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FILED
ALAMEDA COUNTY

SEP 22 2017

CLERK OF THE SUPERIOR COURT
 By JAMIE THOMAS, Deputy

8 Attorneys for Plaintiff MICHAEL G. TECLE

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 11 COUNTY OF ALAMEDA, UNLIMITED JURISDICTION

RG17876401

13 MICHAEL G. TECLE, an individual,
 14
 15 Plaintiff,

CASE NO. _____

16 v.

17 ALAMEDA-CONTRA COSTA TRANSIT
 18 DISTRICT, a government entity; C. HOLLIN,
 19 an individual; KAISER FOUNDATION
 20 HOSPITALS, a corporation; PERMOBIL,
 21 INC., a corporation; NATIONAL SEATING &
 22 MOBILITY, INC., a corporation; and DOES 1
 23 through 50, inclusive,
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 27
 28 Defendants.

COMPLAINT FOR DAMAGES:

1. NEGLIGENCE UNDER GOVERNMENT CODE § 835;
2. NEGLIGENCE UNDER GOVERNMENT CODE § 840.2;
3. NEGLIGENCE;
4. VICARIOUS LIABILITY;
5. COMMON CARRIER LIABILITY;
6. PRODUCTS LIABILITY - STRICT LIABILITY;
7. PRODUCTS LIABILITY - NEGLIGENCE.

DEMAND FOR JURY TRIAL.

1
2 Plaintiff MICHAEL G. TECLE ("Plaintiff" or "TECLE") alleges as follows:

3 **PARTIES, JURISDICTION AND VENUE**

4 1. TECLE is an individual who resides in Alameda County in the State of California.

5 2. TECLE is informed or believes and on that basis alleges that defendant ALAMEDA-
6 CONTRA COSTA TRANSIT DISTRICT ("ALAMEDA TRANSIT") is a government entity that is
7 authorized and chartered in the State of California.

8 3. TECLE is informed or believes and on that basis alleges that ALAMEDA TRANSIT
9 offers transportation services for people to the general public in Alameda County in the State of
10 California, and that ALAMEDA is a common carrier in Alameda County.

11 4. TECLE is informed or believes and on that basis alleges that defendant C. HOLLIN
12 ("HOLLIN") was an employee and bus driver of ALAMEDA TRANSIT at all times relevant herein,
13 and that HOLLIN's employee number was 43684 at all times relevant herein.

14 5. TECLE is informed or believes and on that basis alleges that defendant KAISER
15 FOUNDATION HOSPITALS ("KAISER") is a California corporation with its principal place of
16 business in Alameda County, State of California, and qualified to do business in Alameda County,
17 State of California, and is in fact doing business in Alameda County, State of California.

18 6. TECLE is informed or believes and on that basis alleges that defendant PERMOBIL,
19 INC. ("PERMOBIL") is a Tennessee corporation with its principal place of business in Lebanon, State
20 of Tennessee, and that PERMOBIL offers for sale, and in fact sells, in Alameda County, State of
21 California, products like the wheelchair that gave rise to this suit against PERMOBIL.

22 7. TECLE is informed or believes and on that basis alleges that defendant NATIONAL
23 SEATING & MOBILITY, INC. ("NATIONAL SEATING") is a Tennessee corporation with its
24 principal place of business in Chattanooga, State of Tennessee, and that NATIONAL SEATING offers
25 for sale, and in fact sells, in Alameda County, State of California, products and services like the
26 wheelchair maintenance that gave rise to this suit against NATIONAL SEATING.

27 8. TECLE is suing defendants DOES 1 through 50 because their names and/or capacities
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1 and/or facts showing them to be liable are not presently known. TECLE is informed or believes and
2 on that basis alleges that the entities and/or capacities shall be ascertained through discovery. TECLE
3 shall seek leave to amend this complaint to show their true names and capacities when the same have
4 been ascertained. TECLE is further informed or believes and on that basis alleges that each defendant
5 designated herein as a fictitious defendant was in some manner responsible for the occurrences and
6 damages alleged herein.

7 9. This is an action for injury to person or personal property from wrongful act or
8 negligence. Venue is appropriate as acts alleged herein occurred in Alameda County in the State of
9 California.

10 COMPLIANCE WITH GOVERNMENT CLAIMS ACT

11 10. On March 2, 2017, TECLE presented tort claims raised in this complaint to
12 ALAMEDA TRANSIT, within six months of September 21, 2016, when the incident that gave rise to
13 this complaint occurred.

14 11. ALAMEDA TRANSIT rejected TECLE's claims on April 10, 2017.

15 GENERAL ALLEGATIONS

16 12. On September 21, 2016, TECLE was moving around the town of Oakland, California.
17 TECLE was paralyzed from the waist down and therefore confined to a motorized wheelchair
18 ("Wheelchair").

19 13. On September 21, 2016, TECLE became a passenger on bus No. 2103 of ALAMEDA
20 TRANSIT ("Bus" and "Bus Ride"). HOLLIN was the driver of the Bus during the Bus Ride.

21 14. TECLE is informed or believes and on that basis alleges that HOLLIN saw and/or
22 became aware that TECLE was confined to the Wheelchair when TECLE entered the Bus at the
23 beginning of the Bus Ride.

24 15. HOLLIN did not secure TECLE through a belt at the beginning of and during the Bus
25 Ride.

26 16. HOLLIN did not ensure that TECLE was secured through a belt at the beginning of and
27 during the Bus Ride.

1 17. HOLLIN did not inquire if TECLE needed to be secured through a belt at the beginning
2 of and during the Bus Ride.

3 18. TECLE needed to be secured to his wheel chair through a belt at the beginning of and
4 during the Bus Ride.

5 19. TECLE could not secure himself through a belt at the beginning of and during the Bus
6 Ride.

7 20. HOLLIN was aware at the beginning of the Bus Ride that TECLE wanted to be secured
8 through belts and needed to be secured through belts.

9 21. TECLE is informed or believes and on that basis alleges that is was a reasonable
10 practice for common carriers, like ALAMEDA TRANSIT, on or about September 21, 2016, to secure
11 passengers who are confined to a wheelchair, like TECLE, through belts, so that the passenger is not
12 subjected to unreasonable risks during a bus ride.

13 22. TECLE is informed or believes and on that basis alleges that ALAMEDA TRANSIT
14 was aware on or about September 21, 2016, that it is was reasonable practice for common carriers, like
15 ALAMEDA TRANSIT, to secure passengers who are confined to a wheelchair, like TECLE, through
16 belts, so that the passenger is not subjected to unreasonable risks during a bus ride.

17 23. TECLE is informed or believes and on that basis alleges that ALAMEDA TRANSIT
18 did not take sufficient care on or about September 21, 2016, to ensure that bus drivers of ALAMEDA
19 TRANSIT, like HOLLIN, would secure passengers who are confined to a wheelchair, like TECLE,
20 through belts, so that the passenger is not subjected to unreasonable risks during a bus ride.

21 24. At or about 12:30 p.m. during the Bus Ride, HOLLIN abruptly braked and stopped the
22 Bus ("Braking").

23 25. TECLE was thrown out of his wheel chair and onto the ground because of the Braking
24 and because TECLE was not properly restrained ("Incident").

25 26. The Incident caused TECLE to sustain multiple injuries, including fractures to his legs
26 ("Injuries").

27 27. During the Incident, the Wheelchair maintained insufficient stability.
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1 28. TECLE obtained the Wheelchair in the course of treatment from KAISER in Oakland,
2 California, in 2013.

3 29. KAISER selected the make, brand, and model of the Wheelchair for TECLE.

4 30. The Wheelchair KAISER selected for TECLE was the Wheelchair that TECLE used on
5 September 21, 2016; during the Bus Ride and the Incident.

6 31. TECLE is informed or believes and on that basis alleges that the Wheelchair KAISER
7 selected for TECLE was designed and manufactured by PERMOBIL.

8 32. TECLE is informed or believes and on that basis alleges that the Wheelchair KAISER
9 selected for TECLE is Model C300 of PERMOBIL.

10 33. TECLE is informed or believes and on that basis alleges that the Wheelchair was not
11 designed and/or manufactured so that the Wheelchair could maintain sufficient stability during
12 ordinary and foreseeable use, for example, like the Bus Ride and the Incident.

13 34. TECLE is informed or believes and on that basis alleges that the Wheelchair was not
14 designed and/or manufactured so that the center of gravity was correctly placed relative to the
15 wheelbase of the Wheelchair.

16 35. TECLE is informed or believes and on that basis alleges that the Wheelchair was not
17 designed and/or manufactured so that the wheelbase provided sufficient stability and support.

18 36. KAISER selected a maintenance service provider for the Wheelchair.

19 37. KAISER selected NATIONAL SEATING as the maintenance service provider for the
20 Wheelchair.

21 38. NATIONAL SEATING had provided all maintenance services for the Wheelchair of
22 TECLE before and up to the Incident on September 21, 2016.

23 39. TECLE is informed or believes and on that basis alleges that the maintenance of the
24 Wheelchair by NATIONAL SEATING failed to make reasonable efforts to adjust the Wheelchair so
25 that it had sufficient stability during ordinary and foreseeable use, for example, the Bus Ride and the
26 Incident.

27 40. TECLE is informed or believes and on that basis alleges that the maintenance of the
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1 Wheelchair by NATIONAL SEATING failed to make reasonable efforts to adjust the wheelbase so the
2 Wheelchair had sufficient stability during ordinary and foreseeable use.

3 41. TECLE is informed or believes and on that basis alleges that NATIONAL SEATING
4 failed to make reasonable efforts to alert KAISER and/or PERMOBIL that the Wheelchair had
5 insufficient stability during ordinary and foreseeable use.

6 42. TECLE is informed or believes and on that basis alleges that NATIONAL SEATING
7 failed to make reasonable efforts to request a modification order from KAISER to make adjustments so
8 that the Wheelchair had sufficient stability during ordinary and foreseeable use.

9 43. TECLE is informed or believes and on that basis alleges that KAISER failed to make
10 reasonable efforts to ensure that the Wheelchair had sufficient stability during ordinary and foreseeable
11 use.

12 44. TECLE is informed or believes and on that basis alleges that KAISER unreasonably
13 failed to issue a modification order to ensure that the Wheelchair had sufficient stability during
14 ordinary and foreseeable use.

15 45. KAISER, PERMOBIL, and NATIONAL SEATING failed to warn TECLE that the
16 Wheelchair could be too unstable during ordinary and foreseeable uses.

17 46. TECLE received treatment of the Injuries by Paramedics Plus Ambulance, by Kaiser
18 Medical Center in Oakland, and by Kaiser Convalescent Facility in San Leandro, and by others.

19 47. TECLE suffered damages as a result of the Incident, including medical expenses,
20 transportation services, lost wages, lost earning potential, pain and suffering, and other damages and
21 expenses.

22 48. ALAMEDA, HOLLIN, KAISER, PERMOBIL, NATIONAL SEATING, and DOES 1-
23 50, owe TECLE damages in an amount to be proven at trial, but at least \$1,000,000, for general and
24 specific damages.

25 49. ALAMEDA, HOLLIN, KAISER, PERMOBIL, NATIONAL SEATING, and DOES 1-
26 50, jointly and severally, owe the full amount of damages to be proven at trial, which damages TECLE
27 claims to be in excess of \$1,000,000.

1 FIRST CAUSE OF ACTION

2 (Negligence under Government Code § 835 – against ALAMEDA and DOES 1-50)

3 50. TECLE hereby incorporates by reference paragraphs 1 through 49 of this Complaint, as
4 fully set forth herein.

5 51. A failure to belt in passengers who are handicapped and/or confined to a wheel chair,
6 like TECLE, at the time of the Incident constituted a dangerous operating procedure and/or dangerous
7 condition.

8 52. TECLE is informed or believes and on that basis alleges that the Bus, at the time of the
9 Incident, was under the control, supervision, and/or management of ALAMEDA.

10 53. The failure to ensure that TECLE was belted into his seat was a proximate cause of the
11 Injuries.

12 54. The failure to ensure that TECLE was belted into his seat resulted in a reasonably
13 foreseeable risk of injuries of the kind incurred by TECLE in the Incident.

14 55. TECLE is informed or believes and on that basis alleges that ALAMEDA had actual
15 notice of the failure of drivers like HOLLIN to ensure that passengers like TECLE were belted into
16 their chairs a sufficient time prior to the Incident for ALAMEDA to have taken measures to protect
17 against the risks.

18 56. TECLE is informed or believes and on that basis alleges that ALAMEDA had
19 constructive notice of the failure of drivers like HOLLIN to ensure that passengers like TECLE were
20 belted into their chairs a sufficient time prior to the Incident for ALAMEDA to have taken measures to
21 protect against the risks.

22 57. ALAMEDA's negligence is a cause of TECLE's injuries.

23 58. TECLE is entitled to damages for ALAMEDA's negligence.

24 WHEREFORE, TECLE prays for judgment against ALAMEDA and DOES 1-50 as hereinafter
25 set forth.

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1 **SECOND CAUSE OF ACTION**

2 **(Negligence under Government Code § 840.2 – against HOLLIN and DOES 1-50)**

3 59. TECLE hereby incorporates by reference paragraphs 1 through 58 of this Complaint, as
4 fully set forth herein.

5 60. HOLLIN failed to ensure that TECLE was belted into his wheel chair during the Bus
6 Ride.

7 61. HOLLIN had the authority and the means to ensure that TECLE was belted into his
8 wheel chair during the Bus Ride.

9 62. It was the responsibility of HOLLIN to ensure that TECLE was securely transported
10 during the Bus Ride.

11 63. TECLE is informed or believes and on that basis alleges that HOLLIN had actual
12 knowledge of the dangerous condition of TECLE during the Bus Ride because TECLE was not
13 secured and that HOLLIN had such actual knowledge a sufficient time prior to the Injuries to have
14 taken measures to protect TECLE against the Injuries.

15 64. TECLE is informed or believes and on that basis alleges that HOLLIN had constructive
16 knowledge of the dangerous condition of TECLE during the Bus Ride because TECLE was not
17 secured and that HOLLIN had such constructive knowledge a sufficient time prior to the Injuries to
18 have taken measures to protect TECLE against the Injuries.

19 65. HOLLIN's negligence is a cause of TECLE's injuries.

20 66. TECLE is entitled to damages for HOLLIN's negligence.

21 WHEREFORE, TECLE prays for judgment against HOLLIN and DOES 1-50 as hereinafter set
22 forth.

23 **THIRD CAUSE OF ACTION**

24 **(Negligence – against ALAMEDA, HOLLIN, KAISER, PERMOBIL,**

25 **NATIONAL SEATING, and DOES 1-50)**

26 67. TECLE hereby incorporates by reference paragraphs 1 through 66 of this Complaint, as
27 fully set forth herein.

1 68. ALAMEDA and HOLLIN had a duty to protect TECLE from harm on the Bus Ride by
2 having accepted TECLE as a passenger on the Bus Ride and by TECLE being a paying customer and
3 passenger of ALAMEDA and HOLLIN.

4 69. KAISER had a duty to provide TECLE with safe medical services and safe medical
5 devices, including a safe Wheelchair and safe maintenance services for the Wheelchair.

6 70. PERMOBIL had a duty to design and manufacture the Wheelchair so that it was safe
7 for TECLE to use for its ordinary purpose.

8 71. NATIONAL SEATING had a duty to maintain the Wheelchair of TECLE to ensure that
9 it was safe to use for its ordinary purpose.

10 72. ALAMEDA, HOLLIN, KAISER, PERMOBIL, NATIONAL SEATING, and DOES 1-
11 50 (collectively "DEFENDANTS") were negligent in their conduct before and during the Incident and
12 therefore breached their duties toward TECLE.

13 73. DEFENDANTS' negligence caused the Injuries to TECLE.

14 74. TECLE is entitled to damages for DEFENDANTS' negligence.

15 WHEREFORE, TECLE prays for judgment against ALAMEDA, HOLLIN, KAISER,
16 PERMOBIL, NATIONAL SEATING, and DOES 1-50 as hereinafter set forth.

17 **FOURTH CAUSE OF ACTION**

18 **(Vicarious Liability – against ALAMEDA and DOES 1-50)**

19 75. TECLE hereby incorporates by reference paragraphs 1 through 74 of this Complaint, as
20 fully set forth herein.

21 76. HOLLIN's negligence harmed TECLE.

22 77. TECLE is informed or believes and on that basis alleges that at the time of the Incident,
23 HOLLIN was an agent, employee, partner, and/or affiliate of ALAMEDA.

24 78. TECLE is informed or believes and on that basis alleges that at the time of the Incident,
25 HOLLIN was acting within the scope of her agency, employment, partnership, and/or affiliation for
26 ALAMEDA when she harmed TECLE.

27 79. HOLLIN failed to safely transport TECLE during the Bus Ride at the time of the
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1 Incident.

2 80. TECLE is informed or believes and on that basis alleges that ALAMEDA is responsible
3 for HOLLIN's failure to safely transport TECLE during the Bus Ride.

4 81. TECLE is entitled to damages from ALAMEDA.

5 WHEREFORE, TECLE prays for judgment against ALAMEDA and DOES 1-50 as hereinafter
6 set forth.

7 **FIFTH CAUSE OF ACTION**

8 **(Common Carrier Liability – against ALAMEDA and DOES 1-50)**

9 82. TECLE hereby incorporates by reference paragraphs 1 through 81 of this Complaint, as
10 fully set forth herein.

11 83. TECLE is informed or believes and on that basis alleges that ALAMEDA maintains a
12 regular place of business in the County of Alameda, State of California.

13 84. TECLE is informed or believes and on that basis alleges that ALAMEDA's business in
14 the State of California has as a purpose the transportation of passengers.

15 85. TECLE is informed or believes and on that basis alleges that ALAMEDA advertises its
16 services to the general public.

17 86. TECLE is informed or believes and on that basis alleges that ALAMEDA charges
18 standard fees for its transportation services.

19 87. ALAMEDA accepted a request for transportation by TECLE on September 21, 2016.

20 88. ALAMEDA charged TECLE for a ride on September 21, 2016.

21 89. TECLE was injured while being transported by ALAMEDA on September 21, 2016.

22 90. ALAMEDA failed to transport TECLE safely on September 21, 2016.

23 91. ALAMEDA's failure to safely transport TECLE on September 21, 2016 resulted in
24 harm to TECLE.

25 92. ALAMEDA's failure to safely transport TECLE on September 21, 2016 caused the
26 Injuries to TECLE.

27 93. TECLE is entitled to damages for ALAMEDA's failure to safely carry TECLE.

1 WHEREFORE, TECLE prays for judgment against ALAMEDA and DOES 1-50 as hereinafter
2 set forth.

3 **SIXTH CAUSE OF ACTION**

4 **(Products Liability - Strict Liability – against KAISER, PERMOBIL,
5 NATIONAL SEATING and DOES 1-50)**

6 94. TECLE hereby incorporates by reference paragraphs 1 through 93 of this Complaint, as
7 fully set forth herein.

8 95. KAISER, PERMOBIL, and NATIONAL SEATING distributed and/or manufactured
9 and/or sold the Wheelchair to TECLE.

10 96. TECLE is informed or believes and on that basis alleges that the Wheelchair contained
11 a manufacturing defect.

12 97. TECLE is informed or believes and on that basis alleges that the Wheelchair was
13 defectively designed.

14 98. TECLE is informed or believes and on that basis alleges that the Wheelchair did not
15 include sufficient instructions and/or warning of potential safety hazards.

16 99. The acts and omissions of KAISER, PERMOBIL, and NATIONAL SEATING harmed
17 TECLE during the Incident of September 21, 2016.

18 100. TECLE is entitled to damages for the failures of KAISER, PERMOBIL, and
19 NATIONAL SEATING.

20 WHEREFORE, TECLE prays for judgment against KAISER, PERMOBIL, NATIONAL
21 SEATING, and DOES 1-50 as hereinafter set forth.

22 **SEVENTH CAUSE OF ACTION**

23 **(Products Liability - Negligence – against KAISER, PERMOBIL,
24 NATIONAL SEATING and DOES 1-50)**

25 101. TECLE hereby incorporates by reference paragraphs 1 through 100 of this Complaint,
26 as fully set forth herein.

27 102. KAISER, PERMOBIL, and NATIONAL SEATING designed and/or manufactured
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1 and/or supplied and/or inspected and/or repaired the Wheelchair of TECLE.

2 103. KAISER, PERMOBIL, and NATIONAL SEATING were negligent in designing and/or
3 manufacturing and/or supplying and/or inspecting and/or repairing the Wheelchair of TECLE.

4 104. The acts and omissions of KAISER, PERMOBIL, and NATIONAL SEATING harmed
5 TECLE during the Incident of September 21, 2016.

6 105. The negligence of KAISER, PERMOBIL, and NATIONAL SEATING was a
7 substantial factor in cause TECLE's harm.

8 106. TECLE is entitled to damages for the negligence of KAISER, PERMOBIL, and
9 NATIONAL SEATING.

10 WHEREFORE, TECLE prays for judgment against KAISER, PERMOBIL, NATIONAL
11 SEATING, and DOES 1-50 as hereinafter set forth.

12 **PRAYER**

13 WHEREFORE, TECLE prays for judgment against ALAMEDA, HOLLIN, KAISER,
14 PERMOBIL, NATIONAL SEATING, and DOES 1-50, jointly and severally, as follows:

- 15 1. For damages in an amount in excess of \$1,000,000;
16 2. For special and general damages according to proof;
17 3. For lost wages, loss of future earnings, loss of earning capacity, according to proof;
18 4. For costs of suit incurred herein;
19 5. For pre- and post-judgment interest, pursuant to California law; and
20 6. For such other relief as the Court may deem just and proper.

21 DATED: September 22, 2017

22
23 By: 

24 H. Steven Burnside, Esq.
25 Norbert Stahl, Esq.
26 Laura M. Taute, Esq.

27 Attorneys for Plaintiff MICHAEL G. TECLE
28