 (describing being forced to recruit fellow passengers to help him exit the station, requiring him to push directly in front of passengers, beg for help, and assure them he was not homeless or seeking money); ECF No. 145, Declaration of Chris Pangilinan, at ¶ 15 (declaring how he has attempted to exit stations by using crutches, which has caused him to fall and injure himself); Agalo-Os Dep. at 9:22–11:05, 13:22–14:15, 17:13–18:10, 19:4–:13 (describing how it is “extremely dehumanizing and demoralizing” to beg strangers to carry her out of subway stations).

125. In other cases, class members are forced to go to extreme measures to exit subway stations when encountering an elevator outage, such as asking the fire department to evacuate them from the station. Copeland Decl. at ¶¶ 11–12; Jones Dep. at 17:14–:17; 18:04–:20; 31:08–:21; Jones Aug. 2019 Decl. at ¶ 16.

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Respectfully submitted,

DISABILITY RIGHTS ADVOCATES



Chloe Holzman

Joshua Rosenthal
Madeleine Reichman
Brittany Castle
DISABILITY RIGHTS ADVOCATES
655 Third Avenue, 14th Floor
New York, NY 10017
Tel: (212) 644-8644
Fax: (212) 644-8636
cholzman@dralegal.org
jrosenthal@dralegal.org
mreichman@dralegal.org
bcastle@dralegal.org

Jelena Kolic
DISABILITY RIGHTS ADVOCATES
300 South Wacker Drive, Floor 32
Chicago, IL 60603
Tel: (312) 559-4660
jkolic@dralegal.org

Stuart Seaborn
DISABILITY RIGHTS ADVOCATES
2001 Center Street, 3rd Floor
Berkeley, CA 94704
Tel: (510) 665-8644
Fax: (510) 665-8511
sseaborn@dralegal.org

Daniel Brown
SHEPPARD MULLIN RICHTER & HAMPTON LLP
30 Rockefeller Plaza
New York, NY 10112
Tel: (212) 653-8700
Fax: (212) 653-8701
dlbrown@sheppardmullin.com

Attorneys for Plaintiffs