SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

JACQUELYN GOLDENBERG; EMELINE LAKROUT; and ATHENA SAVIDES, on behalf of themselves and all others similarly situated,

Plaintiffs,

-against-

METROPOLITAN TRANSPORTATION AUTHORITY, a public benefit corporation; JANNO LIEBER, in his official capacity as chair and chief executive officer of the Metropolitan Transportation Authority; NEW YORK CITY TRANSIT AUTHORITY, a public benefit corporation; RICHARD DAVEY, in his official capacity as president of the New York City Transit Authority; and CITY OF NEW YORK,

Defendants.

Index No. _____
Date Index Number Purchased:
October 25, 2022

SUMMONS

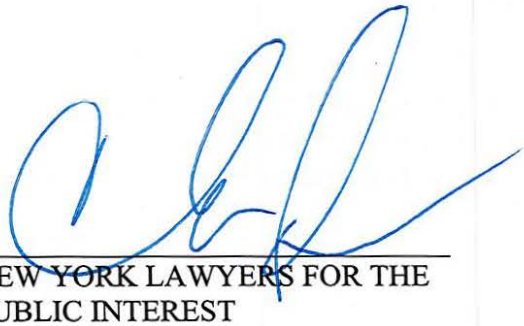
To the above-named Defendants:

YOU ARE HEREBY SUMMONED to answer the Complaint of the Plaintiffs herein and to serve a copy of your answer on the Plaintiffs at the addresses indicated below within twenty (20) days after service of this Summons (not counting the day of service itself) where service is made by delivery upon you personally within the state, or within thirty (30) days after completion of service where service is made in any other manner.

TAKE NOTICE THAT should you fail to answer, a judgment will be entered against you by default for the relief demanded in the Complaint and any additional interest the Court deems applicable.

The basis of the venue, designated as New York County, is the location of Defendants' principal offices.

Dated: New York, New York
October 25, 2022

By: 

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

JACQUELYN GOLDENBERG; EMELINE LAKROUT; and ATHENA SAVIDES, on behalf of themselves and all others similarly situated, Plaintiffs, -against- METROPOLITAN TRANSPORTATION AUTHORITY, a public benefit corporation; JANNO LIEBER, in his official capacity as chair and chief executive officer of the Metropolitan Transportation Authority; NEW YORK CITY TRANSIT AUTHORITY, a public benefit corporation; RICHARD DAVEY, in his official capacity as president of the New York City Transit Authority; and CITY OF NEW YORK, Defendants.	Index No. **COMPLAINT**

Plaintiffs Jacquelyn Goldenberg, Emeline Lakrout, and Athena Savides (collectively, "Plaintiffs"), by and through their undersigned attorneys, New York Lawyers for the Public Interest ("NYLPI") and Morvillo Abramowitz Grand Iason & Anello P.C. ("MAGIA") (together, "Plaintiffs' Counsel"), allege against defendants Metropolitan Transportation Authority ("MTA"), Janno Lieber, New York City Transit Authority ("NYCTA"), Richard Davey, and the City of New York ("the City") (collectively, "Defendants"), as follows:

INTRODUCTION

1. Every day, hundreds of thousands of individuals with disabilities are systematically excluded from the New York subway system and, therefore, vital aspects of city life.

2. Defendants have long been aware that excessive gaps between platforms and subway cars render stations throughout the subway system unusable or unreasonably dangerous for people with disabilities, but they have taken no action to remedy the situation.

3. Plaintiffs are New Yorkers with mobility and visual impairments who have either been forced to abandon the use of the subway because they cannot bridge horizontal gaps (the horizontal distance between the subway platform and the subway car threshold) or vertical gaps (the vertical distance between the subway platform and the subway car threshold) (together referred to as the "gaps") between platforms and subway cars, or who are forced to navigate hazardous conditions as a result of these gaps. To name just a few harrowing experiences:

a. Plaintiff Jacquelyn Goldenberg has abandoned using the subway entirely, even for doctors' appointments and visiting friends, as her worsening vision and knee condition render riding the subway too frightening and dangerous.

b. Plaintiff Emeline Lakrout, who is blind, uses the subway with acute fear, relying on swinging out her cane as she and her guide dog jump over potentially large gaps.

c. Plaintiff Athena Savides was nearly trapped on the train when her power wheelchair struggled to bridge the gap between the train and the platform.

4. This blatant and continuing discrimination against people with disabilities violates the New York City Human Rights Law ("NYCHRL"), which provides even greater protections than federal and state disability discrimination laws.

5. This class-action lawsuit seeks to end the systemic and discriminatory exclusion of people with disabilities from the lifeblood of the City.

6. Notwithstanding the vital role the subway system plays, Defendants, which own and/or operate the largest subway system in the United States, have permitted large gaps to exist between subway trains and platforms throughout the system—even at subway stations designated by Defendants as "accessible." The gaps create a pervasive problem for persons with mobility or visual disabilities who want to use the subway, but who are impeded from boarding or exiting the subway cars at most major stations.

7. To the extent some riders with disabilities are able to manage the gaps, they do so at great personal cost and risk, including the risk of falling into the gaps and being crushed by the trains, being stuck in the door, falling during boarding or deboarding, and being pushed onto the platform or track, as well as general fear and anxiety relating to these risks.

8. The inaccessibility of the subway due to gaps also negatively impacts countless other New Yorkers, including children, elderly persons, parents with strollers, people with temporary illness or injury, and people carrying children, suitcases, bags, groceries, or other heavy objects.

9. Despite being on notice of this pervasive problem for years, including through a detailed report by the New York City Transit Riders Council in 2013, *see* ELLYN SHANNON & BRADLEY BRASHEARS, N.Y.C. TRANSIT RIDERS COUNCIL, BRIDGING THE GAP: IT MAY BE

FURTHER THAN YOU THINK! (2013), https://pcac.org/app/uploads/2013/09/Bridging_The_Gap_FINAL.pdf [hereinafter BTG REPORT], Defendants have not adequately addressed the issue.

10. The MTA reportedly acknowledged as early as 2012 that the gaps should never exceed 2 inches vertically and 4 inches horizontally at the section of the platform designated accessible for wheelchair users. Janet Upadhye, *Wheelchair User Fights the MTA Over Subway Platform Gaps*, DNA INFO (Aug. 16, 2012), https://www.dnainfo.com/new-york/20120816/manhattan/wheelchair-user-fights-mta-over-subway-platform-gaps/. Yet, *a full decade later*, large gaps between the subway platforms and train cars—far greater than 2 inches high and 4 inches wide—are pervasive throughout the system, including at major transfer stations and at sections of the platform designated as accessible. This and other accessibility issues within the subway system, including lack of elevator access, have been repeatedly ignored while Defendants prioritize other projects at the expense of access to the subway system for all. Although in June 2022 the MTA announced plans to install elevators and ramps to make at least 95 percent of the subway system's stations accessible by 2055, completion is 33 years down the road and wholly ignores crucial accessibility issues, such as the gaps. Michael Gold, *M.T.A. Vows to Make Subways 95% Accessible. It Will Take 33 Years.*, N.Y. TIMES (June 22, 2022), https://www.nytimes.com/2022/06/22/nyregion/nyc-subway-accessibility-disabilities-elevators.html.

11. Not only has the MTA failed to eliminate the gaps between the platforms and the tracks, it also has failed to take measures that would reduce the risk posed by the gaps. A person with mobility or visual impairments is highly susceptible to falling or being pushed onto the

subway tracks, particularly on a crowded platform. Platform doors and yellow tactile edge warning strips could reduce these risks. The Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.* ("ADA"), acknowledged as much from its inception. *See* American with Disabilities Act Accessibility Guidelines § 10.3.1(8) (1991), https://www.ada.gov/reg3a.html ("Platform edges bordering a drop-off and not protected by platform screens or guard rails shall have a detectable warning"). Yet, as of May 2022, the MTA had failed to install yellow tactile edge warning strips in approximately 17 percent of its stations and had still failed to install any platform doors. Clayton Guse, *SEE IT: NYPD Cops Save Blind Man Who Fell Off NYC Subway Platform that Lacked Warning Strip*, N.Y. DAILY NEWS (May 25, 2022), https://finance.yahoo.com/news/see-nypd-cops-save-blind-225000719.html.

12. Defendants' failures to eliminate or even ameliorate the life-threatening gaps and implement reasonable safety features at stations throughout the system violate the NYCHRL, which prohibits entities operating public transit systems in the City from discriminating against persons with disabilities. N.Y.C. Admin. Code § 8-107(15)(a).

13. Defendants must forthwith remedy their discriminatory behavior which prevents people with mobility and visual disabilities from safely boarding and deboarding subway cars by eliminating the gaps between the subway platforms and the trains.

STATEMENT OF LAW

14. The NYCHRL's anti-discrimination provisions are independent of, and in addition to, the anti-discrimination protections provided by federal and state laws. N.Y.C. Admin. Code § 8-130.

15. Governmental bodies or agencies are required to comply with the NYCHRL. *Id.* § 8-102.

16. The NYCHRL prohibits any "owner, franchisor, franchisee, lessor, lessee, proprietor, manager, superintendent, agent or employee of any place or provider of public accommodation" from refusing, withholding, or denying the advantages or privileges of such accommodations to persons because of their disability status. *Id.* § 8-107(4)(a)(1)(a).

17. In enacting the NYCHRL, the City Council recognized that discrimination based on disability "threaten[s] the rights and proper privileges of" the City's "inhabitants and menace[s] the institutions and foundation of a free democratic state." *Id.* § 8-101. Without equal access to the subway system, people with disabilities are significantly prejudiced and are deprived of equal citizenship.

18. The NYCHRL provides that "[i]t shall be an unlawful discriminatory practice for any person who is the owner, franchisor, franchisee, lessor, lessee, proprietor, manager, superintendent, agent or employee of any place or provider of public accommodation … [b]ecause of any person's actual or perceived … disability … [t]o refuse, withhold from or deny to such person the full and equal enjoyment, on equal terms and conditions, of any of the accommodations, advantages, services, facilities or privileges of the place or provider of public accommodation." *Id.* § 8-107(4)(a)(1)(a).

19. The NYCHRL defines disability broadly to mean "any physical, medical, mental or psychological impairment, or a history or record of such impairment." *Id.* § 8-102. The term "physical, medical, mental, or psychological impairment" means "[a]n impairment of any system

of the body, including … the neurological system; the musculoskeletal system;" and "the special sense organs," such as the eyes. *Id.*

20. The term "place or provider of public accommodation" includes "providers, whether licensed or unlicensed, of goods, services, facilities, accommodations, advantages or privileges of any kind, and places, whether licensed or unlicensed, where goods, services, facilities, accommodations, advantages or privileges of any kind are extended, offered, sold, or otherwise made available." *Id.*

21. Defendant City of New York is the owner of the City subway system and is therefore a "person" under the NYCHRL. Defendants MTA and NYCTA are public benefit corporations that operate as "managers" of the City subway system and are therefore "persons" under the NYCHRL.

22. Public transportation services constitute "services, . . . accommodations, advantages or privileges" as defined by the NYCHRL. *Id.*

23. The NYCHRL must "be construed liberally for the accomplishment of the uniquely broad and remedial purposes thereof, regardless of whether federal or New York state civil and human rights laws, including those laws with provisions worded comparably to provisions of this title, have been so construed." *Id.* § 8-130(a). The statute's liberal construction requirement subjects Defendants' conduct to a stricter standard than under state or federal law, notwithstanding any similarities in their provisions. Therefore, Defendants' liability under the NYCHRL must be determined separately and independently from any liability under either state or federal civil rights laws protecting against disability discrimination.

JURISDICTION AND VENUE

24. This is an action for declaratory and injunctive relief brought pursuant to the NYCHRL, N.Y.C. Admin. Code § 8-101 *et seq*. The Court has the power to render a declaratory judgment pursuant to N.Y. C.P.L.R. § 3001 and to issue injunctive relief pursuant to N.Y.C. Admin. Code § 8-502(a) (creating "a cause of action in any court of competent jurisdiction . . . for injunctive relief and such other remedies as may be appropriate" for "any person claiming to be a person aggrieved by an unlawful discriminatory practice" under the NYCHRL). For purposes of a private civil action under the NYCHRL, "[a] person is aggrieved even if that person's only injury is the deprivation of a right granted or protected by" the NYCHRL. N.Y.C. Admin. Code § 8-502(h)(2).

25. Following the commencement of this action, a copy of this Complaint will be served on both the Office of the Corporation Counsel of the City of New York and the New York City Commission on Human Rights, thereby satisfying the notice requirements of N.Y.C. Admin. Code § 8-502(c) (requiring service of the Complaint to the above-mentioned offices within ten days after the commencement of a civil action pursuant to this section).

26. Venue is proper in New York County pursuant to N.Y. C.P.L.R. § 503(c) because it is where Defendants' principal offices are located.

PARTIES

A. Plaintiffs

27. Plaintiff Jacquelyn Goldenberg has mobility impairments and poor vision and is therefore a qualified person with a disability. Since developing mobility and vision impairments,

she has been prevented from using the subway system because of the excessive gaps and her fear of falling or being pushed off the platform.

28. Plaintiff Emeline Lakrout is blind and uses a service dog and a cane and is therefore a qualified person with a disability. Ms. Lakrout is significantly limited in her use of the subway system. She uses the subway when there is no other option, but such usage is accompanied by intense anxiety and fear due to the excessive gaps between subway platforms and trains.

29. Plaintiff Athena Savides has visual-perceptual disabilities, has mobility impairments, and uses a wheelchair, and is therefore a qualified person with a disability. Excessive gaps between subway platforms and trains have prevented her from using the subway system.

B. Defendants

30. Defendant MTA is a public benefit corporation chartered by the New York State Legislature under the Metropolitan Transportation Authority Act, N.Y. Pub. Auth. Law § 1260 *et seq*. Accordingly, the MTA qualifies as a governmental body or agency and is therefore a "person" for purposes of the NYCHRL, N.Y.C. Admin. Code § 8-102.

31. Through its subsidiary agencies, the MTA operates North America's largest transportation network, covering a 5,000-square-mile area from New York City through Long Island, southeastern New York State, and Connecticut. *About Us*, METRO. TRANSP. AUTH., https://new.mta.info/about-us. The MTA's adopted budget for 2021 consisted of $14.4 billion in operating expenses before non-cash liability. *See* COUNCIL OF THE CITY OF N.Y., REPORT OF THE FINANCE DIVISION ON THE CALENDAR YEAR 2021 – 2024 ADOPTED PLAN OF THE METROPOLITAN

TRANSPORTATION AUTHORITY 12 (Mar. 23, 2021), https://council.nyc.gov/budget/wp-content/uploads/sites/54/2021/03/MTA-1.pdf.

32. Defendant Janno Lieber, sued in his official capacity, is the Chair and Chief Executive Officer of the MTA and is a "person" subject to the NYCHRL. N.Y.C. Admin. Code § 8-102.

33. Defendant NYCTA, a subsidiary of the MTA, is a public benefit corporation that manages, maintains, and operates the City's subway pursuant to N.Y. Pub. Auth. Law § 1200 *et seq*. NYCTA qualifies as a governmental body or agency and is therefore a "person" for purposes of the NYCHRL. N.Y.C. Admin. Code § 8-102.

34. As of March 23, 2021, NYCTA had an operating budget of $9 billion. COUNCIL OF THE CITY OF N.Y., REPORT OF THE FINANCE DIVISION ON THE CALENDAR YEAR 2021 – 2024 ADOPTED PLAN OF THE METROPOLITAN TRANSPORTATION AUTHORITY 13 (Mar. 23, 2021), https://council.nyc.gov/budget/wp-content/uploads/sites/54/2021/03/MTA-1.pdf.

35. Defendant Richard Davey, sued in his official capacity, is the President of NYCTA and is a "person" subject to the NYCHRL. N.Y.C. Admin. Code § 8-102.

36. Defendant City of New York owns the subway system and is a governmental body or agency, and is therefore a "person" for purposes of the NYCHRL. N.Y.C. Admin. Code § 8-102.

FACTUAL ALLEGATIONS

A. The subway system is the lifeblood of the City.

37. The MTA brags that its "safe, clean, efficient public transportation is the lifeblood of the New York City area" and that its transportation "opens up employment opportunities for

millions of area residents, . . . revives old neighborhoods and . . . links millions of residents and visitors to cultural, educational, retail, and civic centers across the region." *The MTA Network*, METRO. TRANSP. AUTH., https://new.mta.info/about-us/the-mta-network.

38. The City's transit system includes 472 subway stations and more than 6,400 subway cars, which collectively traveled approximately 365 million miles in 2019 alone. Prior to March 2020 and the onset of the COVID-19 pandemic in New York, approximately 5.5 million people rode the City subway daily. At the end of 2020, ridership was approximately 2 million per day, although by 2021, daily ridership had rebounded somewhat to approximately 2.4 million. *Compare Subway and Bus Ridership for 2020*, METRO. TRANSP. AUTH., https://new.mta.info/agency/new-york-city-transit/subway-bus-ridership-2020, w*ith Subway and Bus Ridership for 2021*, METRO. TRANSP. AUTH., https://new.mta.info/agency/new-york-city-transit/subway-bus-ridership-2021.

39. The subway system is a cost-efficient and speedy way to traverse neighborhoods and boroughs, across bodies of water and far distances. It alleviates congestion and avoids carbon emissions endemic to many other forms of transportation, including buses, private cars, taxis, and ride-share services. Taking the subway is by and large faster, cheaper, and greener than taking any other form of transportation in the City.

40. New Yorkers rely heavily on the subway system to commute to work and school, to access healthcare, to shop, to attend houses of worship, to visit friends and family, to eat, to vote, to participate in jury duty, to experience culture, to attend performances, and to otherwise participate in city life. The subway connects residential neighborhoods to financial and commercial centers, freeing City residents to live where they choose and where they can afford

to do so while commuting to workplaces farther distances away. The subway system also facilitates visits to the City's sites, restaurants, Broadway shows, museums, libraries, parks, sporting events, concerts, and more. Importantly, the subway connects New Yorkers to each other, fostering the creation of communities and strong connections across boroughs and neighborhoods.

41. Fast, cost-efficient, and frequent public transportation options open the largest city in the United States to everyone who can access its stations and trains.

B. Pervasive vertical and horizontal gaps render the subway system dangerous, frightening, and inaccessible.

42. Unfortunately, individuals with mobility and vision impairments are not able to access the subway system or can only use the subway system at great personal safety risk due to excessive gaps between the platform and the subway train in many subway stations, including stations that the MTA has designated as "accessible."

43. A vertical gap is created when the subway station boarding platform is either higher or lower than the subway car threshold which transit users must traverse when boarding or exiting trains. Depending on its height, the vertical gap "can result in a wheelchair user not being able to board the subway, or after having boarded the subway, not being able to exit." *See* BTG REPORT at 3. The vertical gap is also a tripping and falling hazard for all riders, though particularly for riders with visual or mobility impairments. Many accidents are caused by the vertical (and horizontal) gaps. *See, e.g.*, Karen Zraick & Ana Ley, *Man Dies After Getting Stuck Between N.Y.C. Subway Car and Platform*, N.Y. TIMES (June 16, 2022), https://www.nytimes.com/2022/06/16/nyregion/nyc-subway-death.html; Michael Elsen-Rooney, Thomas Tracy & Clayton Guse, *"His First Word was Mama": Devastated Family Grieves for 2-*

Year-Old Killed in Freak Subway Accident, N.Y. DAILY NEWS (Dec. 12, 2019), https://www.nydailynews.com/new-york/ny-child-struck-subway-mta-20191212-fgfixewqs5eb3hdb6l353djdz4-story.html; Adam Nichols, *Subway Horror as Man Crushed Between Train and Platform*, DNA INFO (Dec. 11, 2010), https://www.dnainfo.com/new-york/20101211/murray-hill-gramercy/subway-horror-as-man-crushed-between-train-platform/.

44. A horizontal gap is created when there is space between the subway station boarding platform and the subway car threshold. Like a vertical gap, a horizontal gap may prevent a person with a mobility device from boarding or deboarding the subway. A sufficiently large horizontal gap puts riders at risk of falling into the subway tracks, or having a limb stuck in the gap. These risks are particularly acute for persons with visual or mobility impairments. Many accidents are caused by the horizontal (and vertical) gaps. *See* supra ¶ 43.

45. Even if a person with visual or mobility impairments manages to board a subway car at a station with no gaps or minimal gaps, he or she will likely be unable to leave the subway car at a station where no or minimal gaps exist.

46. Although Plaintiffs bring their claim under the NYCHRL, the ADA standards are an important comparison point as the NYCHRL provides even greater protections than does the ADA, which is "a floor below which the City's Human Rights Law cannot fall, rather than a ceiling above which the local law cannot rise." *See* Local Civil Rights Restoration Act of 2005, N.Y.C. Local Law 85, at § 1 (2005).

47. ADA standards for gaps are codified under 49 C.F.R. § 38.53 (Doorways), which states that (1) new vehicles at new stations must have a vertical gap of no more than plus or minus 5/8 inch under normal passenger load conditions, and a horizontal gap of no more than 3

inches at all doors; (2) new vehicles at existing stations must have a vertical gap of no more than plus or minus 1 and 1/2 inches for all doors, and at subway stations designated as "key stations," pursuant to 49 C.F.R. §§ 37.47, 37.51, a horizontal gap for at least one door shall be no more than 3 inches; (3) retrofitted vehicles at either new or existing key stations must have a vertical gap of no more than plus or minus 2 inches for under 50 percent passenger load and a horizontal gap of no greater than 4 inches. At a minimum, in accordance with the ADA, vertical gaps may not exceed 2 inches and horizontal gaps may not exceed 4 inches.

48. Many of the MTA's subway trains and platforms fail to comply with even the ADA standards under 36 C.F.R. § 1192.53, which, as noted, are less stringent than what is required under the NYCHRL.

49. Between 2012 and 2013, the New York City Transit Riders Council, an advisory council created by the New York State Legislature "to study, investigate, monitor and make recommendations with respect to the maintenance and operation of" NYCTA transit, conducted field studies at 91 subway stations to measure the gaps. *See* N.Y. Pub. Auth. Law § 1204-e; BTG REPORT at 1. The results of these studies were published in 2013. *See* BTG REPORT at 1.

50. Not only did the BTG Report identify excessive gaps throughout the system, but it also identified major subway stations that were among the 91 deemed "accessible stations" for persons with disabilities by the MTA, but nonetheless had excessive gaps:

a. 50th Street southbound C trains have a 6-inch vertical gap.

b. 59th Street-Columbus Circle southbound C trains have a 6-inch vertical gap.

c. 59th Street-Columbus Circle northbound B trains have a 6-inch horizontal gap.

d. Brooklyn Bridge-City Hall northbound 4 trains have a 4-inch vertical gap.

e. Brooklyn Bridge-City Hall northbound 5 trains have a 4-inch vertical gap.

f. 34th Street-Penn Station northbound A trains have a 3- and 1/2-inch vertical gap.

g. Dekalb Avenue southbound R trains have a 3- and 1/2-inch vertical gap.

h. 50th Street southbound E trains have a 3- and 3/4-inch vertical gap.

i. 59th Street-Columbus Circle northbound B trains have a 3-inch vertical gap.

j. Atlantic Avenue/Barclays Center northbound 3 trains have a 3-inch vertical gap.

k. Atlantic Avenue/Barclays Center northbound 2 trains have a 3-inch vertical gap.

l. Atlantic Avenue/Barclays Center northbound R trains have a 3-inch vertical gap.

m. Dekalb Avenue southbound B trains have a 3-inch vertical gap.

n. 21st Street-Queensbridge F trains have a 3-inch vertical gap in both directions.

o. Jamaica Center-Parsons/Archer Avenue J trains have a 3-inch vertical gap in both directions.

p. Jamaica Center-Parsons/Archer Avenue Z trains have a 3-inch vertical gap in both directions.

q. Jamaica-Van Wyck eastbound E trains have a 3-inch vertical gap.

r. Sutphin Boulevard-Archer Avenue J trains have a 3-inch vertical gap in both directions.

s. Sutphin Boulevard-Archer Avenue Z trains have a 3-inch vertical gap in both directions.

51. Even though the BTG Report was published almost a decade ago, the MTA has yet to address *any* of the gaps identified.

52. In May 2018, NYCTA announced its "Fast Forward" initiative that aimed to "[t]ransform the Subway" and "[c]ommit to a clear plan and timeline for station accessibility." N.Y.C. TRANSIT AUTH., FAST FORWARD: THE PLAN TO MODERNIZE NEW YORK CITY TRANSIT 20, 41 (May 2018), https://static1.squarespace.com/static/5afef986c3c16a2dc6705929/t/5b072571f950b7a5e621a4ff/1527194994914/Fast+Forward+Plan_05-24-2018_3.15PM.pdf. The initiative discusses accessible stations and elevators. The initiative notes that the MTA intends to upgrade accessibility features by "reducing platform edge gaps," *id.* at 44, but fails to provide specifics on how the MTA plans to do so, even though a person with visual or mobility impairments cannot access the subway without first figuring out how to surmount these gaps, and even though both the ADA and the NYCHRL mandate elimination of excessive gaps.

53. Similarly, in December 2019, the MTA announced its 2020 to 2024 Capital Program plan for twenty additional subway stations to receive accessibility improvements without even referencing the gaps. *MTA Announces 20 Additional Subway Stations to Receive Accessibility Improvements Under Proposed 2020-2024 Capital Plan*, METRO. TRANSP. AUTH. (Dec. 19, 2019), https://www.mta.info/press-release/mta-headquarters/mta-announces-20-additional-subway-stations-receive-accessibility. Notably, the MTA defines accessible stations to be stations where a person using a wheelchair can travel from the street to station platforms. *Increasing Accessibility*, N.Y.C. COUNCIL, https://council.nyc.gov/data/increasing-accessibility/. Defining station accessibility based on whether a person who uses a wheelchair can merely access the platform, of course, fails to account for the presence of gaps between the train and the platform that prevent persons with visual and mobility disabilities from boarding or

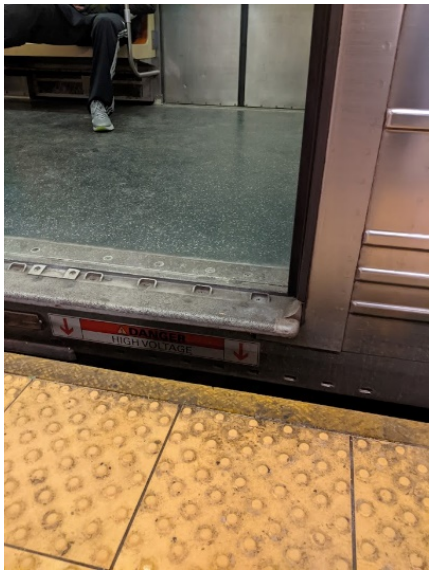
disembarking from a subway car, and fails to consider that many people who can enter "accessible" stations still cannot ride the subway and reach their destination. Accordingly, a person with a mobility or visual disability may access the station platform at an "accessible" subway station and yet encounter extensive and life-threatening barriers to boarding or exiting a subway car.

54. Since their first capital program was authorized in 1982, Defendants MTA and NYCTA have spent more than $100 billion on the City subway system, but have not formulated *any* kind of plan to address the gaps that prevent people with mobility and visual disabilities from using the subway. Indeed, Defendants' forward-looking statements concerning attempts to make subway stations more accessible do not even mention these issues.

55. As of the date of this complaint, major stations in the subway system have excessive vertical and/or horizontal gaps, i.e., vertical gaps exceeding 2 inches and horizontal gaps exceeding 4 inches, as delineated by the ADA regulations, 49 C.F.R. § 38.53; *supra* ¶ 47. For example, according to measurements taken by staff for Plaintiffs' Counsel:

a. 59th Street-Columbus Circle northbound B trains have a 2- and 1/2-inch vertical gap and a 7-inch horizontal gap.

b. 59th Street-Columbus Circle southbound B trains have a 2-inch vertical gap and a 6- and 1/4-inch horizontal gap:



c. Times Square-42nd Street eastbound 7 trains have a 5- and 1/2-inch vertical gap and a 5-inch horizontal gap.

d. Times Square-42nd Street westbound 7 trains have a 2- and 1/2-inch vertical gap and a 5-inch horizontal gap.

e. 14th Street-Union Square northbound 6 trains have a 5- and 1/2-inch vertical gap and a 4- and 1/2-inch horizontal gap.

f. 59th Street-Columbus Circle southbound 1 trains have a 2-inch vertical gap and a 5- and 1/2-inch horizontal gap.

g. 59th Street-Columbus Circle northbound C trains have a 2-inch vertical gap and a 5- and 1/2-inch horizontal gap:

h. 14th Street-Union Square northbound 4 trains have a 5- and 1/2-inch horizontal gap.

i. 47-50th Streets Rockefeller Center southbound D trains have a 4- and 7/8-inch vertical gap.

j. 14th Street-Union Square southbound W trains have a 4- and 1/2-inch vertical gap and a 3-inch horizontal gap:

k. 59th Street-Columbus Circle southbound C trains have a 3- and 1/2-inch vertical gap and 4- and 1/2-inch horizontal gap at car 5:

l. Times Square-42nd Street southbound N trains have a 4-inch vertical gap and a 2-inch horizontal gap.

m. 14th Street-Union Square northbound 5 trains have a 4-inch horizontal gap.

n. Grand Central-42nd Street eastbound 7 trains have a 4-inch horizontal gap:

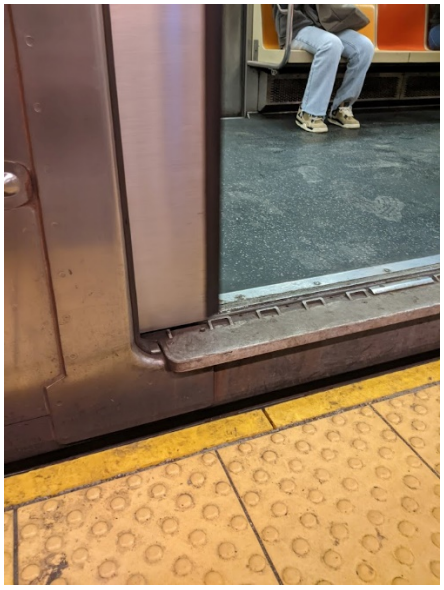
o. 47-50th Streets Rockefeller Center southbound M trains have a 4- and 1/2-inch vertical gap:

p. Grand Central-42nd Street westbound S trains in track 4 have a 3- and 7/8-inch horizontal gap.

q. 47-50th Streets Rockefeller Center southbound B trains have a 3- and 3/4-inch vertical gap.

r. Times Square-42nd Street northbound 1 trains have a 3-inch vertical gap and a 3- and 1/2-inch horizontal gap.

s. Times Square-42nd Street northbound 3 trains have a 3- and 1/2-inch vertical gap and a 3- and 1/4-inch horizontal gap:

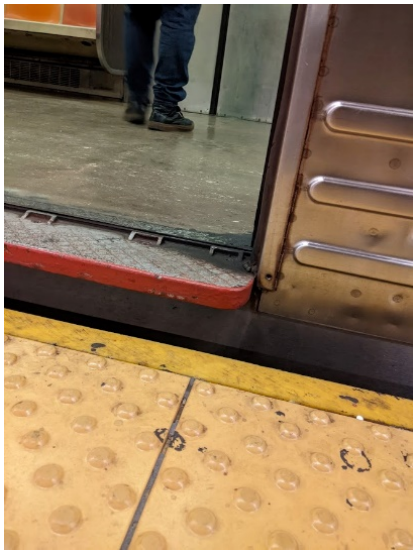


t. Times Square-42nd Street northbound W trains have a 3- and 1/2-inch vertical gap and a 3-inch horizontal gap.

u. Times Square-42nd Street southbound Q trains have a 3- and 1/2-inch vertical gap and a 2- and 1/2-inch horizontal gap.

v. Times Square-42nd Street southbound W trains have a 3- and 1/2-inch vertical gap and a 2- and 1/2-inch horizontal gap.

w. 14th Street-Union Square northbound W trains have a 3- and 3/4-inch vertical gap:



x. Grand Central-42nd Street southbound 4 trains have a 3- and 1/2-inch horizontal gap.

y. 47-50th Streets Rockefeller Center southbound F trains have a 3- and 3/8-inch vertical gap.

z. 14th Street-Union Square southbound Q trains have a 3- and 1/4-inch vertical gap.

aa. Times Square-42nd Street northbound N trains have a 3-inch vertical gap and a 2-inch horizontal gap.

bb. Times Square-42nd Street northbound Q trains have a 3-inch vertical gap and a 2-inch horizontal gap.

cc. Times Square-42nd Street southbound R trains have a 3-inch vertical gap and a 2-inch horizontal gap.

dd. Grand Central-42nd Street westbound S trains on track 1 have a 3-inch vertical gap.

ee. 59th Street-Columbus Circle southbound A trains have a 3-inch vertical gap.

ff. 14th Street-Union Square northbound N trains have a 3-inch horizontal gap.

gg. 14th Street-Union Square southbound 6 trains have a 3-inch horizontal gap.

hh. Times Square-42nd Street northbound R trains have a 3-inch horizontal gap.

ii. 14th Street-Union Square southbound 4 trains have a 2- and 1/2-inch vertical gap and a 3-inch horizontal gap.

jj. 14th Street-Union Square southbound 5 trains have a 2- and 1/2-inch vertical gap and a 3-inch horizontal gap.

kk. Grand Central-42nd Street northbound 6 trains have a 2- and 1/2-inch vertical gap.

ll. Grand Central-42nd Street, southbound 5 trains have a 2- and 1/2-inch vertical gap and a 3- and 3/8-inch horizontal gap.

mm. Times Square-42nd Street northbound 2 trains have a 2-inch vertical gap and a 3- and 1/4-inch horizontal gap.

nn. Times Square-42nd Street southbound 1 trains have a 3-inch vertical gap and a 3- and 1/4-inch horizontal gap.

oo. Times Square-42nd Street southbound 2 trains have a 2-inch vertical gap and 3- and 1/2-inch horizontal gap.

pp. Times Square-42nd Street southbound 3 trains have a 2- and 1/2-inch vertical gap and a 3-inch horizontal gap.

qq. 59th Street-Columbus Circle northbound A trains have a 3- and 1/4-inch vertical gap and a 3-inch horizontal gap.

rr. 59th Street-Columbus Circle southbound D trains have a 2- and 1/4-inch vertical gap and a 2- and 1/2-inch horizontal gap.

ss. 59th Street-Columbus Circle northbound 1 trains have a 2- and 1/2-inch vertical gap and a 3- and 3/4-inch horizontal gap.

56. Crucially, some of the subway system's busiest stations possess excessive gaps:

a. Grand Central-42nd Street on the S, 4, 5, 6, and 7 lines had an annual ridership of 45,745,700 in 2019, ranking as the second busiest subway station for that year; the station has horizontal gaps up to 4 inches wide and vertical gaps up to 3 inches tall.

b. 14th Street-Union Square on the L, N, Q, R, W, 4, 5, and 6 lines had an annual ridership of 32,385,260 in 2019, ranking as the fourth busiest subway station for that year; the station has horizontal gaps up to 5 and 1/2 inches wide and vertical gaps up to 5 and 1/2 inches tall.

c. 34th Street-Penn Station on the A, C, and E lines had ridership of 25,631,364 in 2019, ranking as the seventh busiest subway station for that year; the station has vertical gaps up to 3 and 1/2 inches tall.

d. 59th Street-Columbus Circle on the A, B, C, D, and 1 had a ridership of 23,040,650 in 2019, ranking as the eighth busiest subway station for that year; the station has horizontal gaps up to 7 inches wide and vertical gaps up to 6 inches tall.

57. The solutions to these gaps are known, implementable, and reasonable. Possible solutions include: using self-leveling trains, retrofitting subway cars, replacing old subway cars, providing ramps or bridge plates, and/or adding platform extensions, retractable bridge plates, or

raised platforms at aligned cars throughout the system. Different station configurations might require different types of solutions or different combinations of solutions.

58. Some stations already incorporate Accessible Boarding Areas, which are designated areas near the center of the platform where the floor has been modified to reduce the vertical gap between the train and the platform. They are only in one narrow location in the middle of the platform. In addition, the modifications only address the vertical gap, but not the horizontal gap.

59. Workable solutions are available. For example, New Jersey provides bridge plates and train crew assistance on its mass transit system, NJ Transit, to "bridge the gap between the platform and the train," *see Train Accessibility*, NJ TRANSIT, https://www.njtransit.com/accessibility/train-accessibility, as do Boston and Chicago, *see Access in Motion: Your Guide to MBTA Fixed-Route Services*, MASS. BAY TRANSP. AUTH. 22-24 (2019), https://cdn.mbta.com/sites/default/files/2020-05/Access%20in%20Motion%20-%20English%20.pdf; *RTA Joints CTA, Metra and Pace in Celebration of July 26 Anniversary*, REG'L TRANSP. AUTH. (July 13, 2015), https://www.rtachicago.org/about-us/media/press-release-archives/2015-press-releases/rta-joins-cta-metra-and-pace-celebration. In Hong Kong's mass transit railway system, staff provide ramps to users with disabilities to accommodate gaps between the train and platform, even calling ahead to stops where a wheelchair user will disembark to ensure another staff person has a ramp handy at that station. *Caring for Our Customers with Special Needs*, MASS TRANSIT RY. (June 2017), https://www.mtr.com.hk/en/customer/services/caring_index.html. Australian trains are adding a rubber gap filler—"a sturdy, hard-wearing rubber element … mounted along the edge of a train

platform to reduce the gap between the platform and" the train—to prevent injuries caused by falling into the gap. *Platform Gap Filler Trial Underway at Circular Quay Station in Sydney CBS*, DELKOR RAIL (Apr. 8, 2021), https://www.delkorrail.com/component/easyblog/platform-gap-filler-trial-underway-at-circular-quay-station-in-sydney-cbd. Amtrak provides ramps, bridge plates, and mobile lifts for passengers who use wheelchairs. *Wheeled Mobility Device Specifications and Service*, AMTRAK, https://www.amtrak.com/wheeled-mobility-device-services; Amtrak (@Amtrak), Twitter (Mar. 30, 2015, 10:26 AM), https://twitter.com/amtrak/status/582549352272531456. Washington D.C.'s metro has gap reducers as well as barriers that allow low vision or blind customers to identify space between rail cars. *Metrorail Accessibility Features*, WASH. METRO. AREA TRANSIT AUTH., www.wmata.com/service/accessibility/metrorail.cfm. Examples of portable ramps, gap fillers, and bridge plates include:

a. Portable ramp in the Hong Kong subway:

b. Rubber gap filler at Circular Quay station in Sydney, Australia:

c. Bridge plate for a NJ Transit train:

60. The City subway system's age is no excuse. Boston's MBTA and Chicago's L, which are as old or older, have more accessible subway systems than does the City. Construction for Chicago's L began in the late 1800s. Although only approximately 6 percent of Chicago's rail stations were in compliance when the ADA was passed in 1990, by 2020, more than 70 percent of the system's 145 stations had step-free access, and the Chicago Transit Authority created a plan in 2018 to reach 100 percent step-free accessibility by 2038. Caroline Lewis, *NYC Transit Accessibility Is Abysmal — Here's How Other Cities Do It Better*, GOTHAMIST (Mar. 6, 2020), https://gothamist.com/news/nyc-transit-subway-accessibility-other-cities. Chicago Transit Authority staff offer gap fillers, which are boards to bridge the gaps between the trains and the platforms, upon request for riders with disabilities. *CTA Accessible*

Services and Features, CHI. TRANSIT AUTH. (July 8, 2016), https://www.transitchicago.com/assets/1/6/CTA_ADA_Services_Brochure_FINAL_07_08_16.pdf. Notably, Chicago Transit Authority's 2018 plan to achieve full accessibility discusses efforts to address gap issues. For example, where obstructions on train platforms block Chicago Transit Authority staff from deploying the standard gap filler, the Chicago Transit Authority's plan contemplates modifying the station design to allow a gap filler to be used, including by "removing or relocating platform impediments if possible, [installing] custom gap fillers at specific locations," or modifying berthing areas on train platforms. CHI. TRANSIT AUTH., ALL STATIONS ACCESSIBILITY PROGRAM (ASAP) STRATEGIC PLAN 32 (July 2018), https://www.transitchicago.com/assets/1/6/ASAP_Strategic_Plan_508_FINAL.pdf.

C. The danger and safety risk to people with disabilities from the gaps is compounded by the lack of other key subway safety measures for people with disabilities.

61. The lack of safety mechanisms throughout the system makes platform gaps all the more dangerous for people with disabilities.

62. Standing and walking on open subway platforms presents risks to all subway riders. In December 2021 alone, the MTA recorded 20 incidents of people on the subway tracks—including people who were pushed, fell, and accessed the tracks intentionally—an 82 percent increase compared to December 2020. METRO. TRANSP. AUTH., TRANSIT AND BUS COMMITTEE MEETING JANUARY 2022 37-38 (2022), https://new.mta.info/document/72576. And this follows the MTA's report of a 20 percent increase in incidents of people on subway tracks from 2019 to 2021. METRO. TRANSP. AUTH., TRACK TRESPASSING TASK FORCE: FEBRUARY 2022 2 (2022), https://new.mta.info/document/77166.

63. The fear of falling or being pushed onto the subway track is especially acute for those with visual and mobility impairments, forcing many people with disabilities to decide whether the benefits of using the subway outweigh the personal safety risk and anxiety imposed on them. *See, e.g.*, *PHOTOS: MTA Honors Two Police Officers Who Rescued a Man from the Tracks in Brooklyn*, METRO. TRANSP. AUTH. (May 25, 2022), https://new.mta.info/press-release/photos-mta-honors-two-police-officers-who-rescued-man-tracks-brooklyn (describing incident where police officers rescued blind person who fell "face-first" onto subway tracks as a train approached the station).

64. The MTA has long acknowledged the issue of people who are blind falling onto the subway tracks. Their response to date, however, has been limited to the New York Transit Museum and the New York City Transit's Office of ADA Compliance offering a track safety training program, first implemented in 1995, to instruct blind or visually impaired subway users on what to do if they fall onto the subway tracks. *Access Programs*, N.Y. TRANSIT MUSEUM, https://www.nytransitmuseum.org/learn/access-programs/; *NYCT's Subway Track Education Program (STEP)*, PERMANENT CITIZENS ADVISORY COMM. TO THE MTA (June 15, 2009), https://pcac.org/nycts-subway-track-education-program-step/.

1. Tactile edge warning strips

65. Tactile edge warning strips provide surface patterns "detectable by cane or underfoot that alert people with vision impairments of their approach to street crossings and hazardous drop-offs," including "unprotected drop-offs along the edges of boarding platforms at transit stations[.]" *Detectable Warnings Update*, U.S ACCESS BD. (Mar. 2014), https://www.access-board.gov/prowag/other/dw-update.html.

66. The ADA requires implementation of such detectable edge warning strips at "platform boarding edges not protected by platform screens or guards." *Id.* (citing DEP'T OF JUSTICE, 2010 ADA STANDARDS FOR ACCESSIBLE DESIGN §§ 705.2, 810.5.2 (Sept. 15, 2010)).

67. By providing a detectable change in floor texture, tactile edge warning strips can alert subway users that they are approaching a dangerous drop-off. *See* METRO. TRANSP. AUTH., ADDRESSING TRACK TRESPASSING: ACTIONS FOR RIDER SAFETY & SYSTEM RELIABILITY 24 (May 2022), https://new.mta.info/document/87881 ("The change of texture when moving from the normal platform surface to the tactile platform edge warning strip is noticeable for any passenger entering the strip, whether by foot [or] in a wheelchair."); *id.* ("This change of texture can be a crucial alert to passengers who are vision-impaired that they are approaching the edge of the platform.").

68. Although Defendants implemented yellow tactile edge warning strips at some stations, as of May 2022, approximately 17 percent of City subway platforms still lacked yellow tactile edge warning strips. Clayton Guse, *SEE IT: NYPD Cops Save Blind Man Who Fell Off NYC Subway Platform that Lacked Warning Strip*, N.Y. DAILY NEWS (May 25, 2022), https://finance.yahoo.com/news/see-nypd-cops-save-blind-225000719.html. Unless *all* City subway platforms have these tactile edge warning strips, their protective effect is largely undermined because the costs of wrongly assuming that the strips are present—e.g., getting caught in the gap, injuring limbs, and possibly worse—are too severe for people with visual impairments. As Ms. Lakrout explained, she cannot assume that there are tactile edge warning strips, even if there is a high chance that they are present, when the risk of assuming incorrectly

means a potential crisis. If even a small percentage of platforms do not have them, individuals with visual impairments must act like none of them do.

2. Platform screen doors

69. Platform screen doors, which are barriers between the track and passengers on the edge of train platforms, would reduce the actual and perceived risk that subway riders will fall or be pushed onto subway tracks. Platform screen doors improve passenger safety by reducing incidents of people encountering trains, including by preventing accidental falls, suicides by jumping, and homicides and serious injury by pushing someone onto the tracks. *See* METRO. TRANSP. AUTH., ADDRESSING TRACK TRESPASSING: ACTIONS FOR RIDER SAFETY & SYSTEM RELIABILITY 5 (May 2022), https://new.mta.info/document/87881. As the MTA itself recognizes, "[p]latform screen doors … have proven highly effective at preventing track intrusion in newer subway systems around the world." *Id.*

70. In 2021 alone, the MTA reported 1,267 incidents of subway track intrusions, resulting in 200 collisions with trains and 68 fatalities. *Id.* at 1.

71. The City subway system lacks platform screen doors at any station.

72. Defendants have refused to undertake this safety upgrade, citing costs and engineering challenges inherent in the subway system's design that make retrofitting subway stations unfeasible. David Meyer, *MTA Says Subway Shove-Preventing Platform Doors Are Too Expensive*, N.Y. POST (Feb. 10, 2021), https://nypost.com/2021/02/10/mta-says-subway-shove-preventing-platform-doors-are-too-expensive/.

73. Defendants also refused to install platform barriers at new City subway stations, including the 34th Street-Hudson Yards 7 train station that opened in 2015 and the Second

Avenue Q train stations that opened in 2017. Jose Martinez, *MTA Backtracks on Platform Doors, $100M Plans Set for Three Stations by 2024*, THE CITY (Feb. 24, 2022), https://www.thecity.nyc/2022/2/23/22948225/mta-backtracks-on-platform-doors-100m-plans-set-for-three-stations-by-2024.

74. In February 2022, however, the MTA announced a plan to install platform doors at three stations as part of a pilot program. Michael Gold & Ana Ley, *Subway Platform Barriers Will Be Tested at 3 NYC Stations*, N.Y. TIMES (Feb. 24, 2022), https://www.nytimes.com/2022/02/23/nyregion/nyc-subway-barriers.html. As of July 2022, the MTA had only issued a contract solicitation notice, inviting designers interested in designing and constructing platform screen doors to submit statements of their qualifications and experience. Jose Martinez & Candace Pedraza, *MTA Opens Door to Platform Barriers in Three Subway Stations*, THE CITY (Jul. 15, 2022), https://www.thecity.nyc/2022/7/15/23219309/mta-open-to-platform-door-barrier-in-3-subway-stations. Notably, of the three platforms included in the pilot program (Times Square-42nd Street 7 train, Third Avenue L train, and Sutphin Boulevard-Archer Avenue E train), the Times Square-42nd Street 7 train has substantial gaps, *supra* ¶¶ 55(c)-(d), and the Third Avenue station is not designated as step-free accessible.

75. Platform screen doors already exist at John F. Kennedy International Airport's AirTrain, the train operated by the Port Authority of New York and New Jersey. Platform screen doors have also been incorporated into at least some stations in mass transportation systems in cities around the world, including in Bangkok, Barcelona, Beijing, Copenhagen, Delhi, Dubai, Helsinki, Hiroshima, Hong Kong, Istanbul, Kiev, Las Vegas, London, Madrid, Paris, Rome, Sao Paolo, Seoul, Shanghai, Singapore, St. Petersburg, Sydney, and Tokyo. Yonah Freemark, *The*

Case of the Missing Platform Doors, THE TRANSP. POLITIC (Sept. 26, 2017), https://www.thetransportpolitic.com/2017/09/26/the-case-of-the-missing-platform-doors/.

D. Pervasive exclusion from the City subway system denies people with disabilities access to vital aspects of City life.

76. The City's subway system ranks among the worst major transit systems in the world for equal accessibility because of the gaps and the absence of safety mechanisms like tactile edge warning strips and platform doors or rails. *See* Lise Wagner, *A World Tour of Best Practices for a Subway Truly Accessible to All: Summary of a French Study*, INCLUSIVE CITY MAKER, https://www.inclusivecitymaker.com/world-tour-best-practices-subway-accessible-summary-french-study/. This lack of accessibility, in turn, renders many locations and neighborhoods in the City unreachable for persons with disabilities who cannot safely navigate the subway system.

77. The Bureau of Transportation Statistics has recognized that 25.5 million Americans have travel-limiting disabilities. STEPHEN BRUMBAUGH, U.S. DEP'T OF TRANSP., TRAVEL PATTERNS OF AMERICAN ADULTS WITH DISABILITIES 1 (Sept. 2018), https://www.bts.gov/sites/bts.dot.gov/files/docs/explore-topics-and-geography/topics/passenger-travel/222466/travel-patterns-american-adults-disabilities-11-26-19.pdf; Matt Alderton, *Nearly 30 Years After the ADA, the Nation's Transit Agencies Report Successes and Shortfalls*, WASH. POST (June 26, 2020), https://www.washingtonpost.com/local/trafficandcommuting/nearly-30-years-after-ada-nations-transit-agencies-report-successes-and-shortfalls/2020/06/25/76e102d8-af22-11ea-8758-bfd1d045525a_story.html.

78. The percentage of New Yorkers with disabilities is even higher than the percentages nationally. Nearly 13 percent of Americans have a disability, *Anniversary of*

Americans With Disabilities Act: July 26, 2021, U.S. CENSUS BUREAU (May 26, 2021), https://www.census.gov/newsroom/facts-for-features/2021/disabilities-act.html, while 21 percent of adults in New York have a disability, *Disability & Health U.S. State Profile Data for New York (Adults 18+ Years of Age)*, CTRS. FOR DISEASE CONTROL & PREVENTION (May 18, 2022), https://www.cdc.gov/ncbddd/disabilityandhealth/impacts/new-york.html. The Mayor's Office for People with Disabilities ("MOPD") estimates that an additional approximately 9.7 million people with disabilities visited the City in 2018. CITY OF N.Y., ACCESSIBLENYC: 2019 EDITION 12 (2019), https://www1.nyc.gov/assets/mopd/downloads/pdf/accessible-nyc-2019.pdf.

79. The United States Department of Transportation has recognized that access to public transportation is essential to the participation of people with disabilities in society, including their ability to be employed, stay connected with family and friends, and access healthcare. *Accessibility*, U.S. DEP'T OF TRANSP. (July 26, 2022), https://www.transportation.gov/accessibility.

80. Similarly, as the MOPD recognizes, accessible public transit is vital in "the world's busiest and most dynamic city" because "[r]esidents and tourists alike … depend on public transportation to get them where they need to go." CITY OF N.Y., ACCESSIBLENYC: 2019 EDITION 20 (2019), https://www1.nyc.gov/assets/mopd/downloads/pdf/accessible-nyc-2019.pdf. Despite the well-recognized importance of accessible public transportation, individuals with disabilities who reside in, or travel to, the City remain largely excluded from the subway system due to excessive gaps, even at stations that have been designated by Defendants as "accessible."

81. Locations and services throughout the City are rendered inaccessible to people with mobility and visual disabilities because they are excluded from the subway. For example:

a. Pennsylvania Station, the Empire State Building, and Hudson Yards due to gaps at 34th Street-Penn Station.

b. Gershwin Theatre and Times Square Church due to gaps at 50th Street Station.

c. Central Park, New York Institute of Technology, Time Warner Center, and the Church of St. Paul the Apostle due to gaps at 59th Street-Columbus Circle Station.

d. City Hall, Foley Square, Pace University, and New York Presbyterian Lower Manhattan Hospital due to gaps at Brooklyn Bridge-City Hall Station.

e. Barclays Center, Museum of Contemporary African Diasporan Arts, and the Brooklyn Academy of Music due to gaps at Atlantic Avenue/Barclays Center Station.

f. Fort Greene Park, Long Island University – Brooklyn, and the Brooklyn Hospital Center due to gaps at DeKalb Avenue Station.

g. Silvercup Studios and Queensbridge Park due to gaps at 21st St-Queensbridge Station.

h. York College, Prospect Cemetery, and Queens County Family Court due to gaps at Jamaica Center-Parsons/Archer Avenue Station.

i. Jamaica Hospital Medical Center and Maple Grove Cemetery due to gaps at Jamaica-Van Wyck Station.

j. The New York City Finance Department due to gaps at Sutphin Boulevard-Archer Avenue Station.

k. Union Square due to gaps at 14th Street-Union Square Station.

l. The United Nations, the MetLife Building, and Bryant Park due to gaps at Grand Central-42nd Street Station.

m. Rockefeller Center, Radio City Music Hall, and the Museum of Modern Art due to gaps at 47-50th Streets-Rockefeller Center Station.

82. The City's alternate modes of transportation, including buses, cabs, for-hire vehicles, and the Access-A-Ride paratransit service, cannot substitute for the City subway system. The subway is superior to these alternatives in speed, frequency, and convenience, and costs the same as buses and less than cabs and Access-A-Ride.

83. The City's bus system is slower than the subway, runs less frequently, and is more geographically limited. Traffic, weather, and hazardous street conditions delay bus service.

84. The City's paratransit service for people with disabilities, Access-A-Ride, is unreliable due to long delays, missed pick-up times, and very lengthy rides due to its shared ride nature. It also requires at least twenty-four hours advance notice and does not allow any last-minute changes to a reservation. *Making a Reservation and Managing Trips*, METRO. TRANSP. AUTH. (Aug. 1, 2022), https://new.mta.info/accessibility/paratransit/making-a-reservation-and-managing-trips. Trips must be canceled two hours before the scheduled pick-up time. *Id.* If riders cancel 30 percent or more of the time in two consecutive months or exceed seven missed trips in one month, they are suspended from the service. *Id.* In addition, Access-A-Ride can be far more costly than the subway as it offers no weekly, monthly, senior, or disability discounts. *See* METRO. TRANSP. AUTH., GUIDE TO ACCESS-A-RIDE PARATRANSIT SERVICE 16 (2022), https://new.mta.info/document/15711 ("[Access-A-Ride] fares are the same as the full fare on public transit"). Access-A-Ride is also highly inconvenient as it requires all riders to pay with

exact change. *See* Jose Martinez, *MTA Resumes Access-A-Ride Cash Fare Collections Even as COVID Infections Grow*, THE CITY (Jan. 20, 2021), https://www.thecity.nyc/2021/1/20/22240487/mta-resumes-access-a-ride-cash-fare-collections-even-as-covid-infections-grow. Moreover, in mandating a paratransit system such as Access-A-Ride, the ADA intended its use to be limited to those whose disabilities are so severe they cannot use traditional mass transit. It was never intended to serve people with disabilities who could use mass transit if it were accessible. *See* Transportation for Individuals with Disabilities, 56 Fed. Reg. 45601-02 (Sept. 6, 1991) (explaining that "paratransit is not intended to be a comprehensive system of transportation for individuals with disabilities" and that individuals with a disability that "simply makes use of fixed route transit less comfortable, or more difficult, than use of fixed route transit for persons who do not have the condition" are "not ADA paratransit eligible").

85. Using a taxi or for-hire vehicle service is typically not a viable option, given the limited number of wheelchair-accessible vehicles ("WAVs"). *See* N.Y. LAWYERS FOR THE PUB. INTEREST, CONTINUING TO BE LEFT BEHIND (2021), https://www.nylpi.org/wp-content/uploads/2021/10/2021_Continuing-to-be-Left-Behind-Report.pdf; N.Y. LAWYERS FOR THE PUB. INTEREST, STILL LEFT BEHIND (2019), https://nylpi.org/wp-content/uploads/2019/05/Still-Left-Behind-Report%E2%80%94Updated.pdf; N.Y. LAWYERS FOR THE PUB. INTEREST, LEFT BEHIND (2018), https://www.nylpi.org/wp-content/uploads/2018/05/Left-Behind-Report.pdf. As of March 2022, taxi fleets were only running at around 54 percent of their capacity, and of those in service, only approximately 37 percent of the taxis were wheelchair accessible. Jose Martinez & Suhail Bhat, *TLC Blows by Deadline in Struggle to Get 50% of City Taxis Wheelchair Accessible*, THE CITY (Mar. 15,

2022), https://www.thecity.nyc/2022/3/15/22979913/tlc-blows-by-deadline-in-struggle-to-get-50-of-city-taxis-wheelchair-accessible. Like buses, taxis and for-hire vehicles cannot operate under hazardous surface conditions and may take longer due to heavy traffic. Taxis and for-hire vehicles are also significantly more expensive than subways, making them unviable as an everyday mode of transportation for many New Yorkers—especially those with disabilities, who are disproportionately likely to have limited income and economic resources. *See* STEPHEN BRUMBAUGH, U.S. DEP'T OF TRANSP., TRAVEL PATTERNS OF AMERICAN ADULTS WITH DISABILITIES 1 (Sept. 2018), https://www.bts.gov/sites/bts.dot.gov/files/docs/explore-topics-and-geography/topics/passenger-travel/222466/travel-patterns-american-adults-disabilities-11-26-19.pdf ("Slightly over half of people age 18 to 64 with disabilities live in households with annual household incomes under $25,000 versus 15 percent of people without disabilities."). Furthermore, car services have a history of discriminating against individuals who use guide dogs by refusing to pick them up. *See* Valerie Yingling, *Uber, Lyft, and Service Animals: The Discrimination Continues*, NAT'L FED'N OF THE BLIND (Apr. 13, 2020), https://nfb.org/blog/uber-lyft-and-service-animals-discrimination-continues; Joseph Wilkinson, *Uber to Pay $1.1 Million for Drivers' Discrimination Against Blind Woman*, N.Y. DAILY NEWS (Apr. 2, 2021), https://www.nydailynews.com/news/national/ny-uber-blind-woman-settlement-million-20210403-i47vr6cqqnberflnqrbe5llonm-story.html. As a result of this discriminatory conduct, these forms of transportation are not only much more expensive than the subway, but often not viable options.

E. Harm to Individual Plaintiffs

1. Harm to Jacquelyn Goldenberg

86. Jacquelyn Goldenberg is a 78-year-old woman who lives in Manhattan.

87. Ms. Goldenberg has osteoarthritic knees and weak vision, which greatly affect her balance. Because of her knee condition, Ms. Goldenberg struggles with stairs, including boarding and disembarking from trains with large vertical or horizontal gaps. Ms. Goldenberg's weakening vision compounds her fear of falling into the gaps and of falling or being pushed onto the tracks.

88. Prior to disability onset, Ms. Goldenberg used the subway to travel to and from the opera, to visit friends, to participate in jury duty, and to connect to the Long Island Rail Road and New Jersey Transit. Since developing these disabilities, Ms. Goldenberg tried to use the subway, but felt increasingly unsafe and afraid of falling into the gaps when boarding and exiting trains, and of falling or being pushed onto the tracks when walking or standing on the platform.

89. Over the last two years, the gaps between the train and platform and the lack of safety mechanisms on the platform have caused Ms. Goldenberg to forego using the subway entirely as her vision and knee conditions worsened.

90. If the gap issues were resolved and platform screen doors were installed, Ms. Goldenberg would use the subway, without a state of anxiety and fear, to attend medical appointments, visit friends in other boroughs, access the Long Island Rail Road and New Jersey Transit, and attend the opera. However, she is currently restricted from accessing health care and participating in the City's social, cultural, and community life on equal terms with residents without disabilities due to excessive gaps at subway platforms and the absence of safety mechanisms at platform edges.

2. Harm to Emeline Lakrout

91. Emeline Lakrout is a 24-year-old woman who lives in Manhattan.

92. Ms. Lakrout has visual disabilities and uses a service dog and a cane. Ms. Lakrout uses the subway under a constant state of anxiety and fear when walking or standing on the platform and when boarding and exiting trains.

93. To both board and exit subway trains, Ms. Lakrout must stand at the edge of the platform directly in front of the door and instruct her guide dog to walk first. After using her cane to estimate the vertical gap, Ms. Lakrout then jumps as far as she can across the gaps because she never knows how large the horizontal gaps will be. Ms. Lakrout fears that she will fall into the gaps or that her service dog's paw will get caught in the gaps, or both.

94. In or around late July of 2022, while hopping from the subway car to the platform on the 1 train at 66th Street-Lincoln Center, Ms. Lakrout collided with a pole or column on the platform near the train door. Ms. Lakrout felt embarrassed and frustrated that she ran into an obstruction on the platform while trying to exit the subway car safely. A similar incident happened to Ms. Lakrout approximately a month later in August of 2022 on the uptown side of the platform for the B, C lines at the 72nd Street station.

95. Ms. Lakrout also feels afraid and nervous when standing and walking on the platform because she fears falling or being pushed onto the tracks. This fear is particularly acute on platforms with trains on both sides.

96. If the gap and platform edge safety mechanism issues were remediated, Ms. Lakrout would use the subway without fear to meet with friends, go shopping, travel to the beach, and otherwise participate in the culture and community of the City. Ms. Lakrout would even use the subway to go to her rock-climbing gym. Incredibly, Ms. Lakrout feels that rock

climbing is much safer than riding the subway as a blind person because, when rock climbing, Ms. Lakrout is roped into her harness and is always prepared for the risk of falling. When riding the subway, by contrast, Ms. Lakrout jumps across vertical and horizontal gaps of unknown size and without any safety precautions in place to prevent her from falling into gaps or onto the tracks. Excessive gaps at subway platforms and lack of safety mechanisms at platform edges prevent Ms. Lakrout from participating in the City's social, cultural, and community life fully and comfortably like residents without disabilities.

3. Harm to Athena Savides

97. Athena Savides is a 32-year-old woman who lives in Brooklyn.

98. Ms. Savides has mobility impairments and visual-perceptual disabilities and uses a power wheelchair. A visual-perceptual disability is a deficit in the brain's ability to identify, organize, and process visual information. It can lead to, among other things, errors in estimating between perceived distances and actual distances. Ms. Savides has tried to use the subway in the past but excessive gaps at subway platforms have forced Ms. Savides to abandon use of the subway.

99. Approximately ten years ago, Ms. Savides attempted to travel by subway to 14th Street-Union Square. When it came time to disembark, she had difficulty navigating her wheelchair over the excessive gap, and she was almost trapped on the train. This experience was so frightening for Ms. Savides that she never tried to use the subway again.

100. If the gap and platform edge safety mechanism issues were remediated, Ms. Savides would use the subway to travel to Manhattan for her medical appointments and to meet with friends, attend the theater, and otherwise participate in the culture and community of the

City. The excessive gaps at subway platforms and lack of safety mechanisms at platform edges currently make it impossible for her to utilize the subway fully and comfortably like people without disabilities.

F. Class Action Allegations

101. Pursuant to N.Y. C.P.L.R. § 901, each named Plaintiff brings this action for injunctive and declaratory relief on his or her own behalf, and on behalf of all people similarly situated.

102. The class that Plaintiffs seek to represent consists of people with mobility, visual, or other disabilities affecting their capacity to bridge the subway gaps, who are being discriminated against due to lack of accessible subway cars at City subway stations.

103. The claims asserted herein are solely for injunctive and declaratory relief for class members. Neither the individual plaintiffs nor class members seek monetary damages.

104. The class members are so numerous that joinder of all such individuals is impracticable, and the disposition of their claims in a class action is a benefit to the parties and to the Court. *See* N.Y. C.P.L.R. § 901-a(1). In 2020, there were 554,000 City residents with ambulatory disabilities, CITY OF N.Y., ACCESSIBLENYC: 2020 EDITION 51 (2020), https://www1.nyc.gov/assets/mopd/downloads/pdf/AccessibleNYC2020.pdf, and approximately 200,000 residents who were blind or have low vision capabilities, Zoe Gervais, *New York City Accessibility: Are Pedestrian Crossings Safe for Blind People?*, INCLUSIVE CITY MAKER, https://www.inclusivecitymaker.com/new-york-city-pedestrian-crossings/. Many residents with mobility or visual disabilities seek to use the City's subway system. In addition, there are countless visitors to the City with ambulatory and visual disabilities.

105. The proposed class members share a well-defined community of interest with respect to both questions of law and fact because they are all being discriminated against by being denied equal access, and will continue to be denied equal access, to the City's subway system. *See* N.Y. C.P.L.R. § 901-a(2). For instance, whether Defendants' failure to make subway cars accessible for all people who have difficulty crossing vertical or horizontal gaps between the subway platform and the car constitutes a discriminatory violation of the NYCHRL, is a question of law common to all class members. The proposed class members share common questions of fact, as well, including whether they experience difficulty using the subway system due to the existing vertical and horizontal gaps in subway stations. Such common questions clearly predominate over any questions affecting individual class members.

106. Plaintiffs are adequate class representatives because they are directly impacted by Defendants' discrimination and failure to make the subway system accessible to people whose mobility, visual, and other impairments prevent them from safely crossing subway gaps. *See id.* § 901-a(3).

107. Plaintiffs' claims, likewise, are typical of the claims of the class because all Plaintiffs are similarly affected by Defendants' discrimination and failure to ensure systemic accessibility of the subway system. *See id.*

108. The interests of the Plaintiffs are not antagonistic to, or in conflict with, the interests of the class. *See id.* § 901-a(4).

109. The attorneys representing the class are highly trained, duly qualified, and will fairly and adequately protect the interests of the class. *See id.*

110. NYLPI is a leading civil rights law firm that has, since 1976, served New Yorkers fighting marginalization on the basis of disability, race, and poverty. A recent example of NYLPI's class action experience involving access to mass transportation services includes the landmark case *Jorge v. N.Y.C. Transit Auth.*, No. 14-cv-9946 (S.D.N.Y.) (currently in the monitoring stage), which resulted in improved access to paratransit services for people with disabilities who have limited English proficiency. NYLPI recently filed *Britt v. MTA*, No. 151336/22 (Sup. Ct.), a class action to ensure that paratransit users have available to them the same discounts as do subway and bus riders. Other examples of NYLPI's class action experience include *Jimenez v. N.Y.C. Dep't of Educ.*, No. 155825/2018 (Sup. Ct.) (currently in monitoring stage); *N.Y. Ass'n for Retarded Children v. Paterson*, No. 72-cv-356 (E.D.N.Y.) (currently in the monitoring stage); *Brad. H. v. City of New York*, No. 117882/99 (Sup. Ct.) (currently in the monitoring stage); *O'Toole v. Cuomo*, No. 12-cv-4166 (E.D.N.Y.) (currently in the monitoring stage); *Ligon v. City of New York*, No. 12-cv-2274 (S.D.N.Y.) (currently in the remedial stages); and *Casale v. Kelly*, 257 F.R.D. 396 (S.D.N.Y. 2009).

111. MAGIA is a preeminent litigation boutique in New York City. For almost 50 years, the firm has been at the forefront of advising companies and individuals on complex disputes and litigating in federal and state courts across the country. The firm is known for its unparalleled trial experience. A number of the partners are members of the prestigious American College of Trial Lawyers, and many have been recognized nationally. The firm has a reputation for vigorous advocacy and strategic thinking. As noted by Chambers & Partners USA, MAGIA is "[t]he first port of call for many corporations and individuals for their most high-profile litigation matters."

112. By failing to make the subway systematically accessible to people who have difficulty crossing subway gaps due to disability, Defendants have acted and/or failed to act on grounds generally applicable to the class. Accordingly, an award of appropriate final declaratory and injunctive relief with respect to the class is warranted, and the class action is superior to other available methods for the fair and efficient adjudication of the controversy. *See* N.Y. C.P.L.R. § 901-a(5).

CAUSE OF ACTION

VIOLATIONS OF THE NEW YORK CITY HUMAN RIGHTS LAW
(N.Y.C. ADMIN. CODE § 8-101 *ET SEQ.*)

113. Plaintiffs re-allege and incorporate herein all previously alleged paragraphs in this Complaint.

114. Because the presence of large gaps and the lack of meaningful safety features on platforms throughout the subway system deny people with mobility and visual disabilities access to the services, accommodations, advantages, and privileges of the subway system available to the public, Defendants, in their role as the owners and/or managers of the subway system, discriminate against persons with disabilities in violation of N.Y.C. Admin. Code § 8-107(4)(a).

115. Furthermore, Defendants' failure to take measures to reduce the legitimate feelings of fear and discomfort that accompany efforts to use an unsafe and largely inaccessible subway system contravenes N.Y.C. Admin. Code § 8-107(4)(a)'s prohibition on denying persons with disabilities "the full and equal enjoyment, on equal terms and conditions," of public accommodations such as the City subway system.

116. Defendants are aware, or should be aware, that people with mobility disabilities and visual impairments constitute a portion of the population desiring to use the City's subway

system. Defendants' failure to ensure that persons with disabilities can board and exit subway trains due to excessive gaps violates N.Y.C. Admin. Code § 8-107(15).

117. Defendants' conduct also violates N.Y.C. Admin. Code § 8-107(17), under which "[a]n unlawful discriminatory practice … is established … [when plaintiff] demonstrates that a policy or practice of a covered entity or a group of policies or practices of a covered entity results in a disparate impact to the detriment of any group protected by the provisions of this chapter." By systemically failing to operate a subway system that is accessible and usable by people with disabilities, Defendants have demonstrated a policy or practice that has a disproportionately negative impact on people with disabilities, who are protected groups under the NYCHRL.

118. As set forth herein, Defendants' violations of the NYCHRL have directly and proximately caused the Plaintiffs' injuries.

119. Defendants' failures to provide an accessible subway system constitute an ongoing and continuous act of discrimination in violation of the NYCHRL. Absent an injunction barring Defendants from further violations, Plaintiffs will continue to be discriminated against and denied the accommodations, advantages, facilities, and privileges of the City subway system, along with the accommodations that would allow them to avail themselves of the subway.

PRAYER FOR RELIEF

Wherefore, Plaintiffs pray for the following relief against Defendants:

120. For an order certifying this action as a class action, with the class defined as set forth above in paragraph 102, appointing Plaintiffs as class representatives, and appointing Plaintiffs' attorneys as class counsel;

121. For an order and judgment enjoining Defendants from violating the New York City Human Rights Law, and requiring Defendants to eliminate the gaps at all subway stations, to install detectable warning strips at all platform edges, and to install platform doors where feasible, or where platform doors are not feasible, to install platform railings;

122. For an order and judgment declaring that Defendants' acts and omissions as described herein are unlawful;

123. For an order and judgment enjoining Defendants to implement a grievance system through which the putative class can complain about continuing gap violations;

124. For an order and judgment enjoining Defendants to share with Plaintiffs progress reports every six months of their elimination of subway gaps;

125. For an order and judgment enjoining Defendants to establish a mechanism to allow the putative class to track up-to-date information on which subway stations have eliminated the gaps to allow them to safely plan their travels;

126. For an award of Plaintiffs' reasonable attorneys' fees and costs; and

127. For such other relief that the Court deems appropriate.

Dated: October 25, 2022
New York, New York

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