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17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**
19 **SAN JOSE DIVISION**

20 ABDUL NEVAREZ and PRISCILLA NEVAREZ,
21 on behalf of themselves and all others similarly
22 situated, and SEBASTIAN DEFRANCESCO,
23 Plaintiffs,
24 vs.
25 FORTY NINERS FOOTBALL COMPANY, LLC,
26 a Delaware limited liability company, et al.,
27 Defendants.

CLASS ACTION

Case No.: 5:16-cv-07013-LHK (SVK)

POST-DISTRIBUTION ACCOUNTING

Dept: Courtroom 8
Before: Hon. Lucy H. Koh

1 Pursuant to paragraph 13 of the Court’s July 23, 2020 Order Granting Final Approval of Class
 2 Action Settlement (ECF No. 416) (“Final Approval Order”), and in accordance with the Northern
 3 District of California’s Procedural Guidance for Class Action Settlements updated November 1, 2018
 4 and December 5, 2018 (“Settlement Guidance”), the Parties in the above-captioned matter hereby
 5 submit the following chart summarizing the Post-Distribution Accounting of the Class Action
 6 Settlement. Unless otherwise noted, the information in the chart is based on the Declaration of Alex
 7 Thomas Re: Current Status of Settlement Claims Audit and Distribution of Payments, filed
 8 concurrently herewith.

9 Total settlement fund	\$24,003,158.09
10 Total number of class members	Approximately 5,779 “known” class members identified in Forty Niners Defendants’ records
11 Total number of class members to 12 whom notice was sent and not 13 returned as undeliverable	5,233
14 Number and percentage of claim 15 forms submitted	5,240 claim forms submitted (after de-duplication), 7.9% of which corresponded to known class members. 3,140 total claims approved as valid by Settlement Administrator.
16 Number and percentage of opt-outs	1 opt-out (0.02% of known class list)
17 Number and percentage of objections	0 objections (0% of known class list)
18 Average recovery per claimant	\$7,640.49
19 Median recovery per claimant	\$4,000
20 Largest amount paid	\$79,729.71
21 Smallest amount paid	\$4,000
22 Methods of notice to Class Members	<ul style="list-style-type: none"> • U.S. mail; • e-mail; • provision to membership and/or service organizations for individuals with mobility disabilities; • posting to the settlement website by settlement administrator KCC; and • posting by Defendants throughout Levi’s Stadium and to websites controlled by Defendants.

	<i>See generally</i> ECF No. 392, Order Granting Preliminary Approval at ¶ 13.
Methods of payment to Class Members	Check mailed via U.S. Mail
Number and value of checks not cashed to date	2,901 checks totaling \$22,625,336.41 have not yet been cashed since mailed on July 23, 2021. Class Members have until July 23, 2022 to cash settlement checks.
Amounts distributed to <i>cy pres</i> recipients to date	N/A. <i>See</i> Settlement Agreement (ECF No. 375-2) at p. 41, § VIII.B (payment to <i>cy pres</i> not to be determined until 400 days has elapsed from mailing of damages award).
Administrative costs to date	\$253,636.91 paid directly by Defendants.
Attorneys' fees and costs	\$13,457,152.40 paid directly by Defendants.
Benefits conferred on the classes by the injunctive relief obtained	<p>As described in the Long-Form notice¹ and in greater detail in Section III of the Settlement Agreement (ECF No. 375-2)², and as modified by Stipulation and Order Regarding Extension of Time for Injunctive Relief Stadium Remediation Deadlines (ECF No. 439), by October 23, 2023, Defendants have agreed to modify Levi's Stadium, its main parking lot, and the pedestrian right of way connecting the parking lots to the Stadium so that individuals with mobility disabilities who use wheelchairs, scooters, or other mobility aids will have full and equal access to all features and services of the Stadium. Defendants will also make improvements to Stadium ticketing shuttle services. This work will include, but is not limited to, the following:</p> <ul style="list-style-type: none"> • ensuring there are at least 282 accessible parking spaces in the main parking lot adjacent to Levi's Stadium; • creating accessible paths of travel to and from the entrances of Levi's Stadium, including the removal

¹ The Court-approved Long-Form Notice (ECF No. 390-3) is available on the settlement website, here: http://www.levisstadiumclassactionsettlement.com/media/2806055/v4_f2n_notice_032520_final.pdf.

² The Settlement Agreement is available on the settlement website maintained by Settlement Administrator KCC, here: http://www.levisstadiumclassactionsettlement.com/media/2691589/ecf_375-2_ex_1.pdf. Exhibits to the Settlement Agreement are available on the Case Documents page of the settlement website, here: <http://www.levisstadiumclassactionsettlement.com/case-documents.aspx>.

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	<p>of alleged physical barriers;</p> <ul style="list-style-type: none">• creating accessible paths of travel within the Stadium, including paths to, from, and through accessible seating locations, concession stands, clubs, shops, restaurants, breastfeeding stations, the auditorium, and other amenities;• providing additional signage in the Stadium and surrounding area that directs patrons toward accessible paths of travel, such as ramps, elevators, and accessible entrances;• providing accessible bars, tables, concession counters, drinking fountains, ticketing windows, etc. that people can use while seated in a wheelchair or scooter;• providing the required amount of designated accessible seating for wheelchair and scooter users that complies with applicable federal and state access standards;• leveling accessible seating sections so that the ground surface is not overly sloped and ensuring that companion seats have armrests and cup holders;• ensuring that all Stadium suites and luxury boxes include accessible seating locations and dining surfaces;• modifying restrooms to make them fully accessible to people with mobility disabilities by installing accessible stall door hardware, ensuring that toilet paper dispensers are within reach range, and lowering mirrors, among other improvements;• making sure that the golf carts, vans, and shuttles that provide transportation from the parking lots to the Stadium are accessible to individuals with mobility disabilities;• bringing stairs into compliance with applicable federal and state access requirements;• changing how tickets for accessible seating are sold and exchanged to ensure that individuals with mobility disabilities have the same access to
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	<p>ticketing services as the general public; and</p> <ul style="list-style-type: none"> • providing additional disability access training to Levi’s Stadium employees, as well as to vendors and other relevant third parties. <p>Attached hereto as Exhibit A is Defendants’ Progress Report #2 dated July 23, 2021, describing the status of Defendants’ efforts to implement injunctive-relief terms of the Settlement Agreement to date. Licensed architect, certified access specialist (CASP) and general contractor, Steven E. Schraibman valued the injunctive relief secured at \$12,194,758. <i>See</i> ECF No. 408-5 (Declaration of Steven E. Schraibman in Support of Plaintiffs’ Motion for Reasonable Attorneys’ Fees, Costs and Expenses) at ¶ 27.</p>
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Dated: August 2, 2021

Respectfully submitted,

GOLDSTEIN, BORGEN, DARDARIAN & HO

/s/ Katharine Fisher
Katharine Fisher

Attorneys for Plaintiffs and the Certified Classes

Exhibit A

**Abdul Nevarez, et al v. Forty Niners Football Company LLC, et al,
United States District Court for the Northern District of California,
Case No. 5:16-cv-07013 LHK (SVK)**

Progress Report
Report #2

Report Dated July 23, 2021 for Period Beginning
January 23, 2021 (since last Progress Report)

I. INTRODUCTION

SUMMARY

This report fulfills the requirements outlined in Section X(B) of the Settlement Agreement [ECF 375-2] (the "Agreement") in *Nevarez v. Forty Niners Football Company LLC*, "Reporting Requirements," which requires the Defendants to report every six months in writing on the status of the efforts to implement the terms of the Agreement.

REPORTING REQUIREMENTS

The report shall summarize the following:

- a. All compliance efforts that have been made since the last report with respect to each of the substantive terms of the Agreement ("Compliance Efforts");
- b. All parts of Levi's Stadium, its parking lots and the Pedestrian Rights of Way leading from its parking lots to Levi's Stadium that have been modified and in what manner, all Access Work that has been performed, all elements of Levi's Stadium, its parking lots and the Pedestrian Rights of Way leading from the parking lots to the Stadium that have been brought into compliance with the 2010 ADA Standards and the 2019 CBC, and all Conditions identified in Exhibit A to the Agreement that have been remediated or removed and the manner in which this was done ("Modifications");
- c. The status of any scheduled Access Work on the Stadium, its parking lots and the Pedestrian Rights of Way leading from the Stadium's parking lots to the Stadium;
- d. The reason(s) why any previously scheduled Access Work on the Stadium, its parking lots and the Pedestrian Rights of Way leading from the Stadium's parking lots to the Stadium has not been completed ("Status of Access Work");
- e. The reason(s) why any previously scheduled Access Work on the Stadium, its parking lots and the Pedestrian Rights of Way leading from the Stadium's parking lots to the Stadium has not been completed ("Previously Scheduled Access Work Not Performed");
- f. Anticipated delay(s) completing Access Work in the future and the reason(s) for the anticipated delay(s) ("Anticipated Delays");
- g. All grievances or complaints received by Defendants regarding disability access or ticketing services related to accessible tickets since the last report, including copies of same, and the response to the grievances or complaints ("Grievances"); and

- h. The monies spent since the last report performing the Access Work specified in Section III including, but not limited to, a detailed itemization of the monies expended to remediate or remove Conditions identified in Exhibits A-J (“Monies Spent”).

I. REPORTING REQUIREMENTS

a. COMPLIANCE EFFORTS:

- Retained Independent Settlement Administrator:
Defendants previously retained an independent Settlement Administrator and timely provided the Settlement Administrator with the most current and complete class list. The Settlement Administrator distributed settlement notice and claims forms, received and tracked claims forms, traced class members, obtained supplemental information from claimants, received and forwarded opt-out statements, and verified the validity of the claims. The Settlement Administrator also established a website containing the settlement agreement and exhibits, class notice, claims forms, and other relevant information apprising class members of their opt-out rights and other rights under the Agreement. Defendants provided these documents to the Settlement Administrator in the format required by the Agreement. The Settlement Administrator also established a toll-free number for class members’ inquiries regarding the settlement. Since the last report, Defendants have responded to requests for information from the Settlement Administrator to aid in its efforts to verify the validity of claims. Pursuant to Court order, the Settlement Administrator completed review of the claims for validity by March 31, 2021 and were scheduled to distribute the damages awards on July 15, 2021. On July 20, 2021, the Settlement Administrator advised that it had not distributed the damages fund but would do so on or before July 23, 2021. Defendants are prepared to work cooperatively with Class Counsel to file the post-distribution accounting with the Court by the court-ordered deadline of August 1, 2021.

- Continued Retention of and Coordination With Mutually Agreed Upon Disability Consultant:
Defendants previously retained Gary Waters as the mutually agreed-upon Disability Consultant. Since the last report, Mr. Waters has provided further guidance on the informational signs and site maps of the Stadium’s Accessible features and the Access Guide. He also has reviewed drawings, plans and projects for ADA compliance.

- Maintained Grievance Procedure:
Defendants maintained their written policy and procedure for Class members to submit complaints or grievances regarding the accessibility of the Stadium, its parking facilities, pedestrian rights of way, and ticketing and transportation services, and trained personnel regarding use of same. The ADA Coordinator continued to track submitted grievances and oversee the Grievance Procedure.

- Developed ADA Map and Guide:
With the assistance of Gary Waters, Defendants prepared an ADA Map and Guide, which includes updated maps of accessible paths of travel and other accessibility features, as well as additions to the A-Z Guide listing facility resources and features. Updated ADA Guide and A-Z Guide are posted to the Levi's Stadium website. ADA Map and Guide will also be available in print version on game day.
- Developed New Ticketing Policy to Better Accommodate Accessible and Companion Seating:
Defendants' ticketing policy complies with the requirements of the Agreement, and Defendants have made available the exchange of tickets, when available, through electronic means that do not require the ticketholder or his/her representative to exchange tickets in person. Training sessions were provided to all personnel who sell or exchange tickets for Accessible seating to guests of Levi's Stadium regarding the Stadium's policies and procedures for ensuring that persons with disabilities are provided with full and equal access to the Stadium's facilities and services, and in particular, that persons with Mobility Disabilities and their nondisabled companions are provided with prompt, effective, and courteous ticketing services for Accessible seating.
- Parking Lot Design Developer:
BKF Engineers produced and submitted a Permit Detail Design Package to the City of Santa Clara Building Department for review and approval. Gary Waters reviewed the design package and provided a letter of conformance for the design that was included in the design submission to the City on May 10, 2021. The permit application was paid on July 7, 2021. Permit review by the City is anticipated to take 4+ months. The project will go to public bid and award after the City approval and work is anticipated to occur in Quarter 1 and 2 of 2022.
- Remediation in the Pedestrian Rights of Way:
Bellecci began the design engineering and construction contract preparation for the work in September 2020. The PROW work has been split up into four design, bid, and construction packages. Packages 1 and 2 have been prepared through a 65% milestone level of design completion, Package 3 has been completed through a 35% milestone level of design completion, and Package 4 has begun design. Each milestone submittal is routed to various City departments and divisions for review and comments to reduce conflicts and ensure consistency with various public infrastructures and services provided by the City per the City's typical design development process. Bellecci has also applied for outside agency permits and approvals required to complete certain elements of the work from the San Francisco Public Utilities Commission, the California Public Utilities Commission, Valley Transportation Authority, and the Santa Clara Valley Water District and is pursuing these approvals. Bellecci's subconsultant also completed an independent CASp review of the Package 1 design engineering and is preparing an independent CASp review of the Package 2 design engineering, and will similarly do as such for Packages 3 and 4 once they reach the 65% milestone level of completion.

Bellecci's subconsultant also completed the CEQA analysis required for the work and determined a Categorical Exemption is applicable which is anticipated to be filed by the City. The public works construction contract bidding process of Packages 1 and 2 is expected to occur through September and October 2021 and Packages 3 and 4 in February and March 2022, with construction to begin after bids are accepted and contracts awarded by the City Council. Some elements of the PROW work are anticipated to be affected by other activities occurring in the area such as private development projects and other City capital improvement projects and are planned to be addressed through those other activities and not the four construction packages being prepared by Bellecci.

- Accessible Courtesy Carts/Shuttles: In researching the procurement of side-facing seated carts/shuttles, Defendants have concluded these vehicles are not stocked items. Defendants are confirming appropriate specifications with its Disability Consultant.

b. MODIFICATIONS:

With regard to modifications related to Access Work, please see Schedule 1. With regard to any other modifications made since the Effective Date, please see the following list:

- North Field Cache Creek Club (Completed):
Project converted 1,400 SF of tenant warehouse space to new club space. Club is located on the 100 level service tunnel across from Visitor Locker Room with access to the field. Plans were reviewed and approved by Gary Waters of Pacific Access Consulting prior to permit application. Gary Waters performed a post-construction inspection and identified three punch list items. Two of the three items have been resolved and the third has materials on order. All work will be complete prior to use of the space.
- Food and Beverage Concession Upgrade Project (Completed):
Projects replaced the Point of Sale units at all concessions in the Stadium, upgrades kitchen service equipment to include mechanical, electrical and plumbing connections, and replaces concession signage on the 300 and 700 level concourse. Plans were reviewed and approved by Gary Waters of Pacific Access Consulting prior to permit application.
- Other Miscellaneous Projects:
Other modifications include upgrades to broadcast cameras, sponsor signage, and maintenance repair projects at the Stadium.
- Parking Lot:
Non Access Work modifications related to the Great America Parking Lot remediation are set forth in Section c, below.

c. STATUS OF ACCESS WORK:

Defendants provide the following detail regarding status of Access Work:

- Great America Parking Lot Remediation:
Parking Lot and Path of Travel Design in the Main (Great America) Parking Lot through the canopies and to the Gate A, B and C Bridges design is complete and was submitted to the City of Santa Clara for permit review on May 10, 2021. The Stadium Manager paid the initial permit application fee to the City of Santa Clara of \$30,382.93. This design package identifies 282 ADA Parking Stalls with an 8-ft wide accessible walkway to the Stadium. Project also removes and replaces the current fence line at the ticketing canopies. These drawings will provide details of accessibility improvements in the Great America Parking lot. Defendants anticipate to bid and award the construction contract for this scope of work once the design is approved by the City. Work is anticipated to take place in Quarter 1 and Quarter 2 of 2022.

- Scoping and Preconstruction Activities:
Scoping and preconstruction activities started with the Board approval of the TDJV In-Kind Agreement for remediation of barriers work: accessible path of travel connecting Stadium gates and Stadium, Stadium ramps slopes, designated accessible seating areas, drinking fountains, suite modifications, and restroom improvements. The contractor is scoping and preconstruction activities for the following remediation of barriers work will start: handrail extensions, removal of obstructions, modifications of countertops, accessible paths of travel, stadium box office improvements, interior circulation, signage, and concession improvements.

- Kiosk, Platform, and Bollard Removal:
Defendants removed the kiosk in Section 125, the elevated exterior Bud Light counter and platform, and the bollard at the ramp identified in the Agreement.

- Suite Signage:
Suite signage has been contracted and will be installed prior to the first event. The signage is added to inform and notify guests of how to request the removal of chairs to provide accessible seating for suite guests.

- Pedestrian Rights of Way:
Bellecci began the design engineering and construction contract preparation for the work in September 2020. The PROW work has been split up into four design, bid, and construction packages. Packages 1 and 2 have been prepared through a 65% milestone level of design completion, Package 3 has been completed through a 35% milestone level of design completion, and Package 4 has begun design. Each milestone submittal is routed to various City departments and divisions for review and comments to

reduce conflicts and ensure consistency with various public infrastructures and services provided by the City per the City's typical design development process. Bellecci has also applied for outside agency permits and approvals required to complete certain elements of the work from the San Francisco Public Utilities Commission, the California Public Utilities Commission, Valley Transportation Authority, and the Santa Clara Valley Water District and is pursuing these approvals. Bellecci's subconsultant also completed an independent CASp review of the Package 1 design engineering and is preparing an independent CASp review of the Package 2 design engineering, and will similarly do as such for Packages 3 and 4 once they reach the 65% milestone level of completion. Bellecci's subconsultant also completed the CEQA analysis required for the work and determined a Categorical Exemption is applicable which is anticipated to be filed by the City. The public works construction contract bidding process of Packages 1 and 2 is expected to occur through September and October 2021 and Packages 3 and 4 in February and March 2022, with construction to begin after bids are accepted and contracts awarded by the City Council.

d. PREVIOUSLY SCHEDULED ACCESS WORK NOT PERFORMED:

There is no Access Work that was "previously scheduled" but that has not been completed. There is Access Work that, pursuant to the Agreement, was to be completed before the date of this report that has not yet been completed. That Access Work was the subject of a stipulation and order signed by the Court extending the deadlines to complete such work.

e. ANTICIPATED DELAYS:

The COVID-19 pandemic presented significant challenges related to completion of construction-related Access Work: Minimal staff and no fans / guests have been permitted to enter the Stadium since the original shelter in place order was issued by the Santa Clara County Health Officer on March 16, 2020. Santa Clara County issued an additional order on November 28, 2020 restricting all contact sports requiring the San Francisco 49ers to relocate operations to Phoenix, Arizona. In addition, the COVID-19 pandemic has affected supply chains and travel of design and construction specialists, as well as City operations, which are necessary for both approval of Stadium construction, but also remediation in the Pedestrians Rights of Way. Public entities, such as the City of Santa Clara, have been disproportionately affected by the pandemic with huge increases in expenses, large reductions in revenue from industries, and strained supply of public resources including human resources. Further, the Stadium was used as a mass COVID-19 vaccination site until late June 2021.

In addition, when agreeing to the schedule as set forth in the Settlement Agreement, it was the intent of Defendants to complete most of the construction-related Access Work during the months of January through April each year during the Compliance Period and Defendants will be unable to perform any construction-related Access Work during these months in 2021.

Further, Defendants' Third Party Complaint against TDJV is still pending. Defendants and TDJV engaged in settlement negotiations for many months and the parties executed a

settlement agreement on July 1, 2021. The settlement provides that TDJV perform a significant amount of the construction-related Access Work. The settlement is not final until the Court has issued an order regarding TDJV's motion for determination of good faith settlement, which the Court has set for hearing on November 18, 2021. In addition, the City of Santa Clara and the Santa Clara Stadium Authority approved in open session an amendment to the original Design Build Agreement to allow TDJV to perform the work consistent with Santa Clara ordinances and state law related to public works projects.

Finally, to the extent construction-related Access Work is not performed by TDJV, such work must comply with applicable local and state laws related to public works projects, and the procurement process related to such compliance also has been affected by the pandemic.

As a result, the parties agreed, and the Court ordered, an extension of time for injunctive relief for the Forty Niners Defendants on April 14, 2021. Those deadlines are identified in the Court's Order, ECF 439. The parties are continuing to meet and confer about a potential extension of time related to Defendant The City of Santa Clara's remediation to the PROW, and Defendant will file a motion in the unlikely event that the parties cannot reach an agreement regarding those deadlines.

f. GRIEVANCES:

No grievances or complaints were reported during this time period regarding disability access or ticketing services related to accessible tickets. A handful of inquiries were made regarding future availability of accessible seating and parking.

g. MONIES SPENT:

In addition to monies spent for equitable relief including, but not limited to, training, internal retention of employees, legal counsel, and claims administration, Defendants spent the amounts related to Access Work on Exhibit A to this Report.

EXHIBIT A

Vendor	Amount Since Last Report	Total Amount Since Effective Date	Work
Gary Waters Architectural Corp DBA Pacific Access Consulting	Amounts have been incurred. Awaiting invoice.	\$5,483	Review of informational signs and site maps of the Stadium's Accessible features and the Access Guide
BKF Engineers	\$0	\$145,725	Design Services for parking lot remediation
Imprintz	\$0	\$10,757	Design, layout, and installation of ADA directory signage
Inprintz	\$2135.70	\$2135.70	ADA Suite Signage
KCC	\$189,271.32	\$189,271.32	Claims Administration
City of Santa Clara	\$30,382.93	\$30,382.93	Great America Parking Lot Permit Application
Lithographix	\$10,339.85	\$10,339.85	Revisions and updates to sign directories.
Kevin McGuire & Associates	\$97,736.98	\$97,736.98	Preparation of ADA Training Materials; Conducted ADA Training