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15 **UNITED STATES DISTRICT COURT**

16 **DISTRICT OF NEVADA**

17 NATIONAL FEDERATION OF THE
18 BLIND, on behalf of its members and itself;
and ALAN SCHLANK, BILLIE RUTH
19 SCHLANK, JOYCE PRATT, AND MARK
ADREON, on behalf of themselves and all
20 others similarly situated,

21
22 Plaintiffs,

23 v.

24 CLARK COUNTY, NEVADA; CLARK
COUNTY BOARD OF COMMISSIONERS;
and CLARK COUNTY DEPARTMENT OF
25 AVIATION d/b/a MCCARRAN
INTERNATIONAL AIRPORT,
26

27 Defendants.

Case No.:

CLASS ACTION

COMPLAINT

1 **INTRODUCTION**

2 Plaintiffs complain of Defendants and allege herein as follows:

3 1. This class action seeks to put an end to systemic civil rights violations committed
4 by Defendants Clark County, Nevada; Clark County Board of Commissioners; and Clark County
5 Department of Aviation d/b/a McCarran International Airport (collectively, "Clark County") in
6 Nevada against the blind. By deploying automated "common use self-service" ticketing kiosks
7 ("CUSS Kiosks") at McCarran International Airport ("McCarran") that are inaccessible to blind
8 customers, Clark County is denying blind persons the use of the CUSS Kiosks it offers to non-
9 disabled airline passengers. Clark County thus excludes the blind from full and equal use of
10 mainstream technology used by countless airline passengers each day.

11 **JURISDICTION**

12 2. This Court has subject matter jurisdiction in this action pursuant to 28 U.S.C. §
13 1331 and/or 28 U.S.C. § 1343(a)(3) & (4) because of Plaintiffs' federal civil rights claims
14 pursuant to 42 U.S.C. § 12132 and 29 U.S.C. § 794.

15 **VENUE**

16 3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b). Defendants
17 regularly conduct business in the state of Nevada and maintain offices in the state of Nevada.
18 Moreover, Defendants have been and are committing the acts that give rise to this action in this
19 District. A substantial part, if not all, of the acts and omissions giving rise to Plaintiffs' claims
20 have occurred in this District.

21 **PARTIES**

22 4. The National Federation of the Blind ("NFB"), the oldest and largest national
23 organization of blind persons, is a non-profit corporation duly organized under the laws of the
24 District of Columbia with its principal place of business in Baltimore, Maryland. It has affiliates
25 in all 50 states, Washington, D.C. and Puerto Rico. The vast majority of its approximately
26 50,000 members are blind persons who are recognized as a protected class under federal laws.
27 The NFB is widely recognized by the public, Congress, executive agencies of government and

1 the courts as a collective and representative voice on behalf of blind Americans and their
2 families. The purpose of the NFB is to promote the general welfare of the blind by (1) assisting
3 the blind in their efforts to integrate themselves into society on terms of equality and (2)
4 removing barriers and changing social attitudes, stereotypes and mistaken beliefs that sighted
5 and blind persons hold concerning the limitations created by blindness and that result in the
6 denial of opportunity to blind persons in virtually every sphere of life. The NFB and many of its
7 members have long been actively involved in promoting accessible technology for the blind, so
8 that blind persons can live and work independently in today's technology-dependent world.
9 NFB members reside throughout the United States, including Nevada. Many NFB members
10 would use Clark County's CUSS Kiosks in McCarran if they were made independently
11 accessible to the blind. The NFB sues on behalf of its members throughout the United States, as
12 well as in furtherance of its extensive efforts and expenditure of resources in promoting two of
13 its principal missions: independence of the blind and equal access to technology for the blind.
14 Clark County's discriminatory use of inaccessible CUSS Kiosks frustrates these missions of the
15 NFB and results in the diversion of its resources to address Clark County's discriminatory
16 practices.

17 5. Plaintiffs Alan and Billie Ruth Schlank are a married couple and are both citizens
18 of Virginia and residents of Arlington, Virginia. Mr. Schlank and Ms. Schlank are both blind
19 and are members of a protected class under the Americans with Disabilities Act and the
20 Rehabilitation Act. Mr. Schlank is a computer services consultant for the U.S. Department of
21 Veterans Affairs. Ms. Schlank owns and operates multiple snack and gift card shops located in
22 Washington, D.C. Mr. and Ms. Schlank spend a total of two weeks a year at a time-share condo
23 that they own in Las Vegas. Mr. and Ms. Schlank regularly fly into and out of McCarran several
24 times a year when traveling together to make use of their time-share allowance in Las Vegas.
25 Mr. and Ms. Schlank have been unable to use the CUSS Kiosks independently because CUSS
26 Kiosks require sight to operate. Mr. and Ms. Schlank are faced with the dilemma of having to
27 wait for an airline employee to assist them with the check-in process, or having to provide

1 sensitive, private information to a sighted stranger who can access the CUSS Kiosks for them.
2 Both of these options are undesirable to Mr. and Ms. Schlank. Each option unnecessarily
3 compromises Mr. and Ms. Schlank's privacy and independence.

4 6. Plaintiff Joyce Pratt is a citizen of New Jersey and a resident of Gillette, New
5 Jersey. Ms. Pratt is blind and is a member of a protected class under the Americans with
6 Disabilities Act and the Rehabilitation Act. Ms. Pratt is a retired help desk administrator who
7 spends much of her free time serving in her community church. Ms. Pratt regularly flies into and
8 out of McCarran when traveling to visit family in Las Vegas. Ms. Pratt has been unable to use
9 the CUSS Kiosks independently because they require sight to operate. Ms. Pratt is faced with
10 the dilemma of having to wait for an airline employee to assist her with the check-in process, or
11 having to provide sensitive, private information to a sighted stranger who can access the CUSS
12 Kiosks for her. Both of these options are undesirable to Ms. Pratt. Each option unnecessarily
13 compromises Ms. Pratt's privacy and independence.

14 7. Plaintiff Mark Adreon is a citizen of Washington and a resident of Seattle,
15 Washington. Mr. Adreon is blind and is a member of a protected class under the Americans with
16 Disabilities Act and the Rehabilitation Act. Mr. Adreon is employed as a program specialist at
17 the Department of Services for the Blind with the State of Washington. Mr. Adreon desires to
18 fly into and out of McCarran while vacationing in Las Vegas. Mr. Adreon reasonably believes
19 he will be unable to independently use the CUSS Kiosks because they require sight to operate.
20 Mr. Adreon will be faced with the dilemma of having to wait for an airline employee to assist
21 him with the check-in process, or having to provide sensitive, private information to a sighted
22 stranger who can access the CUSS Kiosks for him. Both of these options are undesirable to Mr.
23 Adreon. Each option unnecessarily compromises Mr. Adreon's privacy and independence.

24 8. Plaintiffs Mr. and Ms. Schlank, Pratt and Adreon are hereinafter referred to as the
25 "Individually Named Plaintiffs."

26 9. Defendant Clark County, Nevada is a political subdivision of the State of Nevada.
27

1 10. Defendant Clark County Board of Commissioners is the body politic of Clark
2 County, Nevada.

3 11. Defendant Clark County Department of Aviation d/b/a McCarran International
4 Airport is a department of Clark County, Nevada.

5 12. Defendants own, operate, and control McCarran and the CUSS Kiosks contained
6 therein.

7 13. This action is brought by the NFB on behalf of its members and itself. NFB has
8 approximately 50,000 members, hundreds of whom fly out of Nevada airports, including
9 McCarran. This action is also brought by the Individually Named Plaintiffs on behalf of
10 themselves and a class of all other persons who are similarly situated, as set forth below.

11 14. Plaintiffs' Counsel signing this complaint are authorized to do so on behalf of
12 Plaintiff NFB and the Individually Named Plaintiffs.

13 **CLASS ACTION ALLEGATIONS**

14 15. The Individually Named Plaintiffs bring this case as a class action pursuant to
15 Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure on behalf of all legally blind
16 individuals in the United States who have been unable to use Clark County's CUSS Kiosks at
17 McCarran International Airport because of a visual disability, hereinafter referred to as the
18 "Kiosk Class".

19 16. The persons in this class are so numerous that joinder of all such persons is
20 impractical and the disposition of their claims in a class action is a benefit to the parties and to
21 the Court. According to U.S. Census Bureau data from 2002, there are approximately 1.8
22 million blind persons in the United States. On information and belief, a significant number of
23 these individuals fly each year on air carriers operating out of McCarran located in Clark County,
24 Nevada.

25 17. There is a well-defined community of interest in the questions of law and fact
26 involved affecting the parties to be represented in that they all have been and/or are being denied
27

1 their civil rights to full and equal access to, and use and enjoyment of, CUSS Kiosks required by
2 law for persons with disabilities.

3 18. Common questions of law and fact predominate.

4 19. The claims of the individually named plaintiffs are typical of those of the class.
5 The individually named plaintiffs will fairly and adequately represent the interests of the class.

6 **FACTUAL ALLEGATIONS**

7 20. McCarran is owned, operated, and controlled by Clark County. According to
8 Clark County Department of Aviation statistics posted on the McCarran website, 19.9 million
9 passengers enplaned at the airport in 2010. McCarran offers air transportation by over 30 air
10 carriers, including AirTran Airways, American Airlines, Continental Airlines, Delta Air Lines,
11 JetBlue Airways, Southwest Airlines, US Airways, and United Air Lines. In fiscal year 2010,
12 McCarran realized \$362.5 million in operating revenues with \$227.7 million in operating
13 expenses, resulting in an operating surplus of approximately \$134.8 million.

14 21. McCarran utilizes CUSS Kiosks in its terminals and concourses as the primary
15 means for airline passengers to gather information from and engage in transactions with air
16 carriers at McCarran. CUSS kiosks allow passengers to access information about flights, check
17 in for flights, print tickets and boarding passes, select seats, upgrade to business or first class
18 cabins, check baggage, and perform other transactions relevant to their air travel plans.

19 22. CUSS Kiosks are automated machines that are owned, operated, and controlled
20 by Clark County. On information and belief, Clark County owns, operates, and controls at least
21 One Hundred Eighty (180) CUSS Kiosks at McCarran.

22 23. Clark County relies on its CUSS Kiosks to reduce physical space demands in the
23 airport, increase passenger processing efficiency, and allow check-in locations outside of the
24 airport.

25 24. Because CUSS Kiosks make it possible for travelers to obtain information and
26 process transactions without assistance from others, CUSS Kiosks provide sighted air travelers
27 numerous, unique benefits, including convenience, privacy and independence.

1 31. The Americans with Disabilities Act (ADA), 42 U.S.C. § 12101 *et seq.*,
2 guarantees equal access for qualified individuals with disabilities to the benefits of the services,
3 programs, or activities of a public entity. 42 U.S.C. § 12132.

4 32. Various members of the NFB who have experienced Clark County's inaccessible
5 CUSS Kiosks, as well as the Individually Named Plaintiffs and the Kiosk Class, are legally blind
6 and are recognized as qualified individuals with disabilities under the ADA.

7 33. Clark County, Nevada, as a local government, is a public entity under the ADA.

8 34. Clark County Board of Commissioners, as a department, agency, special purpose
9 district, or other instrumentality of a local government, is a public entity under the ADA.

10 35. Clark County Department of Aviation d/b/a McCarran International Airport, as a
11 department, agency, special purpose district, or other instrumentality of a local government, is a
12 public entity under the ADA.

13 36. CUSS Kiosks are a service, program, or activity provided by Clark County that is
14 inaccessible to patrons who are blind. The inaccessibility of the CUSS Kiosks denies blind
15 patrons full and equal benefits of the services, programs, or activities that Clark County makes
16 available to the non-disabled public. Clark County is systematically violating the ADA, in that
17 Clark County is denying blind customers the benefits of access to CUSS Kiosks. These
18 violations are ongoing.

19 37. Clark County's actions constitute intentional discrimination on the basis of a
20 disability in violation of the ADA, in that: Clark County has offered CUSS Kiosks that are
21 inaccessible to members of the NFB, to the Individually Named Plaintiffs, and to the Kiosk Class
22 and has failed to take actions to correct access barriers even after being notified of the
23 discrimination that such barriers cause.

24 38. As a result of Clark County's wrongful conduct, the NFB, the Individually Named
25 Plaintiffs, and the Kiosk Class are entitled to injunctive relief pursuant to 42 U.S.C. § 12133
26 requiring Defendants to remedy the discrimination.

1 39. In addition, as a result of Clark County's intentional wrongful conduct, the
2 Individually Named Plaintiffs are entitled to monetary damages pursuant to 42 U.S.C. § 12133
3 for each and every offense.

4 40. The NFB, the Individually Named Plaintiffs, and the Kiosk Class are also entitled
5 to reasonable attorneys' fees and costs.

6 **SECOND CAUSE OF ACTION**

7 **(Violation of Rehabilitation Act, 29 U.S.C. § 794 on behalf of the NFB, the Individually**
8 **Named Plaintiffs and the Kiosk Class)**

9 41. The allegations contained in the previous paragraphs are incorporated by
10 reference.

11 42. Section 504 of the Rehabilitation Act mandates that "[n]o otherwise qualified
12 individual with a disability . . . shall, solely by reason of her or his disability, be excluded from
13 the participation in, be denied the benefits of, or be subjected to discrimination under any
14 program or activity receiving Federal financial assistance." 29 U.S.C. § 794(a). The
15 Rehabilitation Act defines "program or activity," in pertinent part, as "all of the operations of a
16 department, agency, special purpose district, or other instrumentality of a State or of a local
17 government; or the entity of such State or local government that distributes such assistance and
18 each such department or agency (and each other State or local government entity) to which the
19 assistance is extended, in the case of assistance to a State or local government" *Id.* §
20 794(b)(1).

21 43. One of the regulations promulgated under the Rehabilitation Act requires that
22 "[a]irport operators shall ensure that the terminal facilities and services subject to this section
23 shall be readily accessible to and usable by individuals with disabilities" 49 C.F.R.
24 § 27.71(b).

25 44. Clark County's CUSS Kiosks are a program or activity of Clark County and/or its
26 Board of Commissioners and/or Department of Aviation d/b/a McCarran International Airport.

1 45. Clark County, Nevada is a local government and airport operator under the
2 Rehabilitation Act.

3 46. Clark County Board of Commissioners is a department, agency, special purpose
4 district, or other instrumentality of a local government and airport operator under the
5 Rehabilitation Act.

6 47. Clark County Department of Aviation d/b/a McCarran International Airport is a
7 department, agency, special purpose district, or other instrumentality of a local government and
8 airport operator under the Rehabilitation Act.

9 48. Clark County, Nevada; Clark County Board of Commissioners; and Clark County
10 Department of Aviation d/b/a McCarran International Airport have received many millions of
11 dollars in Federal financial assistance. In particular, Clark County's own records indicate that in
12 fiscal year 2009 it received at least \$41.2 million in Federal financial assistance relating
13 specifically to McCarran. Clark County has secured additional Federal financial assistance for
14 fiscal year 2010, including \$6.3 million for McCarran.

15 49. Various members of the NFB who have experienced Clark County's inaccessible
16 CUSS Kiosks, as well as the Individually Named Plaintiffs and the Kiosk Class, are legally blind
17 and are recognized as qualified individuals with disabilities under the Rehabilitation Act.

18 50. Clark County has excluded blind people in Nevada from participation in and the
19 benefits of CUSS Kiosks and has subjected the Individually Named Plaintiffs, the Kiosk Class,
20 and members of the NFB to discrimination in violation of the Rehabilitation Act. Clark County
21 is systematically violating the Rehabilitation Act, in that Clark County is denying blind
22 customers the benefits provided by CUSS Kiosks because of their disabilities. These violations
23 are ongoing.

24 51. Clark County's violation of the Rehabilitation Act and its regulations denies the
25 Individually Named Plaintiffs, the Kiosk Class, and members of the NFB meaningful access to
26 the public benefit of the CUSS Kiosks. Clark County acted with deliberate indifference in that it
27 knew it was likely that its actions would result in a violation of its obligation to make its CUSS

1 Kiosks accessible to individuals with disabilities and that Clark County failed to act on that
2 likelihood.

3 52. As a result of Clark County's wrongful conduct, the Individually Named
4 Plaintiffs, the Kiosk Class, and the NFB, are entitled to injunctive relief pursuant to 29 U.S.C. §
5 794 requiring Defendants to remedy the discrimination.

6 53. In addition, as a result of Clark County's wrongful conduct, the Individually
7 Named Plaintiffs are entitled to compensatory damages pursuant to the Rehabilitation Act for
8 each and every offense.

9 54. The Individually Named Plaintiffs, the Kiosk Class, and the NFB are entitled to
10 reasonable attorneys' fees and costs pursuant to the Rehabilitation Act.

11 **REQUEST FOR RELIEF**

12 WHEREFORE, Plaintiffs request judgment as follows:

13 A. A declaration that Clark County is owning, maintaining and/or operating CUSS
14 Kiosks in a manner which discriminates against the blind and which fails to provide access for
15 persons with disabilities as required by Federal and state law;

16 B. A preliminary and permanent injunction to prohibit Clark County from violating
17 42 U.S.C. § 12132;

18 C. A preliminary and permanent injunction to prohibit Clark County from violating
19 29 U.S.C. § 794;

20 D. Damages for the Individually Named Plaintiffs under 42 U.S.C. § 12133 in an
21 amount to be determined by proof;

22 E. Damages for the Individually Named Plaintiffs under 29 U.S.C. § 794 in an
23 amount to be determined by proof;

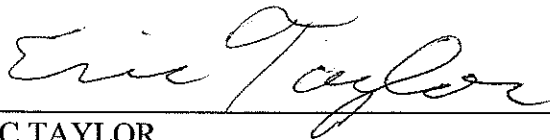
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1 F. Plaintiffs' reasonable attorneys' fees, expenses, and costs of suit for the
2 Individually Named Plaintiffs, the Kiosk Class, and the NFB as provided by law; and

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

4 Dated this 29th day of March, 2011.

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