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9 Conservatee and Plaintiff Nathaniel Foster, Jr., and Minor Natalie Foster

10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**

12 Nathaniel Foster, an Individual; Pamela Foster,
13 an Individual; Nathaniel Foster, Jr., by and
14 through his Conservator Nathaniel Foster; and
15 Natalie Foster, a Minor, by and through her
16 Guardian ad Litem, Pamela Foster,

17 Plaintiffs

18 v.

19 United Airlines Holdings, Inc., a Delaware
20 Corporation; United Airlines, Inc., a Delaware
21 Corporation; ExpressJet Airlines LLC, Inc. dba
22 United Express, a Foreign Profit Corporation;
23 DAL Global Services, LLC, a Delaware
24 Limited Liability Corporation

25 Defendants.

CASE NO. **3:19-cv-02530-JD**

**SECOND AMENDED Complaint for
Damages**

1. Negligence, Negligence per Se (in Violation of Air Carrier Access Act, 49 U.S.C. §41705 *et seq*);
2. Negligent Hiring, Supervision & Retention
3. Breach of Contract;
4. Negligent Misrepresentation;
5. Intentional Infliction of Emotional Distress.

DEMAND FOR JURY TRIAL

26 Plaintiffs Nathaniel Foster; Pamela Foster, an Individual; Nathaniel Foster, Jr. aka “NJ Foster”,
by and through his father and Conservator Nathaniel Foster; and Natalie Foster, a Minor, by and
through her mother and Guardian ad Litem, Pamela Foster (collectively referred to as
“Plaintiffs”) hereby file this Complaint for Damages and Demand for Jury Trial against

1 Defendants United Airlines Holdings, Inc., a Delaware Corporation; United Airlines, Inc., a
2 Delaware Corporation; ExpressJet Airlines, LLC dba United Express, a Foreign Profit
3 Corporation; and DAL Global Services, LLC, a Delaware Limited Liability Corporation and
4 allege as follows:

5 **I. NATURE OF THE ACTION**

6 This action seeks damages on behalf of Plaintiff and Conservatee NJ Foster, a 22 year old
7 disabled young man and his family, co-Plaintiffs Nathaniel Foster, Pamela Foster and Natalie
8 Foster. Plaintiff and Conservatee NJ Foster suffered catastrophic personal injury and has been in
9 a coma following Defendants' actions and omissions in the deplaning process of UA Flight No.
10 4193 on February 8, 2019.

11 In sum, this action alleges that common carriers, Defendant United Airlines, Inc. and ExpressJet
12 Airlines dba United Express failed to abide by the standard of care owed to disabled passengers
13 by failing to have appropriately trained staff (and/or by ensuring that their contractor and/or
14 subcontractors Defendant DAL Global Services, LLC are trained appropriately), necessary
15 personnel and assistive devices necessary for the safe transport of disabled passengers.

16 **II. JURISDICTION AND VENUE**

- 17 a. This court has federal diversity jurisdiction pursuant to 28 U.S.C.A. 1332, *et seq.* as the
18 parties are completely diverse in citizenship and the amount in controversy exceeds
19 \$75,000.
- 20 b. Venue is proper in this district as all Plaintiffs are residents of Pleasant Hill, California
21 whereas Defendant United Airlines Holdings, Inc., is a Delaware corporation with its
22 headquarters in Chicago, Illinois; United Airlines, Inc. is a Delaware corporation with its
23 principal place of business in Chicago, Illinois. Defendant ExpressJet Airlines is a foreign
24 profit corporation with headquarters in Atlanta, Georgia. Defendant DAL Global Services,
25 LLC is a Limited Liability Delaware Corporation.

1 **III. PARTIES**

2 **a. PLAINTIFFS**

3 i. **Plaintiff Nathaniel Foster** is the father and Conservator of Plaintiff Nathaniel
4 Foster, Jr. Attached hereto as **Exhibit 1** is the Order Appointing Temporary
5 Conservator Status to Plaintiff Nathaniel Foster dated March 22, 2019. On
6 February 8, 2019, the date of the incident of this lawsuit, Plaintiff Nathaniel Foster
7 was traveling with his family and co-Plaintiffs: son, NJ; wife, Pamela, and
8 daughter, Natalie Foster. Plaintiff Nathaniel Foster works in management for the
9 U.S. Postal Service. At the time of the subject incident, Plaintiff Nathaniel Foster
10 was living in Pleasant Hill, California in Contra Costa County with his family.

11 ii. **Plaintiff and Conservatee Nathaniel Foster, Jr. aka “NJ” (hereinafter**
12 **“Plaintiff NJ Foster”)** is now a twenty-two (22) year old young man who at the
13 time of the incident had full mental capacities, was verbal, ate solid food and
14 attended college to fulfill his dream of becoming a physician. Plaintiff NJ Foster is
15 also a qualified individual with a disability, as he was quadriplegic at the time of
16 the incident, using a tracheal tube, ventilator and a power wheelchair following an
17 unrelated incident which caused spinal cord injury (not subject to this suit) that
18 occurred on August 31, 2016. Plaintiff NJ Foster’s disability affects major life
19 activities such as bathing, dressing, feeding, and attending school.

20 iii. Following the subject incident of the instant lawsuit that occurred on February 8,
21 2019 at the Monroe Regional Airport in Louisiana, Plaintiff Conservatee NJ Foster
22 has been in a coma. At the time of the subject incident and presently, Plaintiff NJ
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1 Foster lives with his family at home in Pleasant Hill, California in Contra Costa
2 County.

3 iv. **Plaintiff Pamela Foster** is the mother of Plaintiff NJ Foster and was traveling with
4 her immediate family and co-Plaintiffs at the time of the incident. Plaintiff Pamela
5 Foster works as an Economist with the U.S. Department of Labor. Plaintiff Pamela
6 Foster lives with her immediate family in Pleasant Hill, California in Contra Costa
7 County.

8 v. Plaintiff Pamela Foster serves as Guardian ad Litem for her minor daughter, Natalie
9 Foster (now age 17). The Order appointing Pamela Foster as Guardian ad Litem is
10 attached hereto as **Exhibit 2**.

11 vi. **Plaintiff Natalie Foster** is a minor, now age 17 and the sister of Plaintiff
12 Conservatee NJ Foster. Plaintiff Natalie Foster was traveling with her family at the
13 time of the incident. Plaintiff Natalie Foster attends high school and lives at home
14 with her immediate family in Pleasant Hill, California in Contra Costa County.

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16 **b. DEFENDANTS**

17 i. Defendant United Airlines, Inc.

18 ii. On information and belief, **Defendant United Airlines Holdings, Inc.** is a
19 Delaware corporation with its headquarters in Chicago, Illinois and is the owner
20 and operator of United Airlines, Inc. United Airlines Holdings, Inc., was formerly
21 named United Continental Holdings, Inc., and was so named at the time that the
22 Plaintiffs filed their Complaint. According to the Illinois Secretary of State's
23

1 Corporate / LLC records, United Continental Holdings, Inc., changed its name to
2 United Airlines Holdings, Inc., on June 27, 2019.

3 1. United Airlines Holdings, Inc.'s, Securities and Exchange Commission Form

4 10-K provides that:

5 *(together with its consolidated subsidiaries, "UAL" or the "Company") [it] is a*
6 *holding company and its principal, wholly-owned subsidiary is United Airlines,*
7 *Inc. (together with its consolidated subsidiaries, "United"). As UAL consolidates*
8 *United for financial statement purposes, disclosures that relate to activities of*
9 *United also apply to UAL, unless otherwise noted. United's operating revenues and*
10 *operating expenses comprise nearly 100% of UAL's revenues and operating*
11 *expenses.*

12 *UAL was incorporated under the laws of the State of Delaware on December 30,*
13 *1968. Effective June 27, 2019, UAL amended its Certificate of Incorporation to*
14 *change its name to "United Airlines Holdings, Inc."*

15 *The principal executive office is located at 233 South Wacker Drive, Chicago,*
16 *Illinois 60606 (telephone number (872) 825-4000).*

17 *The Company transports people and cargo throughout North America and to*
18 *destinations in Asia, Europe, Africa, the Pacific, the Middle East and Latin*
19 *America. UAL, through United and its regional carriers, operates more than 4,900*
20 *flights a day to 362 airports across six continents, with hubs at Newark Liberty*
21 *International Airport ("Newark"), Chicago O'Hare International Airport ("Chicago*
22 *O'Hare"), Denver International Airport ("Denver"), George Bush Intercontinental*
23 *Airport ("Houston Bush"), Los Angeles International Airport ("LAX"), A.B. Won*
24 *Pat International Airport ("Guam"), San Francisco International Airport ("SFO")*
25 *and Washington Dulles International Airport ("Washington Dulles").*

26 *All of the Company's domestic hubs are located in large business and population*
centers, contributing to a large amount of "origin and destination" traffic. The hub
and spoke system allows us to transport passengers between a large number of
destinations with substantially more frequent service than if each route were served
directly. The hub system also allows us to add service to a new destination from a
large number of cities using only one or a limited number of aircraft. As discussed
under Alliances below, United is a member of Star Alliance, the world's largest
alliance network. Regional. The Company has contractual relationships with
various regional carriers to provide regional aircraft service branded as United
Express.

1 *This regional service complements our operations by carrying traffic that connects*
2 *to our hubs and allows flights to smaller cities that cannot be provided*
3 *economically with mainline aircraft...*

4 *ExpressJet Airlines LLC ("ExpressJet") ... are all regional carriers that operate*
5 *with capacity contracted to United under capacity purchase agreements ("CPAs").*
6 *Under these CPAs, the Company pays the regional carriers contractually agreed*
7 *fees 4 (carrier costs) for operating these flights plus a variable rate adjustment*
8 *based on agreed performance metrics, subject to annual adjustments. The fees are*
9 *based on specific rates multiplied by specific operating statistics (e.g., block hours,*
10 *departures), as well as fixed monthly amounts.*

11 *Under these CPAs, the Company is also responsible for all fuel costs incurred, as*
12 *well as landing fees and other costs, which are either passed through by the*
13 *regional carrier to the Company without any markup or directly incurred by the*
14 *Company. In some cases, the Company owns some or all of the aircraft subject to*
15 *the CPA and leases such aircraft to the regional carrier. In return, the regional*
16 *carriers operate the capacity of the aircraft included within the scope of such CPA*
17 *exclusively for United, on schedules determined by the Company. The Company*
18 *also determines pricing and revenue management, assumes the inventory and*
19 *distribution risk for the available seats and permits mileage accrual and*
20 *redemption for regional flights through its MileagePlus loyalty program.*

21 2. The registered agent for service of process is listed on the secretary of state
22 of Delaware's website as The Corporation Trust Company with the address

23 listed as : Corporation Trust Center, 1209 Orange Street, Wilmington,

24 Delaware 19801. The file number is listed as 697326.

25 3. Oscar Munoz, CEO of United Airlines, Inc. sits on the Board of Directors for
26 United Airlines Holdings, Inc.

 4. Defendant United Airlines Holdings, Inc. and Defendant United Airlines,
 Inc., are alter egos of each other.

 5. The Securities and Exchange Commission Form 10-K form in and of itself
 provides evidence that United Airlines Holdings, Inc. is the airline, despite
 the fact that it is not a Part 121 certified commercial air carrier.

- 1 3. The most recent Statement of Information dated June 13, 2018 for Defendant
2 United Airlines, Inc. lists Oscar Munoz as the CEO, Jennifer L. Kraft as
3 Secretary and Gerald Laderman as the company's CFO.
- 4 4. The California Corporate Number is listed as C1249108.
- 5 5. The Agent for Service of Process is listed as C T Corporation located at 111
6 Eighth Avenue, 13th Floor, New York, NY 10011.
- 7 6. Defendant United Airlines, Inc. is an air carrier holding a certificate of
8 public convenience and necessity issued by the Secretary of Transportation
9 under 49 USC § 41102.
- 10 7. At all times herein mentioned, Defendant United Airlines, Inc., was and is a
11 common carrier for hire engaged in the transportation of passengers in both
12 domestic and international air travel.
- 13 8. On information and belief, Defendant United Airlines, Inc. owns, operates
14 and maintains the aisle chair and jet bridge on which the subject incident
15 occurred.
- 16 9. Said defendant owned, operated, controlled, serviced, maintained and flew,
17 through its operators, partners, agents, subcontractors and employees acting
18 in the course and scope of their employment, certain aircraft including the
19 aircraft used for Flight Nos. 540 and 4193 on February 8, 2019, from San
20 Francisco, California to Houston, Texas onto Monroe, Louisiana,
21 respectively on which Plaintiffs flew.
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1 iv. **Defendant ExpressJet Airlines, LLC dba United Express** is a foreign, for profit
2 corporation and commercial airline with a Control Number of 12001365 as listed
3 by the Georgia Corporations Division. ExpressJet Airlines, LLC was formerly
4 named ExpressJet Airlines, Inc., and was so named at the time that the Plaintiffs
5 filed their Complaint. According to the Georgia Corporations Division, ExpressJet
6 Airlines, Inc., changed its name to ExpressJet Airlines, LLC, on February 26, 2020.
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- 8 1. The office address listed on the Georgia Corporations Division is listed as
9 1745 Phoenix Blvd, Suite 500, #700, College Park, GA, 30349, USA.
- 10 2. The Registered Agent for Service of Process is listed as 289 S Culver Street,
11 Lawrenceville, GA 30046-4805.
- 12 3. Defendant ExpressJet Airlines, LLC is an air carrier holding a certificate of
13 public convenience and necessity issued by the Secretary of Transportation
14 under 49 USC section 41102.
- 15 4. On information and belief, Defendant ExpressJet Airlines, LLC dba United
16 Express co-owns, operates and maintains the aisle chair and jet bridge on
17 which the subject incident occurred.
- 18 5. On information and belief, Defendant ExpressJet Airlines, LLC dba United
19 Express owned, operated, controlled, serviced, maintained and flew, through
20 its operators, partners, agents, subcontractors and employees acting in the
21 course and scope of their employment, the aircraft used for Flight No. 4193
22 on February 8, 2019, from Houston, Texas onto Monroe, Louisiana,
23 respectively.
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1 v. **DEFENDANT**

2 vi. **DAL Global Services, LLC** also known as “DGS” and/or “DAL” is a Limited
3 Liability Delaware Corporation with its primary place of business in Georgia.

4 vii. **According to its website,**¹ DGS “provide[s] a full scope of aviation services with
5 expertise in such diverse areas as ramp and passenger handling, cabin and cargo
6 services, operations and load control, aircraft and ground support equipment
7 maintenance, crew transportation, security services, wheelchair and skycap
8 services, flight control and operations consulting for domestic and international
9 carriers in the U.S.”

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11 1. On information and belief, Defendant DAL Global Services, LLC contracted
12 with Defendant United Airlines, Inc. and Defendant ExpressJet, Inc. dba
13 United Express.

14 2. Robert Brown, Jr., a former employee (Ramp Supervisor) of Defendant DAL
15 Global Services, LLC was involved in the deplaning process of Plaintiff NJ
16 Foster at the Monroe Regional Airport at the time of the incident.

17 **IV. FACTUAL ALLEGATIONS**

18 1. Plaintiffs reallege and incorporate by reference all preceding paragraphs as fully set forth
19 herein.

20 2. On February 6, 2019, Plaintiffs experienced a death in their family. Plaintiff Pamela Foster’s
21 sister, Vickey Johnson passed away. Ms. Johnson was a resident of Bastrop, Louisiana.

22 3. The family decided to travel to Louisiana in order to attend the funeral.
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¹ <https://www.dalgs.com/>; (Last visited August 15, 2019)

1 4. On the same day, Plaintiff Pamela Foster called the Accessibility desk for Defendant United
2 Airlines, Inc. in order to make disability related flight arrangements for her son, Plaintiff NJ
3 Foster.

4 5. The Accessibility desk via an agent (name unknown, referred to hereinafter as “Agent #1”)
5 directed Plaintiff Pamela Foster to first purchase airline tickets prior to calling the accessibility
6 desk.

7 6. Plaintiff Pamela Foster did as directed and purchased (with a United Chase Mileage Plus
8 Explorer credit card) four round-trip tickets for her family, departing from San Francisco
9 International Airport (“SFO”), connecting in Houston, Texas and going onto the final destination
10 of Monroe, Louisiana. The departure date was set for February 8, 2019.

11 7. Plaintiffs’ itinerary was as follows: UA Flight No. 540: departing SFO at 7:15 a.m. to
12 Houston, Texas (IAH-BUSH INTL) with an arrival time of 1:02 p.m and UA Flight No. 4193:
13 departing Houston, Texas, at 2:20 p.m. and arriving in Monroe, Louisiana (MLU) at 3:29 p.m.

14 8. After purchasing her family’s tickets, Plaintiff Pamela Foster then immediately called back
15 Defendant United Airlines’ accessibility desk to make the necessary arrangements for her son, NJ
16 Foster.

17 9. During the call, Plaintiff Pamela Foster informed the operator (name unknown, referred to as
18 Agent #2) that her son, NJ required special assistance given his disability – he was a quadriplegic
19 individual, used a power wheelchair, tracheal tube, and ventilator.
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21 10. Plaintiff Pamela Foster inquired about the size of the planes to fly from San Francisco to
22 Houston and from Houston to Monroe and requested assurances that the necessary assistance was
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1 available in the embarking and disembarking process for her son, Plaintiff Conservatee NJ
2 Foster.

3 11. The operator, Agent #2, at Defendant United Airlines accessibility desk repeatedly
4 communicated to Plaintiff Pamela Foster not to worry and that the outbound plane from Houston,
5 Texas to Monroe, Louisiana was even larger than the plane from SFO to Houston and that all
6 staffing would be provided to embark and disembark her son.
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8 12. Pamela Foster called a third time seeking further assurances. The operator at the accessibility
9 desk, Agent #3, repeatedly communicated to Plaintiff Pamela Foster that traveling with Plaintiff
10 NJ Foster was not a problem and that it was able to provide safe passage to Plaintiff NJ Foster.
11 In all, the three phone calls with the United Airlines Accessibility Desk agents (Agents #1-3), the
12 phone calls lasted thirty-seven (37) minutes.

13 13. On February 8, 2019, Plaintiffs arrived at the departure gate for UA Flight No. 540 at SFO.

14 14. In order to embark and disembark Plaintiff NJ Foster, it was necessary for him to be
15 transferred from his personal power wheelchair to a narrower “aisle chair” at the jetway.

16 15. Arriving at the departure gate at SFO, a single wheelchair assistant appeared from
17 PrimeFlight Aviation Services.

18 16. The assistant himself called additional staff to help transfer Plaintiff NJ Foster from his
19 personal power wheelchair to an aisle chair.

20 17. Approximately 4 attendants (Names Unknown) transferred Plaintiff Conservatee NJ Foster
21 out of his personal power wheelchair and placed him onto an aisle chair with leg, lap, and chest
22 straps, transporting him onto the plane without incident.
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1 18. Plaintiffs departed SFO at or about 7:15 a.m. flying to Houston, Texas on a Boeing 737-800
2 airplane. Plaintiffs arrived in Houston, Texas at approximately 1:02 p.m.

3 19. Upon arrival to Houston, four or more attendants (Names Unknown) provided deplaning
4 assistance to Plaintiff NJ Foster.

5 20. After making the transfer onto another plane, Plaintiffs boarded UA Flight No. 4193 to
6 Monroe, Louisiana.

7 21. Plaintiff NJ Foster boarded the ERJ-145 airplane with the assistance of approximately 4 or
8 more attendants (Names Unknown) who again used the leg, lap and chest straps on the aisle chair
9 provided.

10 22. UA Flight No. 4193 was operated by Defendant ExpressJet Airlines, LLC dba United
11 Express.

12 23. Upon arrival at the Monroe Regional Airport on or about 3:29 p.m., the female steward
13 (Rachel White) inside the Express Jet, Inc. dba United Express plane communicated to Plaintiffs
14 to remain in their seats until the entirety of the plane disembarked in order to receive
15 disembarking assistance for Plaintiff NJ Foster.

16 24. Plaintiffs waited approximately twenty (20) minutes in their seats and observed that the
17 Captain of the flight (Joao Fernandes) disembarked from the plane as well. First Officer,
18 Christina Nikolov (employee of ExpressJet Airlines, LLC) was also on board the plane.

19 25. Once all passengers and the Captain had deplaned, the ExpressJet, Inc. flight attendant
20 (Rachel White) called for assistance. Linda Daniels, a second flight attendant was also on board
21 the plane.
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1 26. Plaintiffs observed that a sole, African American, heavy-set woman (Charlotte Gibson,
2 Supervisor for Defendant DAL Global Services LLC), arrived with an aisle chair. Charlotte
3 Gibson identified herself as a “Supervisor” to Plaintiffs.

4 27. Plaintiffs Nathaniel Foster and Pamela Foster communicated to Charlotte Gibson that their
5 son is quadriplegic and needed the assistance of additional personnel to transport him off of the
6 plane. Plaintiffs communicated that typically four (4) to six (6) individuals had been used in the
7 deplaning process for their son on prior flights.

8 28. Charlotte Gibson appeared to get upset and communicated to Plaintiffs that she knew how to
9 transport disabled passengers, stating, “*I know what I’m doing*” and reluctantly called for an
10 additional employee from inside the Monroe Regional Airport for assistance.

11 29. A second, African American young woman (Mignon Jackson, Customer Service Agent for
12 DAL Global Services LLC), approximately 115 pounds came to assist with Plaintiff NJ Foster’s
13 deplaning process.

14 30. Again, Plaintiffs Nathaniel and Pamela Foster communicated their request for additional
15 personnel.

16 31. Supervisor Charlotte Gibson became even more visibly upset and communicated “*Fine. Do*
17 *it yourself, then...I’m out.*”

18 32. Mignon Jackson remained in the plane with Plaintiffs, holding onto Plaintiff NJ’s ventilator.

19 33. As Charlotte Gibson was leaving the airplane, she verbally called out to an African
20 American man, Robert Brown, Jr., Ramp Supervisor for Defendant DAL Global Services, LLC.

21 34. Robert Brown, Jr. boarded the plane and moved Plaintiff NJ from his seat onto the aisle
22 chair.
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1 35. Robert Brown, Jr. secured Plaintiff NJ to the aisle chair with the use of the sole restraint, a
2 cross chest strap, that made an “x” formation.

3 36. On information and belief, the aisle chair used in the deplaning process was not in
4 accordance with the provisions set forth in the Air Carrier Access Act, 14 C.F.R. §382 et seq.

5 37. No further assistance was forthcoming.

6 38. One of two flight attendants on the airplane, Rachel White, ExpressJet Airlines, LLC
7 employee, did not offer to assist; nor did she assist Plaintiff NJ Foster in disembarking from the
8 plane.

9 39. Plaintiff Nathaniel Foster repeatedly urged Robert Brown, Jr. to go slow and be careful with
10 his son.

11 40. Plaintiff Nathaniel Foster walked in front of Plaintiff NJ’s aisle chair, facing his son in the
12 deplaning process.

13 41. Robert Brown, Jr. pushed the aisle chair occupied by Plaintiff Conservatee NJ Foster.

14 42. Mignon Jackson carried Plaintiff Conservatee NJ Foster’s ventilator.

15 43. Plaintiff Conservatee NJ Foster’s feet were dragging on the airplane’s flooring as he was
16 wheeled through and out of the airplane.

17 44. Robert Brown, Jr. aggressively pushed the aisle chair through the singular aisle of the small
18 plane, causing Plaintiff NJ Foster to sway and slip over the right side of the aisle chair on two
19 separate occasions prior to reaching the plane’s threshold.

20 45. On the first occasion, Plaintiff Conservatee NJ Foster prominently leaned to the right side,
21 and was propped up by his father, Plaintiff Nathaniel Foster.

1 46. On the second occasion, Plaintiff NJ again leaned to the right side, but was caught by an
2 interior wall of the plane that propped him up upon exiting from the plane.

3 47. Upon reaching the plane's threshold, Robert Brown, Jr. pushed the aisle chair forcefully and
4 caused the aisle chair to move forward violently and then fall back.

5 48. Plaintiff NJ Foster's body jerked forward and back in response and slouched down into the
6 seat.

7 49. Plaintiff Pamela Foster asked her son if he was okay and heard her son whisper, "*I can't*
8 *breathe.*"

9 50. Plaintiff Pamela Foster immediately began yelling for assistance.

10 51. Dr. Edgar Leon Feinberg, a thoracic and cardiac surgeon, meanwhile was waiting inside the
11 terminal at Gate 6 to board the plane for his own flight.

12 52. Upon hearing Plaintiff Pamela Foster scream loudly for help from the jet bridge below, Dr.
13 Edgar Leon Feinberg identified himself as a doctor and offered assistance to the United Airlines
14 agent at Gate 6 (Name Unknown, referred to as Agent #4).

15 53. In response, Agent #4 audibly "giggled" and communicated to Dr. Feinberg that no help was
16 needed, that he could take his seat because "*we got this.*"

17 54. Dr. Edgar Leon Feinberg went back to his seat and sat down as directed.

18 55. Meanwhile, Plaintiff Nathaniel Foster looked to his son and immediately noticed that his son
19 looked wide-eyed, fearful, and that his lips were turning a deep purple color.

20 56. NJ Foster was removed from the wheelchair and laid onto the floor of the jet bridge,
21 attaching the plane to the airport terminal.

22 57. Gate Agent Mignon Jackson remained holding Plaintiff's ventilator at all times.
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1 58. Plaintiff NJ Foster went into cardiac arrest.

2 59. Plaintiff Nathaniel Foster provided CPR to his son.

3 60. Plaintiff Pamela Foster provided assistance to her son with an Artificial Manual Breathing
4 Unit (also known as an “AMBU” or “AMBU bag”).

5 61. Plaintiff Natalie Foster stood nearby watching her parents attend to her brother, NJ.

6 62. A police officer, “Private Blue” arrived and took over chest compressions from father,
7 Nathaniel Foster.

8 63. Approximately three (3) to five (5) minutes later, Dr. Edgar Leon Feinberg was called down
9 to the jetway.

10 64. Upon arrival at Plaintiff NJ Foster’s side, Dr. Feinberg observed that Plaintiff NJ Foster did
11 not have a pulse and began coaching CPR.

12 65. The fire department arrived at the scene on or about 4:27 p.m. and assumed chest
13 compressions.

14 66. According to the Fire Department’s report, its personnel checked Plaintiff NJ Foster’s
15 airway and found that his tracheal tube was not in place, which was also confirmed by an
16 additional medic.

17 67. Paramedics from Acadian Ambulance Services arrived, took over the CPR and AMBU bag
18 functions and transported Plaintiff NJ Foster (with Plaintiff Nathaniel Foster) to Saint Francis
19 Medical Center in Monroe, Louisiana via ambulance.

20 68. Plaintiffs Pamela and Natalie Foster were driven to the hospital in a police car.

21 69. Plaintiff NJ Foster was admitted into the Intensive Critical Care Unit of St. Francis Medical
22 Center in Monroe, Louisiana.
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1 70. Upon arrival, NJ Foster was in a coma.

2 71. On or about February 19, 2019, Plaintiff NJ Foster was transported from St. Francis Medical
3 Center in Monroe, Louisiana, to Kaiser Hospital, Walnut Creek, California, via air ambulance.

4 72. Plaintiff NJ Foster has suffered a significant hypoxic brain injury, and has been given a very
5 poor prognosis by his physicians at Kaiser Hospital, Walnut Creek.

6 73. Plaintiff NJ Foster remains in a coma through the date of the filing of this amended
7 complaint.

8 74. As a result of the acts and omissions by Defendants and each of them, Plaintiff NJ Foster has
9 been seriously and grievously injured and damaged.

10 75. Plaintiffs Nathaniel Jr., Nathaniel, Pamela and Natalie Foster suffer and continue to suffer
11 from severe emotional pain and distress.
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14 **II. CAUSES OF ACTION**

15 **FIRST CAUSE OF ACTION**

16 **Negligence and Negligence Per Se**

17 **(in Violation of Air Carrier Access Act, 49 U.S.C. §41705)**

18 **(All Plaintiffs against All Defendants and Does 1-50)**

19 76. Plaintiffs reallege and incorporate by reference all preceding paragraphs as fully set forth
20 herein.

21 77. On or about February 6, 2019, Defendants United Airlines Holdings, Inc., United Airlines,
22 Inc. and ExpressJet Airlines, LLC, agreed to safely carry Plaintiff Conservatee NJ Foster from
23 San Francisco to his final destination of Monroe, Louisiana.

24 78. At all times herein, Defendants United Airlines, Inc., and ExpressJet Airlines, LLC were
25 common carriers of persons for hire and as such required to use the utmost care and diligence for
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1 safe carriage of passengers, such as Plaintiff Conservatee NJ Foster, and must exercise a
2 heightened degree of skill to provide everything necessary for that purpose.

3 79. Defendant DAL Global Services, LLC is a contractor or subcontractor of Defendants United
4 Airlines, Inc. and ExpressJet Airlines, LLC.

5 80. By virtue of Defendants' negligence, the actions and omissions as alleged above on the part
6 of said Defendants, and each of them, is a breach of the terms, both explicit and implied, of the
7 contract created by selling airplane tickets to Plaintiffs, as well as a breach of Defendants'
8 obligations as common carriers and air carriers.

9 81. Plaintiffs had fulfilled all obligations on their part for the contract of safe carriage.

10 82. As a direct and proximate result of defendants' breach as set out above, Plaintiffs were
11 damaged as alleged herein.

12 83. Plaintiffs are informed and believe, and therefore allege, that all Defendants, their agents
13 and/or employees, acting in the course and scope of their employment were negligently
14 responsible in some manner for the occurrences herein alleged, and that Plaintiffs' damages as
15 herein alleged were legally caused by their conduct.

16 84. At all times herein mentioned, each and every one of the Defendants herein was the agent,
17 servant and employee, each of the other, and each was acting within the course and scope of
18 his/her agency, service and employment with the permission, consent and ratification, each of the
19 other.

20 85. At all times mentioned, Defendants undertook a duty to accommodate Plaintiff NJ Foster in
21 compliance with anti-discrimination provisions for disabled passengers under federal statutes and
22 regulations.

23 86. The Department of Transportation (DOT) has promulgated regulations, codified at 14 C.F.R.
24 § 382, specifying detailed requirements that airlines must meet to comply with the Air Carrier
25 Access Act (ACAA), 49 U.S.C. § 41705 et seq.

1 87. Air carriers and common carriers such as Defendants United Airlines, Inc., and ExpressJet
2 Airlines, LLC are required to exercise the highest degree of care and diligence for the safe
3 carriage and passage of their ticketed passengers and are required to comply with the provisions
4 of the ACAA in order to avoid injury to its disabled passengers requesting assistance in the
5 onboarding and disembarking processes.

6 88. 14 C.F.R. §382.95 provides in relevant part,

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8 *As a carrier, you must promptly provide or ensure the provision of assistance*
9 *requested by or on behalf of passengers with a disability, or offered by carrier*
10 *or airport operator personnel and accepted by passengers with a disability,*
11 *in enplaning and deplaning. This assistance must include, as needed, the*
12 *services of personnel and the use of ground wheelchairs, accessible*
13 *motorized carts, boarding wheelchairs, and/or on-board wheelchairs*
14 *where provided in accordance with this part, and ramps or mechanical lifts.*

15 89. 14 C.F.R. § 382 was intended to prohibit air carriers from discriminating against passengers
16 on the basis of disability; requiring carriers to make aircraft, other facilities, and services
17 accessible to disabled passengers; and requires carriers to take steps to accommodate passengers
18 with disabilities. 14 C.F.R. § 382.1.

19 90. Subpart G of the DOT regulations provides that carriers shall ensure that individuals with
20 disabilities are to be provided with assistance in enplaning, deplaning, and in making flight
21 connections and transportation between gates.

22 91. Subpart J of the DOT regulations requires training for personnel involved in providing
23 boarding and deplaning assistance. Specifically found within the ACAA are specific
24 requirements regarding the training carriers must provide for personnel involved in providing
25 boarding and deplaning assistance:

- 26 i. 14 C.F.R. § 382.141(a)(1)(iii) (*requiring training to proficiency concerning use of*
boarding and deplaning assistance equipment and procedures);

- 1 ii. *id.* § 382.141(a)(5) (requiring carriers to develop a program to provide refresher training
- 2 *as needed to maintain proficiency*);
- 3 iii. *id.* § 382.143 (detailing requirements for when training must occur);
- 4 iv. *id.* § 382.145 (requiring carriers to retain records regarding initial and refresher training
- 5 *for employees*);
- 6 v. *id.* § 382.141(a)(i)(iii) (requiring training to proficiency concerning use of boarding and
- 7 *deplaning assistance equipment and procedures that safeguard the safety and dignity of*
- 8 *passengers*);
- 9 vi. *id.* § 382.141 (a)(1)-(6) (Carriers must develop a program to provide training and
- 10 *refreshing training to maintain proficiency, and provide or ensure that its contractors*
- 11 *provide training to the contractors' employees concerning travel by passengers with a*
- 12 *disability.*)
- 13 vii. *id.* § 382.15 (Carrier must make sure that their contractors provide services to the public
- 14 *that meet the requirements of this part that would apply to you if you provided the services*
- 15 *yourself...carriers must include an assurance of compliance in contracts with*
- 16 *contractors...Carriers remain responsible for your contractors' compliance with this part*
- 17 *and for enforcing assurances in your contracts with them.*)

18 92. As provided above, Plaintiff Pamela Foster requested that Defendant United Airlines, Inc.,
19 provide her son with embarking and disembarking assistance on February 6, 2019.

20 93. On the same day, Defendant United Airlines, Inc., agreed to provide transport and the
21 necessary disability assistance to NJ Foster, causing Plaintiffs to purchase airline tickets for safe
22 passage.

23 94. On February 8, 2019 the family flew from SFO to Monroe Louisiana via Houston.

24 95. On February 8, 2019 Plaintiff NJ Foster, a quadriplegic individual, used a tracheal tube and
25 ventilator and thereby, was in the class of persons intended to be protected by the ACAA.

1 96. Defendant United Airlines, Inc. and Defendant ExpressJet Airlines, LLC dba United Express
2 are both carriers, and agreed to provide the requested assistance for Plaintiff Conservatee NJ
3 Foster.

4 97. Defendant United Airlines, Inc. and Defendant ExpressJet Airlines, LLC breached their duty
5 of care owed to Plaintiff NJ by violating the requirements of the ACAA as follows:

- 6 a. by failing to ensure that the request for disability assistance is recorded and properly
7 transmitted to the personnel responsible for providing the accommodation, *id.* at §382.81,
8 §382.141;
- 9 b. by failing to properly train their employees regarding safe deplaning procedures for Plaintiff
10 NJ Foster, a disabled passenger, *id.*;
- 11 c. by failing to properly train their contractors regarding safe deplaning procedures for
12 Plaintiff NJ Foster, a disabled passenger, *id.*;
- 13 d. by failing to provide safe deplaning assistance as requested, 14 C.F.R. § 382.95;
- 14 e. by failing to provide the personnel necessary for the safe deplaning process of Plaintiff NJ
15 Foster, *id.*;
- 16 f. by failing to adhere to safety measures, protocols for the safe deplaning process for Plaintiff
17 Conservatee NJ Foster;
- 18 g. by failing to use the appropriate devices for providing assistance in the deplaning of
19 Plaintiff Conservatee NJ Foster, a disabled passenger, 14 C.F.R § 382.95;
- 20 h. by failing to properly maintain and/or provide ACAA compliant aisle chairs, 14 C.F.R. §
21 382.65;
- 22 i. by failing to provide compliant seating accommodations to Plaintiff Conservatee NJ Foster,
23 14 C.F.R § 382.81; and
24
25
26

- 1 j. by having an agent abandon Plaintiff Conservatee NJ Foster when Plaintiffs Nathaniel and
2 Pamela Foster merely asked for additional personnel in the deplaning process of their son;
3
4 k. by evidencing reprehensible conduct such as the “giggling” in response to a good Samaritan
5 (thoracic and cardiac surgeon) coming forward to offer medical attention upon hearing a
6 mother’s desperate cry for help;
7
8 l. by failing to permit a Good Samaritan physician to provide needed medical attention to
9 Plaintiff NJ Foster upon hearing cries for help.

98. Defendant DAL Global Services, LLC breached its duty of care owed to Plaintiff NJ under
10 the common law and under the ACAA as follows:

- 11 a. by failing to ensure that the request for disability assistance is recorded and properly
12 transmitted to the personnel responsible for providing the accommodation, *id.* at §382.81,
13 §382.141;
14 b. by failing to properly train their employees regarding safe deplaning procedures for Plaintiff
15 NJ Foster, a disabled passenger, *id.*;
16 c. by failing to properly train their contractors regarding safe deplaning procedures for
17 Plaintiff NJ Foster, a disabled passenger, *id.*;
18 d. by failing to provide safe deplaning assistance as requested, 14 C.F.R. § 382.95;
19 e. by failing to provide the personnel necessary for the safe deplaning process of Plaintiff NJ
20 Foster, *id.*;
21 f. by failing to adhere to safety measures, protocols for the safe deplaning process for Plaintiff
22 Conservatee NJ Foster;
23 g. by failing to use the appropriate devices for providing assistance in the deplaning of
24 Plaintiff Conservatee NJ Foster, a disabled passenger, 14 C.F.R § 382.95;
25

- 1 h. by failing to properly maintain and/or provide ACAA compliant aisle chairs, 14 C.F.R. §
- 2 382.65;
- 3 i. by failing to provide compliant seating accommodations to Plaintiff Conservatee NJ Foster,
- 4 14 C.F.R § 382.81; and
- 5 j. by having an agent abandon Plaintiff Conservatee NJ Foster when Plaintiffs Nathaniel and
- 6 Pamela Foster merely asked for additional personnel in the deplaning process of their son;
- 7 k. by evidencing reprehensible conduct such as the “giggling” in response to a good Samaritan
- 8 (thoracic and cardiac surgeon) coming forward to offer medical attention upon hearing a
- 9 mother’s desperate cry for help;
- 10 l. by failing to permit a Good Samaritan physician to provide needed medical attention to
- 11 Plaintiff NJ Foster upon hearing cries for help.

12 99. Defendants’ acts and omissions as described above were a substantial factor in bringing
13 about the harm to Plaintiff NJ Foster and his family, co-Plaintiffs and proximately caused injury
14 to Plaintiffs.

15 100. The injuries suffered by Plaintiff Conservatee NJ Foster were the kind of occurrences
16 that the Air Carrier Access Act was designed to prevent.

17 101. As a direct and proximate result of all Defendants’ failure to follow federal Statutes and
18 Regulations and instead, in acting recklessly, maliciously, lacking even slight care and diligence,
19 and exhibiting utter disregard for the dictates of prudence, amounting to complete neglect of the
20 rights of others and the rights of disabled passengers, Plaintiff Conservatee NJ Foster suffered
21 life altering catastrophic injury.

22 102. As proximate result thereof, Plaintiffs have suffered and continue to suffer personal
23 injury.
24

1 103. Plaintiffs Nathaniel Foster, Pamela Foster and Natalie Foster have suffered and continue
2 to suffer severe emotional injury as a result of the trauma of seeing their family member injured
3 upon deplaning, turning purple, flat-lining, being given CPR and continuing on in comatose state.

4 104. Since the date of the incident, Plaintiff NJ Foster has sustained significant personal
5 injuries, including but not limited to being in a coma, suffering permanent brain damage,
6 suffering severe mental and emotional injuries, and other injuries presently undiagnosed.

7 105. Plaintiff NJ Foster has had and in the future will have pain, suffering, worry and anxiety,
8 all to Plaintiff Conservatee's general damages in an amount to be proven at trial.

9 106. As a proximate result thereof, Plaintiff NJ Foster incurred, and in the future, will incur
10 medical and related expenses all to Plaintiff's damage in such amount as will be proven at trial.

11 107. As a proximate result thereof, Plaintiff NJ Foster has lost the ability to talk, to eat as
12 before (without a feeding tube), to participate in family life, to have a social and romantic life, to
13 attend school and fulfill his dream of becoming a physician.

14 108. Plaintiff NJ Foster has and will have lost earning capacity all to Plaintiff's damage in
15 such amount as will be proven at trial.

16 109. Plaintiffs Nathaniel and Pamela Foster have been unable to follow their regular
17 employment schedules and have incurred expenses for their son's needed medical care, treatment
18 and related costs and expenses. Plaintiffs' damages in this respect are presently unascertained and
19 are continuing.

20 110. As a further proximate result of the acts and omissions of Defendants and each of them,
21 Plaintiffs have sustained substantial economic and non-economic damages, in amounts according
22 to proof at trial.
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1 111. Defendants' acts and omissions as set forth in this complaint were oppressive and
2 malicious and a knowing and reckless breach of Defendants' statutory duty.

3 112. Defendants' acts and omissions were willful and with conscious disregard of Plaintiff
4 Conservatee NJ Foster's rights and safety and in that they subjected him to cruel and unjust
5 hardship in conscious disregard of his rights and safety.

6 113. The totality of Defendants' conduct, actions and omissions, in the deplaning of Plaintiff
7 NJ Foster was so egregious and such a *gross* deviation the applicable standard of care that malice
8 may be implied to justify a significant award of punitive damages.

9 114. Alternatively, or additionally, the totality of Defendants' conduct demonstrated
10 altogether an entire want of care raising the presumption of a conscious indifference and reckless
11 disregard to the consequences sufficient to justify a significant award of punitive damages.

12 115. Accordingly, Plaintiffs are entitled to an award of punitive damages in an amount to be
13 determined at trial for the extreme recklessness, willful and conscious disregard of the rights and
14 safety of Plaintiffs as exhibited by Defendants' acts and omission.

15 116. WHEREFORE, Plaintiffs request relief as hereinafter provided.

16
17 **SECOND CAUSE OF ACTION**

18 **Negligent Hiring, Supervision or Retention of Employee**

19 (All Plaintiffs against All Defendants and Does 1-50)

20 117. Plaintiffs reallege and incorporate by reference all preceding paragraphs as fully set forth
21 herein.

22 118. Plaintiffs claim that they were harmed by the acts and/or omissions of Defendants'
23 individual agents, supervisors and personnel (including but not limited to: Joao Fernandes,
24 Christina Nikolov, Rachel White, Linda Daniels, Charlotte Gibson, Mignon Jackson, Robert

1 Brown, Jr.), and that Defendants United Airlines Holding, Inc., United Airlines, Inc., ExpressJet
2 Airlines, LLC, and DAL Global Services, LLC are responsible for the harms as alleged above,
3 because they each negligently hired, supervised and/or retained the employees whose actions or
4 omissions caused Plaintiffs' harms.

5 119. Defendants hired each of the employees identified above.

6 120. Each employee was unfit or incompetent to perform the work for which each was hired.

7 121. Defendants at all times relevant herein, knew or should have known that each employee
8 was unfit or incompetent or created a particular risk to all passengers.

9 122. The employees' unfitness or incompetence harmed each plaintiff as alleged above.

10 123. Defendants' negligence in hiring, supervising, retaining the individuals as described
11 above was a substantial factor in causing Plaintiffs' harm.

12 124. WHEREFORE, Plaintiffs request relief as hereinafter provided.

13 **THIRD CAUSE OF ACTION**

14 **Breach of Contract**

15 (All Plaintiffs against All Defendants and Does 1-50)

16 125. Plaintiffs reallege and incorporate by reference all preceding paragraphs as fully set forth
17 herein.

18 126. On February 6, 2019, Plaintiffs purchased airline tickets from Defendant United Airlines,
19 Inc. thereby entering into a contract with Defendant United Airlines, Inc. and Defendant United
20 Airlines Holdings, Inc.

21 127. Defendants United Airlines, Inc. and Defendant United Airlines Holdings, Inc. is bound
22 to a contract with Plaintiffs, in part, evidenced by Defendant United Airlines' Contract of
23 Carriage.
24

1 128. In relevant part, the Contract of Carriage provides that it:

2 *...constitute[s] the conditions of carriage upon which UA agrees to provide Domestic... Carriage*
3 *and are expressly agreed to by the Passenger...and [t]he rules herein are applicable to*
4 *transportation of Passengers...provided by UA...UA's obligations hereunder extend only to the*
5 *Ticketed Passenger.*

6 129. The contract specifically provides in “Rule 14 Special Services” as follows:

7 *A. Definition of Non-Ambulatory under this Rule: 1. Persons who are unable to move themselves*
8 *or need the support of another person to walk or move, but who are otherwise capable of caring*
9 *for themselves without assistance throughout the flight are considered Non-Ambulatory....*

10 *B. Qualifications for Acceptance of Non-Ambulatory Passengers - Non-Ambulatory Passengers*
11 *are accepted when accompanied by an assistant able to assist the Non-Ambulatory Passenger to*
12 *evacuate the aircraft in accordance with 14 CFR Part 382.29. See Rule 21.*

13 *C. Qualified Individual with a Disability - UA requires a Passenger, including a Qualified*
14 *Individual with a Disability, to provide up to 48 hours' advance notice and check-in one hour*
15 *before the check-in time for the general public for Domestic U.S. flights and for International*
16 *flights as set forth in Rules 5 D) and 5 E) if such Passenger wishes to receive any of the following*
17 *service accommodations: 1. Transportation of an electric wheelchair on an aircraft with fewer*
18 *than 60 seats....*

19 *D. When Travel Assistance is Required: 1. If UA determines that an assistant is essential for*
20 *safety, UA may require that a Passenger, including a Qualified Individual with a Disability,*
21 *meeting any of the following criteria travel with an assistant as a condition of being provided*
22 *air transportation: ... b. A person with a mobility impairment so severe that the person is unable*
23 *to physically assist in his or her evacuation of the aircraft;...*

24 130. The contract specifically provides in “Rule 18 Service Provided by United Express and
25 Other Codeshare Partners” as follows:

26 *UA has arrangements with certain other carriers to enable UA to provide Codeshare services to*
Passengers on flights operated by these carriers. Transportation provided by UA under a
Codeshare arrangement with these carriers is designated by a flight number that includes UA's
two-letter airline designator code, “UA”...

For Codeshare services on flights operated by another carrier, UA is responsible for the entirety
of the Codeshare journey for all obligations to Passengers established in these rules. The rules
contained herein with respect to ticketing will apply to UA Codeshare services on flights
operated by partner airlines...

1 131. Plaintiffs were ticketed passengers as provided in the Contract of Carriage and had at all
2 times fulfilled all obligations on their part for the contract of safe carriage.

3 132. Defendants, however, failed to provide safe carriage, causing significant harm to each
4 Plaintiff.

5 133. The activities alleged above on the part of said Defendants, and each of them, is a
6 breach of the terms, both explicit and implied, of the contract created by Defendant United
7 Airlines, Inc. selling a ticket to each Plaintiff as well as a breach of Defendant ExpressJet's
8 obligations as a common carrier to provide safe passage.

9 134. As a direct and proximate result of defendants' breach as set out above, Plaintiffs were
10 damaged as alleged herein, in an amount subject to proof at trial.

11 135. WHEREFORE, Plaintiffs request relief as hereinafter provided.

12 **FOURTH CAUSE OF ACTION**

13 **Negligent Misrepresentation**

14 (All Plaintiffs against Defendants United Airlines, Inc. and United Airlines Holdings, Inc.)

15 136. Plaintiffs reallege and incorporate by reference all preceding paragraphs as fully set forth
16 herein.

17 137. Defendant United Airlines, Inc., via its agent(s) (name(s) unknown, Agent #2) at its
18 Accessibility Desk, on February 6, 2019, misrepresented to Plaintiff Pamela Foster that her son,
19 Plaintiff-Conservatee NJ Foster, a disabled individual, could be accommodated and provided
20 with the necessary disability related assistance as requested on the family's trip from SFO to
21 Monroe, Louisiana via Houston.

22 138. Defendant United Airlines, Inc.'s representations were untrue as Plaintiff NJ Foster did
23 not receive the necessary deplaning assistance at the Monroe Regional Airport.
24

1 139. Defendant United Airlines, Inc., made the misrepresentation of the material fact without
2 reasonable grounds for believing the representation was true when the representations were
3 made.

4 140. Defendant United Airlines, Inc., intended that Plaintiffs rely on this representation.

5 141. Plaintiffs reasonably and justifiably relied on Defendant United Airlines, Inc.'s
6 representations and were unaware of the falsity of the representations made by Defendant's
7 agent.

8 142. As a result of the reliance upon the agent's representations, Plaintiffs were each harmed.
9 As provided above, Plaintiff NJ Foster suffered catastrophic injury and Plaintiffs Nathaniel,
10 Pamela and Natalie Foster also suffered and continue to suffer severe emotional injury; and

11 143. Plaintiffs' reliance on Defendant United Airlines, Inc.'s representations were a
12 substantial factor in causing their harm.

13 144. WHEREFORE, Plaintiffs request relief as hereinafter provided.

14 **FIFTH CAUSE OF ACTION**

15 **Intentional Infliction of Emotional Distress**

16 (All Plaintiffs against All Defendants and Does 1-50)

17 145. Plaintiffs reallege and incorporate by reference all preceding paragraphs as fully set forth
18 herein.

19 146. Defendants at all times knew that Plaintiff Conservatee NJ Foster was a disabled,
20 quadriplegic individual, with a trach tube, ventilator and power wheelchair;

21 147. Defendants exhibited extreme and outrageous conduct in the following acts and
22 omissions:

- 23
24 i. failing to properly maintain jet bridges (connecting the airport's terminal with the plane);
25
26

- 1 ii. failing to provide compliant aisle chairs;
- 2 iii. failing to properly maintain aisle chairs for use in the deplaning process;
- 3 iv. negligently hiring and supervising agents, employees, subcontractors and/or operators;
- 4 v. failing to provide the sufficient training for its agents, employees, subcontractors and/or
- 5 operators;
- 6 vi. failing to provide an appropriate number of trained personnel for deplaning Plaintiff
- 7 Conservatee NJ Foster upon arrival at the Monroe Regional Airport;
- 8 vii. failing to provide safe deplaning assistance for Plaintiff NJ Foster, a quadriplegic young
- 9 man with a tracheal tube and ventilator after agreeing to provide safe passage for him;
- 10 viii. failing to exercise care in preventing a catastrophic personal injury to Plaintiff Conservatee
- 11 NJ Foster;
- 12 ix. failing to have and/or implement adequate deplaning policies and procedures;
- 13 x. failing to adequately protect Plaintiff NJ Foster, a disabled passenger;
- 14 xi. failing to act reasonably under the circumstances to avoid an unreasonable risk of harm to
- 15 Plaintiff NJ Foster; and
- 16 xii. for first denying and then, delaying the voluntary assistance of a good Samaritan (a
- 17 thoracic and cardiac surgeon no less) from providing medical assistance to Plaintiff
- 18 Conservatee NJ Foster at a critical time.

19 148. As provided above, Defendants' acts and omissions evidence shocking, outrageous
20 conduct that is so extreme in degree, as to go beyond all possible bounds of decency, and to be
21 regarded as atrocious and utterly intolerable in a civilized community.

22 149. As a result of the aforementioned acts, Defendants caused Plaintiffs to suffer severe
23 emotional distress in the form of severe shock, worry, distress, fright, anxiety, depression, weight
24 loss, weight gain and angst.

25 150. Defendants' conduct by their acts and omissions was a substantial factor in causing
26 Plaintiffs' severe emotional distress.

1 151. WHEREFORE, Plaintiffs request relief as hereinafter provided.
2
3

4 **PRAYER FOR RELIEF**

- 5 1. Wherefore Plaintiffs pray for judgment against Defendant as follows:
6 a. For a money judgment representing general and compensatory damages including
7 necessary and reasonable medical expenses and reasonably anticipated future medical
8 expenses;
9 b. For a money judgment representing past and future impairment of ability to enjoy life;
10 c. For a money judgment representing loss of future earnings, retirement benefits and other
11 employee benefits, and all other sums of money, together with interest on these amounts,
12 according to proof at trial;
13 d. For a money judgment for mental anguish, pain and suffering (past, present and for that
14 mental anguish, pain and suffering reasonably likely to occur in the future) according to
15 proof at trial;
16 e. For punitive / exemplary damages in an amount appropriate to punish the individual
17 Defendants for their willful, callous, reckless, wrongful and malicious conduct and
18 effectively deter Defendants from engaging in similar conduct and to set an example for
19 other common carriers in the provision of assistance to disabled passengers asking for
20 assistance;
21 f. For general and special damages according to proof;
22 g. For prejudgment and post-judgment interest;
23 h. Reasonable attorneys' fees and costs;
24 i. For injunctive relief to ensure that all passengers with disabilities seeking assistance in the
25 embarking and disembarking process are provided the necessary assistance and are
26 provided with equal access and dignity as the law requires; and
j. For any other relief that the Court deems just and proper.

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Dated: August 25, 2020

Albert Stoll Jr., A Law Corporation

By: /S/

Albert G. Stoll, Jr.
Jessica Juarez.
Attorneys for Plaintiffs Nathaniel Foster, Pamela
Foster, Conservatee and Plaintiff Nathaniel Foster, Jr.,
and Minor Natalie Foster

DEMAND FOR JURY TRIAL

Dated: August 25, 2020

Albert Stoll Jr., A Law Corporation

By: /S/

Albert G. Stoll, Jr.
Jessica Juarez
Attorneys for Plaintiffs Nathaniel Foster, Pamela
Foster, Conservatee and Plaintiff Nathaniel Foster, Jr.,
and Minor Natalie Foster

EXHIBIT 1

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): — Trisha D. Friedberg/ Melanie J. Emmons 243737 / 284400 Kato, Feder & Suzuki, LLP 235 Montgomery Street, Suite 1220 San Francisco, CA 94104 TELEPHONE NO: (415) 974-5715 FAX NO.(Optional): (415) 974-6199 E-MAIL ADDRESS (Optional): tfriedberg@kfslaw.net / memmons@kfslaw.net ATTORNEY FOR (Name): Petitioners	<div style="text-align: right; font-weight: bold; font-size: 24px; opacity: 0.5;">FILED</div> <div style="text-align: right; font-size: 10px; opacity: 0.5;">FOR COURT USE ONLY</div> <div style="text-align: center; margin-top: 20px;"> 2019 MAR 22 A 9:09 COURT CLERK CLERK OF THE SUPERIOR COURT COUNTY OF CONTRA COSTA SAN FRANCISCO, CALIFORNIA </div>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Contra Costa STREET ADDRESS: 725 Court Street MAILING ADDRESS: -- CITY AND ZIP CODE: Martinez, CA 94553 BRANCH NAME: --	CASE NUMBER: <div style="font-size: 24px; font-weight: bold; margin-left: 20px;">P19-00335</div>
TEMPORARY CONSERVATORSHIP OF THE <input checked="" type="checkbox"/> PERSON <input checked="" type="checkbox"/> ESTATE OF (Name): Nathaniel Foster Jr.	CONSERVATEE
ORDER APPOINTING TEMPORARY CONSERVATOR	
WARNING: THIS APPOINTMENT IS NOT EFFECTIVE UNTIL LETTERS HAVE ISSUED.	

1. The petition for appointment of a temporary conservator came on for hearing as follows (check boxes c-j to indicate personal presence):

- a. Judicial officer (name): Honorable John H. Sugiyama
- b. Hearing date: 3/22/2019 Time: 9:00 AM Dept.: Probate Room: 14
- c. Petitioner (name): Nathaniel Foster
- d. Attorney for petitioner (name): Melanie J. Emmons
- e. Conservatee (name):
- f. Attorney for conservatee (name):
- g. Conservatee's spouse or registered domestic partner, and relatives (names and relationships):

h. Attorneys for persons listed in item g (names and persons represented):

- i. Public Guardian (name):
- j. Attorney for Public Guardian (name):

THE COURT FINDS

- 2. a. Notice of time and place of hearing has been given as required by law.
- b. Notice of time and place of hearing has been modified or dispensed with under *Order on Ex Parte Application for Good Cause Exception to Notice on Petition for Appointment of Temporary Conservator* filed on (date):
- 3. It is necessary that a temporary conservator be appointed to provide for temporary care, maintenance, and support protect property from loss or injury
 - a. pending the hearing on the petition for appointment of a general conservator.
 - b. pending an appeal under Probate Code section 1301.
 - c. during the suspension of powers of the conservator.
- 4. To prevent irreparable harm, the residence of the conservatee must be changed. No means less restrictive of the conservatee's liberty will prevent irreparable harm.

ORDER APPOINTING TEMPORARY CONSERVATOR
 (Probate - Guardianships and Conservatorships)

Foster Jr., Nathaniel

TEMPORARY CONSERVATORSHIP OF (Name): Nathaniel Foster Jr. <div style="text-align: right;">CONSERVATEE</div>	CASE NUMBER:
---	--------------

5. The conservatee must be removed from the State of California to permit the performance of nonpsychiatric medical treatment essential to the conservatee's physical survival. The conservatee consents to this medical treatment.
6. The conservatee need not attend the hearing.

THE COURT ORDERS

7. a. (Name): Nathaniel Foster
 (Address): 547 Tananger Heights Lane, Pleasant Hill, CA 94523 (Telephone): 925.354.5350

is appointed temporary conservator of the PERSON of (name): Nathaniel Foster Jr. and Letters shall issue upon qualification.

- b. (Name): Nathaniel Foster
 (Address): 547 Tananger Heights Lane, Pleasant Hill, CA 94523 (Telephone): 925.354.5350

is appointed temporary conservator of the ESTATE of (name): Nathaniel Foster Jr. and Letters shall issue upon qualification.

8. a. Bond is not required.
- b. Bond is fixed at: \$ _____ to be furnished by an authorized surety company or as otherwise provided by law.
- c. Deposits of: \$ _____ are ordered to be placed in a blocked account at (specify institution and location): _____

- and receipts shall be filed. No withdrawals shall be made without a court order. Additional orders in attachment 8c.
- d. The temporary conservator is not authorized to take possession of money or any other property without a specific court order.

9. The temporary conservator is authorized to change the residence of the conservatee to (address): _____

10. The temporary conservator is authorized to remove the conservatee from the State of California to the following address to permit the performance of nonpsychiatric medical treatment essential to the conservatee's physical survival (address): _____

11. The conservatee need not attend the hearing.

12. In addition to the powers granted by law, the temporary conservator is granted other powers. These powers are specified in attachment 12 below (specify): _____


13. Other orders as specified in attachment 13 are granted.

14. Unless modified by further order of the court, this order expires on (date): 12-22-19 19S

15. Number of boxes checked in items 7-14: 8

16. Number of pages attached: 4

Date: 3/23/19


 JUDICIAL OFFICER

SIGNATURE FOLLOWS LAST ATTACHMENT

Temporary Conservator of Person and Estate
Nathaniel Foster Jr.

Attachment 12

Probate Code Section 2351(a): The temporary conservator is authorized to collect, redirect, and control conservatee's mail.

Probate Code Section 2355: The temporary conservator is authorized to have the exclusive authority to make health care decisions for the conservatee that the conservator in good faith based on medical advice determines to be necessary.

Attachment 13

Temporary Conservator is granted the following powers:

1. The Court authorizes Petitioner Nathaniel Foster to retain Jessica Juarez, Esq. of *Albert G Stoll Jr., A Law Corporation*, to represent Conservatee in personal injury issues and to execute a retainer agreement with *Albert G Stoll Jr., A Law Corporation*, to that effect;
2. The Court authorize the Conservator, to pay the *Albert G Stoll Jr., A Law Corporation* in accordance with the terms set forth in their attorney-client contingency agreement attached hereto as **Exhibit A**. To summarize paragraph two of Exhibit A, the Court authorize the Conservator to pay up to but not to exceed 33.33% of all sums recovered, 40% for all sums recovered if the case is settled after either a complaint is filed with the court or a demand for binding arbitration is made or 45% should the matter be set for trial for legal services rendered to the conservatorship with said payments subject to review by this court at the next accounting.

Attached hereto as **Exhibit A** is the *Albert G Stoll Jr., A Law Corporation* attorney-client agreement and firm profile.

Petitioner is granted authorization to retain *Albert G Stoll Jr., A Law Corporation* to represent the proposed conservatee in matters related to these personal injury issues. Petitioner also is granted authority to pay *Albert G Stoll Jr., A Law Corporation*, though any settlement agreement would be subject to Court approval. Payments will be paid upon Petitioner's receipt of invoices from *Albert G Stoll Jr., A Law Corporation*. Said invoices will be submitted to the Court with the filing of the first account and report and subject to review by this Court.

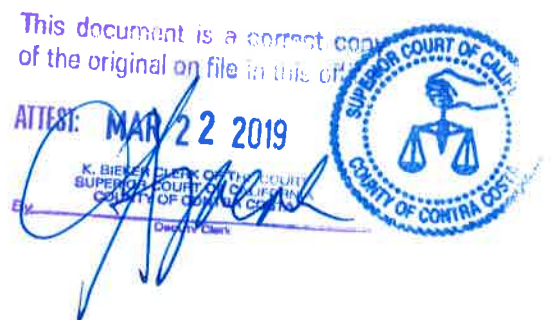


EXHIBIT 2

1 Albert G. Stoll, Jr. SBN 164649
2 Walter Haynes, SBN 244776
3 Jessica Juarez, SBN 269600
4 ALBERT G. STOLL, JR. | A LAW CORPORATION
5 235 Montgomery Street, Ste 1220
6 San Francisco, California 94133
7 Phone: (415) 576-1500
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9 E-mail: jessica@stoll-law.com
10 Attorneys for Plaintiffs Nathaniel Foster Jr., Nathaniel Foster,
11 Pamela Foster and Natalie Foster
12

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT COURT OF CALIFORNIA

15 Case No.

16 NATALIE FOSTER'S PETITION FOR
17 APPOINTMENT OF GUARDIAN AD LITEM

18 **I. INTRODUCTION**

19 This case arises from an incident in which Plaintiff NJ Foster, a young man and quadriplegic was
20 receiving assistance from Defendant United Airlines, Inc. and Defendant ExpressJet Airlines, Inc. dba
21 United Express in the deplaning process. Plaintiff NJ suffered catastrophic injury upon exiting the
22 plane and has been in a coma since the date of the incident: February 8, 2019. Plaintiff NJ was
23 traveling with his family at the time of the incident: his father, Nathaniel Foster, mother, Pamela Foster
24 and minor sister, Natalie Foster (age 16).

25 Now before the court is Petitioner Natalie Foster's petition to appoint her mother, Pamela Foster as
26 guardian ad litem. Petitioner is a minor of the age of 16 years and a Plaintiff in the above-entitled
27 action filed in this court against Defendants United Airlines, Inc.; Express Jet Airlines, Inc. dba United
28 Express; DAL Global Services, LLC and the City of Monroe, Louisiana, and DOES 1-50. Petitioner
has no previous petition for appointment of a guardian ad litem.

1 Mother Pamela Foster is competent, willing and able to serve as her daughter’s Guardian Ad
2 Litem. *See* Decl. of Pamela Foster in Support of Petition for Appointment of Guardian Ad Litem. No
3 actual or potential conflicts of interest exist. *Id.*

4 Nathaniel Foster, Natalie’s father agrees that his wife, Pamela Foster should be appointed as
5 guardian ad litem. *See* Decl. of Nathaniel Foster in Support of Petition for Appointment of Guardian
6 Ad Litem.

7 **II. LEGAL STANDARD**

8 Federal Rule of Civil Procedure 17 allows a general guardian to sue on behalf of a minor or
9 incompetent person. Fed. R. Civ. P. 17(c)(1)(A). Courts “must appoint a guardian ad litem ... to protect
10 a minor or incompetent person who is unrepresented in an action.” Fed. R. Civ. P. 17(c)(2). “The
11 decision to appoint a guardian ad litem under Rule 17(c) is normally left to the sound discretion of the
12 trial court[.]” *Davis v. Walker*, 745 F.3d 1303, 1310 (9th Cir. 2014). “When there is no conflict of
13 interest, the guardian ad litem appointment is usually made on ex parte application and involves
14 minimal exercise of discretion by the trial court.” *Kulya v. City & Cty. of S.F.*, 2007 WL 760776, at *1
15 (N.D. Cal. Mar. 9, 2007)(citing *In re Marriage of Caballero*, 27 Cal. App. 4th 1139, 1149 (1994)).

16 An individual’s capacity to sue is determined by the law of the individual’s domicile. *Id.* 17(b).
17 Under California law, an individual under the age of eighteen is a minor. Cal. Fam. Code § 6500. A
18 minor may bring suit as long as a guardian conducts the proceedings and the court may appoint a
19 guardian ad litem to protect the minor’s interests in the litigation. *Id.* § 6601; Cal. Civ. Proc. Code §
20 372(a); *Williams v. Super. Ct.*, 147 Cal. App. 4th 36, 47 (2007).

21 The court “has broad discretion in ruling on a guardian ad litem application.” *Williams v. Super.*
22 *Ct.*, 147 Cal. App. 4th 36, 47 (2007). In the case of parent representatives, “[w]hen there is a potential
23 conflict between a perceived parental responsibility and an obligation to assist the court in achieving a
24 just and speedy determination of the action,’ a court has the right to select a guardian ad litem who is
25 not a parent if that guardian would best protect the child’s interests.” *Id.* at 49 (quoting *M.S. v.*
26 *Wermers*, 557 F.2d 170, 175 (8th Cir. 1977)) Thus, “if the parent has an actual or potential conflict of
27 interest with his [or her] child, the parent has no right to control or influence the child’s litigation.” *Id.*
28 at 50. If, on the other hand, “a parent brings an action on behalf of a child, and it is evident that the
interests of each are the same, no need exists for someone other than the parent to represent the child’s
interests under Rule 17(c).” *Gonzalez v. Reno*, 86 F. Supp. 2d 1167, 1185 (S.D. Fla. 2000), *aff’d* 212
F.3d 1338 (11th Cir. 2000); see also *Bhatia v. Corrigan*, No. C 07-2054 CW, 2007 WL 1455908, at *1
(N.D. Cal. May 16, 2007) (citing *Gonzalez*, 86 F. Supp. 2d at 1185). When there is no conflict of

1 interest, “the appointment is usually made on application only and involves little exercise of
2 discretion.” Williams, 147 Cal. App. 4th at 47 (quoting In re Marriage Caballero, 27 Cal. App. 4th
3 1139, 1149 (1994)) (internal quotations omitted).

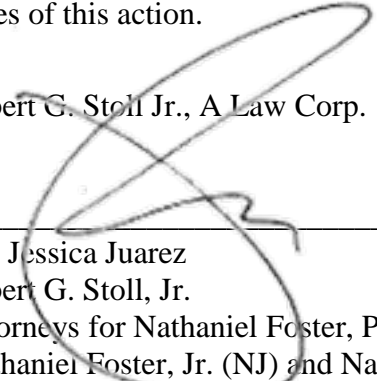
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5 **III. CONCLUSION**

6 Based on the foregoing, Petitioner petitions this court for an order appointing her mother
7 Pamela Foster as her Guardian Ad Litem for the purposes of this action.

8 Albert G. Stoll Jr., A Law Corp.

9 Dated: May 10, 2019

10 
11 By: Jessica Juarez
12 Albert G. Stoll, Jr.
13 Attorneys for Nathaniel Foster, Pamela Foster,
14 Nathaniel Foster, Jr. (NJ) and Natalie Foster

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NORTHERN DISTRICT COURT OF CALIFORNIA

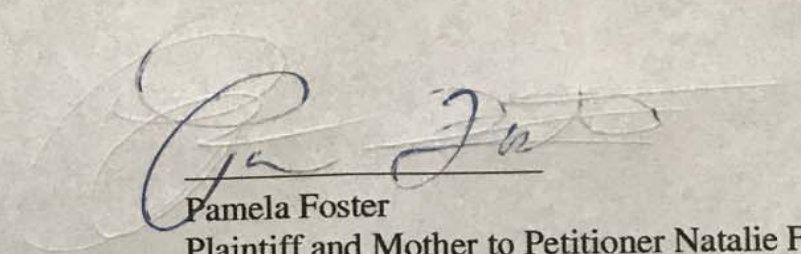
DECLARATION OF PAMELA FOSTER IN
SUPPORT OF PETITION FOR APPOINTMENT
OF GUARDIAN AD LITEM

I, Pamela Foster declare as follows:

1. I have personal knowledge of the matters set forth below, and if called to testify about them, I could and would do so competently.
2. I traveled with my family (husband, Nathaniel Foster, son NJ, daughter Natalie Foster) on February 8, 2019 when my son, Nathaniel Foster, Jr. "NJ" suffered a catastrophic injury upon deplaning United Airlines Flight No. 4193 in Monroe, Louisiana.
3. My son continues to be in a coma on the date this petition was filed.
4. My family and I have brought claims to recover damages for injuries stemming from the incident of February 8, 2019.
5. I am the mother and legal guardian of Natalie Foster.
6. My daughter, Natalie Foster is a minor child, age 16 with a birthdate of July 18, 2002.
7. There is no actual or potential conflict of interest between myself and my daughter's claims in this action.
8. I am competent to act as my daughter's Guardian ad Litem and will at all times act only in the best interests of my daughter.

I declare under penalty of perjury under the federal laws of the United States that the foregoing is true and correct.

Date: 5/10/19

A handwritten signature in blue ink, appearing to read 'Pamela Foster', is written over a horizontal line. The signature is stylized and somewhat cursive.

Pamela Foster
Plaintiff and Mother to Petitioner Natalie Foster

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11 Pamela Foster and Natalie Foster

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NORTHERN DISTRICT COURT OF CALIFORNIA

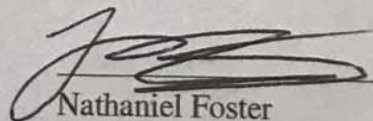
DECLARATION OF PAMELA FOSTER IN
SUPPORT OF PETITION FOR APPOINTMENT
OF GUARDIAN AD LITEM

I, Nathaniel Foster declare as follows:

- 1) I have personal knowledge of the matters set forth below, and if called to testify about them, I could and would do so competently.
- 2) I traveled with my family (wife, Pamela Foster, son NJ, and daughter Natalie Foster) on February 8, 2019 when my son, Nathaniel Foster, Jr. "NJ" suffered a catastrophic injury upon deplaning United Airlines Flight No. 4193 in Monroe, Louisiana.
- 3) My son continues to be in a coma on the date this petition was filed.
- 4) My family and I have brought claims to recover damages for injuries stemming from the incident of February 8, 2019.
- 5) I agree that my wife, Pamela Foster should serve as our daughter, Natalie Foster's Guardian ad Litem in this case.

I declare under penalty of perjury under the federal laws of the United States that the foregoing is true and correct.

Date: 5/10/19



Nathaniel Foster
Plaintiff and Father to Petitioner Natalie Foster

1
2
3 UNITED STATES DISTRICT COURT
4 NORTHERN DISTRICT OF CALIFORNIA

5 [PROPOSED] ORDER GRANTING
6 PLAINTIFF'S PETITION FOR APPOINTMENT
7 OF GUARDIAN AD LITEM

8 The Court, having considered the petition of Natalie Foster for appointment of
9 a guardian ad litem in the above action, and good cause appearing, hereby orders that Pamela Foster be
10 appointed guardian ad litem for minor, Natalie Foster in this action.

11 **IT IS SO ORDERED**

12
13 Dated: _____

14 United States Magistrate Judge
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