

passenger stage corporation between points in the City and County of San Francisco and Marin County, and to establish a ZORF related thereto. Attached hereto as Exhibit 1 is a true and correct copy of the Certificate of Public Convenience (the "Certificate") issued to Open Top in Decision 07-07-008.

Open Top's local corporate and operational business is located at 3240 3rd Street, San Francisco, California 94124.

Notices, correspondence, and communications with respect to this Protest should be addressed to Open Top's attorney:

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and to its President:

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President
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Pursuant to its Certificate, Open Top has provided regular, continuous and scheduled services between designated points and stops between San Francisco and Marin Counties, on an individual fare basis, utilizing so-called "London type" of open top, double-decker coaches. In accordance with PSC-21880, Open Top established designated stopping points whereby passengers may "Hop On/Hop Off" its coaches, using a single-fare, one or two day pass to access such services at the convenience of the customer. Attached hereto as Exhibit 2 is a description of the scheduled services operated by Open Top. Protestant has on file a corresponding tariff describing the stops, as well as the fares and operational rules applicable to its existing service. Applicant's proposed service points, particularly Routes 2, 3, and 4 (as

described at Section IV of the Application) are directly competitive with the existing operations already available through Open Top.

II. GROUNDS FOR PROTEST.

A. The Application Fails to Meet the Evidentiary and Statutory Standards of Public Utilities Code Section 1032.

1. Introduction.

The Application was filed pursuant to PUC Code Section 1031 (hereinafter all references to the PUC Code shall be to the specific Section cited herein), and must satisfy the contemporaneous requirements of PUC Section 1032. Accordingly, Section 1032 sets forth the mandatory conditions and standard by which this Commission must measure the sufficiency of the Application in order to determine whether Deluxe should be allowed to transport passengers for-hire under the passenger stage corporation certificate it seeks in this proceeding. Section 1032 establishes substantive and rigid diligence tests which an application must meet for a carrier to be qualified to be entrusted to transport passengers (now and in the future). Deluxe cannot take lightly these duties and responsibilities in the false hope that issuance of a passenger stage corporate certificate may be viewed as merely a *pro forma* administrative exercise. It is not. Instead, the evidentiary foundation established in Section 1032 is explicit and unequivocal. Here, Deluxe completely fails to meet these rigid statutory standards.

2. Section 1032(b)(1) - Fitness.

First and foremost, Section 1032(b)(1) clearly states that the Commission "shall require the applicant to establish reasonable fitness and financial responsibility. . . ." to qualify for and maintain a passenger stage corporation. Deluxe cannot satisfy this criteria by any stretch of the imagination. The first critical and historical aspect of any fitness test is whether an applicant can and has operated within the law. If the Applicant has not operated within the law, the Commission should not condone nor reward any such illegal behavior by approving operating such as that sought by Deluxe.

a. **Fitness - Deluxe's Illegal Operations.**

The pretext of the Application is that Deluxe wants to expand its "roundtrip sightseeing tours," to provide scheduled service, with an emphasis on passengers of Russian nationality. Currently, as the PUC's records confirm, applicant operates under an "S" Charter-Party Permit ("S" Permit) issued pursuant to Public Utilities Code Section 5384(c). Accordingly, Deluxe is only authorized to conduct loop roundtrip sightseeing tours whereby a passenger boards the bus at a designated point and remains on the vehicle throughout the entire trip, without leaving the bus until it arrives back to the original starting point.

In contrast, Open Top operates between designated service points whereby passengers may debark from or board its coaches at any point along the designated route of service between San Francisco and Marin Counties. In this regard, Open Top conducts what is normally referred to as a "Hop On/Hop Off" service. Open Top is presently the only passenger carrier authorized to conduct such a service.

Applicant seeks to legally compete in this market to conduct what it calls "pick-when-to-ride" (Application, Article XIII), which is essentially a "Hop On/Hop Off" operation. What Applicant fails to disclose is that it is already providing such services without appropriate authority. It is now seeking that authority so that it may (in its own words) "offer a properly licensed, regulated . . . " service. The logical conclusion to be reached from this stated purpose is Deluxe's current operations are presently improper. In fact, Deluxe actively advertises that it provides individual fare transportation between San Francisco and Marin Counties which include a "Hop On/Hop Off" feature, as opposed to continuous and loop sightseeing services. Attached hereto as Exhibit 3 is a portion of Deluxe's website (www.deluxesightseeing.com) which includes a description of the "Hop On/Hop Off" stops maintained by Applicant.

It is undisputable that the filing of this Application was directly

related to Open Top's recent, written demand that Deluxe cease and desist from any and all of its illegal services. Attached hereto as Exhibit 4 is a true and correct copy of a letter dated August 9, 2010, from counsel for Open Top to Manana Koslova Copart, Deluxe's CEO, which details Deluxe's on-going unlawful services, together with an emphasis on the economic damage caused to Open Top's licensed services.¹

Open Top should not be penalized by Deluxe's flagrant disregard for the law and this Commission's jurisdiction. Instead, the PUC should not encourage, but must stop, such behavior. As part of this record, Open Top will also seek an Interim Order that Deluxe be directed by this Commission to cease and desist from any and all unlawful services.

Deluxe's response to Open Top's demand came in the form of this Application, even as Deluxe continued its illegal operations unabated. The only credible part of the Application, is Deluxe's clear admission that: *"Applicant will be competing with [a] variety of transportation services, several of whom are unlicensed and unregulated but serve the same market at unpredictable fares."* This statement acknowledges the reality that Deluxe is actively engaged in illegal operations as one of the class of "unlicensed and unregulated" carriers to which it refers.

As this Commission is aware, the California Legislature is keenly aware of and has emphasized the need to stop illegal passenger services. Accordingly, Section 5387 was recently added to the PUC's arsenal to stop such operations. Section 5387(c)(1) is intended to assure that illegal operators cannot profit from their transgressions:

¹ Similar letters were sent to SF Navigators, Inc. dba Super Sightseeing Tours and City Sightseeing, respectively. In fact, Super Sightseeing has now filed an Application which seeks to overcome the same authority shortcomings described herein with respect to Deluxe. Open Top will protest Super Sightseeing's Application as well. In addition, Protestant understands that City Sightseeing will soon file an application to conduct licensed passenger stage corporation services in order to, again, overcome Open Top's demand to cease and desist operations conducted without benefit of a Section 1031 certificate.

“(c)(1) A charter-party carrier shall have its authority to operate as a charter-party carrier permanently revoked by the Commission or be permanently barred from receiving a permit or certificate from the Commission if it commits any of the following acts:

(A) Operates a bus without having been issued a permit or certificate from the Commission. . . .” (emphasis added)

By its own admission, made under penalty of perjury, Deluxe is and has been operating the very type of services it seeks by this proceeding. Under such circumstances, the clear and explicit language of Section 5387(c)(1) and 5387(c)(1)(A) dictates that Deluxe's current “S” Permit be permanently revoked and, furthermore, that the Application be dismissed because the Commission cannot give Deluxe the relief its seeks.

b. Fitness - Compliance With State and Local Law.

Part and parcel with the concept of fitness is whether beyond basic compliance with appropriate licensing requirements, the applicant is a “good citizen”. Based on Open Top's own first-hand knowledge about law enforcement activity related to Deluxe, as well as the public record surrounding this carrier, the answer is a resounding “NO!” Deluxe's customers seem to share this view as evidenced by Exhibit 5, which sets forth a sampling of random, yet negative, comments regarding Applicant's services or, better yet, the lack thereof.

As part of a group of bus carriers who jointly pursued certain parking accommodations from the City of San Francisco, and as a victim of Deluxe's business tactics, Open Top has witnessed and is aware that Deluxe has been the subject of police intervention, consisting of citations and other operating violations. Open Top believes that this pattern of misconduct deserves close scrutiny by the PUC in measuring whether Deluxe is worthy to be licensed (at all). Open Top cautions that the PUC cannot ignore the proven reality

of how Deluxe conducts its services, beyond compliance with this Commission's jurisdiction.

3. Financial Fitness - PUC Section 1032(b)(1)(A).

In addition to operational fitness, Section 1032(b)(1)(A) also requires that before a certificate may be issued by the Commission, any applicant must establish that it has the financial capability to conduct the proposed operations. Against this standard, the financial statements offered by Deluxe are entirely suspect and raise serious questions about its ability to sustain the proposed services.

First, it is not clear whether the assets described in the Balance Sheet dated August 20, 2010 belong to Deluxe as an LLC entity or are personally held and owned by its managing member, Manana Kozlova Copart. Moreover, what is reported in the Balance Sheet has no reality to accepted accruing principals, particularly given the failure to disclose the type of short and long liabilities normally associated with bus operations, including those related to financing, payables, current and future accounts payables, insurance, inter-company loans, taxes, and other similar obligations. The "Net Worth" entry does not reveal the specific components used to determine total equity in and of the entity.

Equally troubling is the Pro Forma Projected Annual Income [and] Expenses Statement. The only value of this information is to confirm and quantify the magnitude of Deluxe's illegal operations. Presumably, the numbers reported by Deluxe reflect its own unlawful experiences, leading to the irrefutable conclusion that Deluxe has earned over \$1,939,245 in ill-gotten gains over the course of its prior and current operations. The numbers focus direct attention on the adverse and harmful economic consequences to Open Top which are directly attributable to Deluxe's unlicensed services. Again, Section 5387 mandates that the Commission end this travesty of justice once and for all.

4. Compliance of Hours of Service ("HOS") - PUC Section 1032(b)(1).

Other than a gratuitous statement that its drivers "will be mostly bilingual," and are knowledgeable "about safety rules and regulations," the Application is completely

devoid of any credible evidence regarding driver training, drug testing, qualifications, compliance with applicable hours of service and other safety-related requirements from which the Commission may conclude that Deluxe hires, manages, and trains competent and safe drivers. Without such basic evidence, the Commission cannot consider, much less, grant the Application.

5. **Preventative Maintenance Program - PUC Sections 1032(b)(1) and 1032(b)(1)(F).**

The Application is completely silent on the fundamental maintenance requirements of Sections 1032(b)(1)(C) and 1032(b)(1)(F), respectively, to protect the public from liability attributable to unsafe equipment and operations. The Commission is left to guess as to whether Deluxe is in fact a responsible and safe carrier.

6. **Safety Education and Training Programs - PUC Section 1032(b)(1)(E).**

Open Top has already addressed this glaring shortfall in the Application. Part and parcel of the overarching concern for safety is appropriate levels of liability and worker's compensation insurance. Again, the Application is silent on these fundamental conditions to authority.

7. **Drug Testing Requirements and Procedures Under PUC Section 1032.1.**

Section 1032.1 requires that an applicant must provide competent evidence that it is compliant with the PUC's mandatory controlled substance and alcohol testing certification program. The Applicant is absolutely silent on this critical aspect of public safety.

III. **ADVERSE IMPACT ON SERVICES OF OPEN TOP AND, ULTIMATELY, THE PUBLIC INTEREST.**

Other than acknowledging its own illegal services, as well as those of other "unlicensed and unregulated" carriers, Deluxe ignores that the certificated services provided by Open Top have been and are available to the public. Clearly, Deluxe has aggressively siphoned

passengers away from Open Top's business. The self-serving allegations as to any demand for service beyond those conducted by Open Top are not sufficient to justify any authority, particularly when they are based on a completely illegal record. Certainly, the veracity of such conclusions must be challenged in a full evidentiary hearing, starting with the disingenuous statement that: "the proposed scheduled service will be significantly different from the existing roundtrip sightseeing services." Again, Deluxe totally ignores that Open Top is already operating "Hop On/Hop Off" options to visitors to San Francisco and Marin Counties.

Although the Commission generally favors competition where justified, it has consistently qualified that support with the proviso that: "We will allow competition whenever to do so is not adverse to the public interest." See, *Pacific Towboat and Salvage* (1982) Decision D. 8207-110, 1982 Cal. PUC LEXIS 1247. In that decision, the Commission specifically found that "[W]e do conclude from the evidence that there will be sufficient growth to support PacTow's entry into the market without serious impact on [the protestants] H-10 and Universal." Likewise, in this Application, Deluxe has offered no information on the market of passengers for scheduled services, much less that it could enter the market without causing serious adverse impacts on Open Top or without having any adverse impacts on the public interest. Open Top is currently the carrier of choice. There is absolutely no need to change that equation.

IV. APPLICATION LACKS SUFFICIENT INFORMATION TO JUSTIFY THE PROPOSED RATES AND, MOREOVER, THE REQUEST FOR ZONE OF RATE FREEDOM IS UNJUSTIFIED.

The Application contains no statement about or calculation of the operating ratio for the proposed new service. Operating ratios are essential to the Commission's review of the sufficiency of any proposed rates. "Operating ratio" is defined as a ratio of operating expenses, including depreciation expenses and taxes, to gross revenue. It shows the proportion of annual gross revenues which are required to meet the costs of doing business before compensation to investors." (Decision No. 96-04-048; 65 CPUC2d 339; 1996 Cal. PUC LEXUS 268). The

Commission has noted that "the proper standard for determining whether a rate is too low" is that a proposed rate contributes to the carrier's profitability. This, in terms familiar to the transportation industry, the carrier's operating ratio must be less than 100%." (Decision No. 90-02-040, 35 CPUC2d 419, 1990 Cal. PUC LEXIS 136). In that Decision, as here, the applicant's financial exhibits were fragmented and incomplete, leading the Commission to find that the applicant in that proceeding did not meet its burden of proof to demonstrate that the proposed rates would contribute to profitability. Likewise, as to this Application, the Commission should require at hearing that Deluxe produce sufficient and credible information for an accurate calculation of the projected operating ratio of the new service to support the proposed rates.

Moreover, Applicant cannot meet any of the criteria upon which the Commission relies to grant ZORF authority the following reasons: (1) it has not described or analyzed the competitive environment for the proposed new service; (2) it has not presented detailed information on its projected operating costs of revenues; (3) it has not given sufficient data to calculate a reasonable operating ratio; (4) it has not shown that its projected profit is reasonable and fair to consumers; and, (5) it has not shown that by its past track record or by its Application that it fully embraces its responsibility as a public utility.

Therefore, Deluxe has failed to satisfy basic requirements to support ZORF authority.

V. **THE APPLICATION IS BLATANTLY DEFICIENT AND CANNOT REST UPON APPLICANT'S OWN SELF-SERVING ASSESSMENT AS TO THE ADVERSE ENVIRONMENTAL IMPACT RESULTING FROM THE PROPOSED SERVICES.**

Applicant's statement that "granting the application will have no significant adverse effect upon the quality of the human environment" is self-serving and unsustainable. Deluxe utterly fails to provide any evidence which would remotely support such a conclusion in any respect. The Application itself does not sustain Deluxe's burden to satisfy the critical California Environmental Quality Act ("CEQA") standards applicable to such proceedings.

VI. APPLICANT'S REQUEST FOR CATEGORIZATION AND RELIEF WITHOUT A HEARING SHOULD BE REJECTED.

The Scoping Memo attached to the Application identifies "Ratesetting" as the appropriate category under which to process the Application. This is wrong. Instead, the Application should be viewed as "Adjudicatory" in nature given Deluxe's pattern of illegal services which must be comprehensively tested at a formal hearing on the record. The conduct of Deluxe compels a full and complete evidentiary hearing which will allow the Commission full opportunity to assess the Application in the context of Section 1032 and, moreover, Section 5387, leading to the denial of the Application, as well as the revocation of Deluxe's current "S" Permit as the Legislature has recently mandated by Section 5387.

This Application begs for a formal hearing. The statements relied on in the Application to support *ex parte* are not credible, fail to satisfy even basic evidentiary standards, are deceitful and intended to mislead the Commission, and, moreover, must be thoroughly examined under a due process microscope only available through oral hearing.

Open Top submits that any schedule for hearing under the circumstances surrounding the operations and activities of Deluxe would, at a minimum, consist of:

Pre-hearing Conference:	60 days from the date of this Protest;
Discovery:	To be completed within 120 days of the date of this Protest;
Pre-hearing Conference:	60 days following completion of discovery;
Hearing:	30 days following service of any Pre-hearing Conference Order;
Post-hearing Briefing:	Due 45 days after hearing;
Submissions:	As of the date briefs are filed;
Proposed Decision:	90 days after submissions; and,
Final Decision:	60 days after proposed decision is mailed.

VII. REQUEST THAT THE COMMISSION INITIATE ITS OWN INVESTIGATION REGARDING THE SERVICES OF DELUXE, INCLUDING ISSUANCE OF AN INTERIM CEASE AND DESIST ORDER TO PREVENT FURTHER UNLAWFUL OPERATIONS.

The record developed through the admissions contained in the Application itself, as well as the Protest, mandates that the Commission Safety and Enforcement Branch immediately launch an investigation into the nature, scope and extent of the current services operated by Deluxe with a focus on whether they have been and continue to be illegal, in whole or in part, under Sections 1031, 1032, 1044 and 5387. Furthermore, Deluxe should be ordered forthwith to cease and desist from any such services.

VIII. CONCLUSION AND PRAYER FOR RELIEF.

WHEREFORE, it is respectfully requested that Open Top be entered as a protestant in this matter, that the Application be dismissed forthwith or, in the alternative, that a public hearing be set at a time and place convenient to the Commission and all parties so that Open Top can freely and fully present the adverse consequences which would result from the granting of said Application. Specifically, Open Top prays that:

1. The Commission conduct formal hearings on this Application which will provide an opportunity for Open Top and others to present testimony and expert opinions on the issues raised by the Application and this Protest;
2. Pursuant to PUC Code Sections 1032, 1044 and 5387, the Commission specifically order that Deluxe cease and desist from any and all operations conducted without proper authority to do so;
3. After due review of all of the evidence and pertinent information as required by PUC Code Sections 1031 and 1032, the Commission deny Deluxe's Application; and,

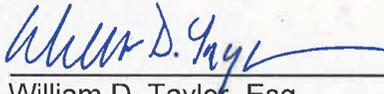
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4. The Commission specifically deny Deluxe's request for a ZORF authority to adjust baseline rates as proposed by Deluxe.

Dated: October 4, 2010

Respectfully submitted,

HANSON BRIDGETT LLP

By: 

William D. Taylor, Esq.
Attorneys for Protestant
Open Top Sightseeing San Francisco, LLC

VERIFICATION

I, Anders Nielsen, state:

I am the President of Open Top Sightseeing San Francisco, LLC and I am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except as to matters which are therein stated on information or belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 4, 2010, at Hyattsville.

Maryland.



Anders Nielsen

AUTHORIZATION OF REPRESENTATIVE

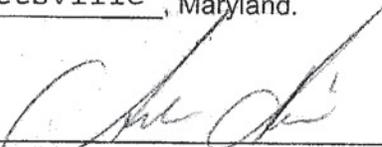
I, ANDERS NIELSEN, hereby declare:

I am the President of Open Top Sightseeing San Francisco, LLC, a Delaware Limited Liability Company, the Protestant in opposition to the Application herein, and I have the authority to make this Authorization of Representative on its behalf.

I hereby authorize William D. Taylor, Esq., and other assigned attorneys of Hanson Bridgett LLP, to represent Open Top Sightseeing San Francisco, LLC in this proceeding and to file documents and to speak on behalf of Open Top Sightseeing San Francisco, LLC in opposition to the Application in this proceeding. Mr. Taylor's business address is 500 Capitol Mall, Suite 1500, Sacramento, CA 95814.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 4, 2010 at Hyattsville, Maryland.



Anders Nielsen - President

EXHIBIT 1

**CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY
AS A PASSENGER STAGE
CORPORATION - PSC-21880**

CPSD/pw

Appendix PSC-21880

Open Top Sightseeing
San Francisco, LLC
(a Delaware limited liability company)

Original Title Page

CERTIFICATE

OF

PUBLIC CONVENIENCE AND NECESSITY

AS A PASSENGER STAGE CORPORATION

PSC-21880

Showing passenger stage operative rights, restrictions,
limitations, exceptions, and privileges.

All changes and amendments as authorized by
the Public Utilities Commission of the State of California
will be made as revised pages or added original pages.

Issued under authority of Decision 07-07-008, dated July 12, 2007, of the Public
Utilities Commission of the State of California in Application 07-03-021.

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SECTION I. GENERAL AUTHORIZATIONS, RESTRICTIONS,
LIMITATIONS, AND SPECIFICATIONS.

Open Top Sightseeing San Francisco, LLC, a Delaware limited liability company, by the certificate of public convenience and necessity granted by the decision noted in the foot of the margin, is authorized to transport passengers and their baggage on a scheduled basis between the points described in Section II, over the routes described in Section III, subject, however, to the authority of this Commission to change or modify this authority at any time and subject to the following provisions:

- A. Service will be operated only at the points described in Section II and over the routes described in Section III. A description of all the stop points and the arrival and departure times from such points shall be indicated in the timetable filed with the Commission.
- B. Stop points must conform to local passenger loading zone regulations, if any.

SECTION II. SERVICE AREA.

- A. Points in the City of San Francisco
- B. Points in the County of Marin

SECTION III. ROUTE DESCRIPTION.

Commencing from the vicinity of Fisherman's Wharf in San Francisco, then over the most convenient streets and highways to Muir Beach in Marin County, and return. Note: Because "sightseeing" is an integral part of the service, transportation will not necessarily be by the most direct route of travel.

EXHIBIT 2

OPEN TOP SIGHTSEEING SAN FRANCISCO, LLC's DESCRIPTION OF SCHEDULED SERVICES

OPEN TOP BY NIGHT

- Including Twin Peaks and Treasure Island

- China Town - Union Square
- Castro - Twin Peaks
- Treasure Island
- The Embarcadero
- Ferry Terminal
- Japan Town

2 1/2 hour fully narrated tour of San Francisco by night

From Twin Peaks you have the most impressive 270° view of the city. See the lighted San Francisco skyline from Treasure Island and Bay Bridge. With the San Francisco skyline as your backdrop.

With the San Francisco skyline as your backdrop.

Daily April - October 2009

Boundary	Time
Fisherman's Wharf Sighting Stop 1 On Mason St @ corner of Jefferson St	7pm
Golden Gate Bridge Sighting Stop 7 On Geary St @ corner of Post St	7:30pm
Union Square Sighting Stop 8 On Geary St @ corner of Powell St	7:30pm
Price	Adults \$31 Children 4 - 12 years of age \$16

Price includes Twin Peaks and Treasure Island. Seats are limited for reservations. Price is \$15.50 per person. Open top sightseeing. 2009 Taylor St @ corner of Beach St at Fisherman's Wharf. Tickets valid for one tour only. No Hop On Hop Off service on this tour.

Stop

- 01: Fisherman's Wharf
On Mason St @ corner of Jefferson St
- 02: Fisherman's Wharf B
On Taylor St @ upper Buena Vista @ corner of Jefferson St
- 03: Fisherman's Wharf Activity Center
On Taylor St @ corner of Beach St
- 04: North Beach & Coit Tower
On Columbus Avenue @ corner of Union St
- 05: Wells Fargo Museum
On Montgomery St @ inside Ocean View @ corner of Taylor St
- 06: China Town
314 Sutter St @ bus stop @ corner of Eddy St
- 07: Union Square and Grand Hyatt Hotel
On Stockton St @ corner of Powell St
- 08: Union Square and Mays
On Geary St @ corner of Powell St @ bus stop
- 09: Union Square and Galleries
On Geary St @ corner of Powell St
- 10: Union Square Hotel District
On Mason St @ corner of Powell St
- 11: Asian Art Museum, City Hall & Civic Center
On Taylor St @ corner of Powell St
- 12: Herb Theatre, The Opera & The Symphony
On Fulton St @ corner of Franklin St @ upper Beach @ Ocean
- 13: The Painted Ladies & Alamo Square
On Hayes St @ corner of Steiner St
- 14: Haight Ashbury
On Haight St @ corner of Haight St @ corner of Divisadero St
- 15: Golden Gate Park
Academy of Science @ 1900 University Avenue @ Japan Gate @ Garden of Eatin' @ California Children's Center @ Academy of Science @ Civic Center @
- 16: Golden Gate Bridge & Presidio Park
Walk the Bridge Stopt
- 17: Golden Gate Bridge
View Point North
- 18: Palace of Fine Arts & The Exploratorium
On Richardson Ave @ corner of Embarcadero St
- 19: Chestnut, Fillmore & Union St - Shopping
On Chestnut St @ corner of Fillmore St
- 20: Ghirardelli Square & Cannery Shopping & Cable Car & Maritime Museum
On Beach St @ corner of Hyde St
- 21: Fisherman's Wharf, Pier 39 & Alcatraz
On Mason St @ corner of Jefferson St

1: When Golden Gate Park is closed stop will be on Lincoln Way @ corner of 9th Ave

SIGHTSEEING
OPEN TOP SIGHTSEEING SAN FRANCISCO

HOP ON - HOP OFF

New for 2009!
Night Tour
Sausalito
Alcatraz

BEST VIEW
GUIDED TOURS
TICKET VALID 2 DAYS
AIR CONDITIONED & HEATED
GOLDEN GATE BRIDGE INCLUDED

OPEN TOP SIGHTSEEING
SAN FRANCISCO

1995 Bancroft Avenue
San Francisco, CA 94124
Call toll free 1-877-332-8689
info@opentopsightseeing.com
www.opentopsightseeing.com

Subject to change

* Limited number of Adults under 125
San Francisco Convention & Visitors Bureau photo by
PH: Golden Gate & Alcatraz photo by
PH: Golden Gate & Alcatraz photo by

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OPEN TOP SIGHTSEEING
SAN FRANCISCO

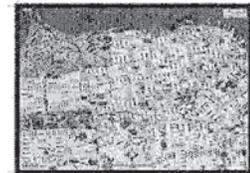


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OPEN TOP SIGHTSEEING SAN FRANCISCO
ALL ABOARD SAN FRANCISCO

Hop on Hop Off at any of these stops:
[Brochure Download! Click Here](#) (may take more than a minute to download)



[Tour Map-Click to enlarge]

STOP	NAME	LOCATION
1	FISHERMAN'S WHARF A Nearby Hotels Attractions at this stop (same for B & C): 1. www.pier39.com 2. www.boudinbakery.com 3. www.rainforestcafe.com 4. www.waxmuseum.com 5. www.ripleysf.com	On Mason St at Corner of Jefferson St
2	FISHERMAN'S WHARF B Nearby Hotels	On Taylor St at Corner of Jefferson St outside of Burger King
3	FISHERMAN'S WHARF Activity Center Nearby Hotels	On Taylor St at Corner of Beach outside of Activity Center.
4	NORTH BEACH and COIT TOWER Nearby Hotels Attractions at this stop: 1. Coit Tower	On Columbus Avenue at Corner of Union St

STOP	NAME	LOCATION
	2. North Beach Neighborhood 3. Sts. Peter and Paul Church	
5	WELLS FARGO MUSEUM Nearby Hotels Attractions at this stop: 1. Wells Fargo Museum 2. Trans-America Pyramid Many historic buildings	On Montgomery St Outside Omni Hotel across Wells Fargo Museum
6	CHINA TOWN Nearby Hotels Attractions at this stop: 1. China Town	314 Sutter St outside Restaurant E&O Trading Company
7	UNION SQUARE and GRAND HYATT HOTEL Nearby Hotels Attractions at this spot: 1. www.unionsquashop.com	On Stockton St at Grand Hyatt Hotel
8	UNION SQUARE and MACY'S Nearby Hotels Attractions at this spot: 1. www.macys.com 2. www.sfmoma.org 3. www.yerbabuenagardens.com	On Geary St across main entrance to Macy's at stairs to the Park
9	UNION SQUARE and GALLERIES Nearby Hotels	On Geary St outside Westin Hotel
10	UNION SQUARE HOTEL DISTRICT Nearby Hotels	On Mason St at Hilton Hotel across from Hotel Nikko
11	ASIAN ART MUSEUM/CITY HALL/CIVIC CENTER Nearby Hotels Attractions at this spot: 1. Asian Art Museum 2. San Francisco Public Library 3. San Francisco City Hall 4. Nations Plaza	On Larkin St outside the Asian Art Museum
12	HERBST THEATRE/THE OPERA/THE SYMPHONY Nearby Hotels Attractions at this spot: 1. http://sfwmpac.org/	On Fulton St at corner of Frankling St across Hotel Ovation
13	THE PAINTED LADIES AND ALAMO SQAURE Nearby Hotels Attractions at this spot: 1. De Young Museum 2. Japanese Tea Garden 3. Botanical Garden 4. Golden Gate Park 5. Conservatory of Flowers	On Hayes St. at corner of Steiner St.

STOP	NAME	LOCATION
14	<p>HAIGHT ASHBURY</p> <p>Nearby Hotels</p> <p>Attractions at this spot:</p> <p>1. California Academy of Sciences</p>	<p>On Stanyan St. at corner of Haight St, across from McDonalds</p>
15	<p>GOLDEN GATE PARK: Academy of Science & the De Young Museum & Japanese Tea Garden & Botanical Garden</p> <p>Nearby Hotels</p> <p>Attractions at this spot:</p> <p>1. Golden Gate Bridge</p> <p>2. Presidio Park</p>	<p>Outside Academy of Science at music concourse</p>
16	<p>GOLDEN GATE BRIDGE/PRESIDIO PARK</p> <p>WALK THE BRIDGE STOP!!!!</p> <p>Nearby Hotels</p> <p>Attractions at this spot:</p> <p>1. Golden Gate Bridge</p> <p>2. Presidio Park</p>	<p>Vista Point South</p>
17	<p>GOLDEN GATE BRIDGE</p> <p>Attractions at this spot:</p> <p>1. Golden Gate Bridge</p>	<p>Vista Point North</p>
18	<p>PALACE OF FINE ARTS/THE EXPLORATORIUM</p> <p>Nearby Hotels</p> <p>Attractions at this spot:</p> <p>1. www.palaceoffinearts.org</p> <p>2. www.exploratorium.edu</p>	<p>On Richardson Ave at corner of Francisco St</p>
19	<p>CHESTNUT ST/UNION ST/FILMORE ST SHOPPING</p> <p>Nearby Hotels</p> <p>Attractions at this spot:</p> <p>1. www.chestnutshop.com</p> <p>2. www.unionstreetshop.com</p> <p>3. www.fillmoreshop.com</p>	<p>On Lombard at corner of Fillmore St</p>
20	<p>GHIRARDELLI SQUARE/CANNERY SHOPPING/CABLE CAR/MARITIME MUSEUM</p> <p>Nearby Hotel</p> <p>Attractions at this spot:</p> <p>1. www.ghirardellisq.com/ghirardellisq</p> <p>2. www.thecannery.com</p> <p>3. www.maritime.org/index.htm</p>	<p>On Beach St across Starbuck Coffee at corner of Hyde St</p>
21	<p>FISHERMAN'S WHARF</p> <p>Nearby Hotels</p>	<p>Mason St at corner of Jefferson St</p>

TICKET PURCHASE

RESERVATION NOT REQUIRED

CONTACT INFORMATION

EXHIBIT 3

**SAN FRANCISCO DELUXE
SIGHSEETING'S WEBSITE
DESCRIBING ITS
"HOP ON/HOP OFF" SERVICE
TO THE PUBLIC**

[HOME](#) [MAP](#) [TOURS & STOPS](#) [CONTACT](#) [BUY TICKET](#)

Welcome!

Looking for some great sightseeing in San Francisco? Well then, Hop-ON aboard one of our open top Double Decker buses and explore! San Francisco Deluxe Sightseeing mission is to provide each customer with a unique sightseeing experience. With four routes to choose from, you can explore every corner of the city at your own pace. Our Hop-ON Hop-OFF service is the easiest way to get around town and see all of the sights that San Francisco has to offer. Our tour guides will keep you entertained and informed throughout the 19 stops we offer.

ONLINE SPECIAL!
 >CLICK HERE<
BOOK OUR ALL LOOPS PACKAGE & GET A 3RD DAY FREE



Downtown Loop



Departs from Union Square
 Stop #1 every 20-30 minutes
 Duration: 1 hour

- ☐ Union Square
- ☐ China Town
- ☐ Financial District
- ☐ North Beach
- ☐ Coit Tower
- ☐ Fisherman's Wharf
- ☐ Pier 39
- ☐ Ghirardelli Square
- ☐ Fort Mason
- ☐ Lombard Street
- ☐ Pacific Heights
- ☐ Civic Center
- ☐ Asian Arts Museum

[MAP](#) [BOOK NOW](#)

\$20

Downtown/Golden Gate B. Loop



Departs from Union Square
 at 10:00a, 11:00a, 1:00p, 3:30p.
 Departs from Fisherman's Wharf
 stop #5 - 11:30a, 1:30p, 4:00p.
 Duration: 2 hour

- ☐ Union Square
- ☐ China Town
- ☐ Financial District
- ☐ North Beach
- ☐ Coit Tower
- ☐ Fisherman's Wharf
- ☐ Pier 39
- ☐ Ghirardelli Square
- ☐ Fort Mason
- ☐ Palace Of Fine Arts
- ☐ Golden Gate Bridge
- ☐ Lombard Street
- ☐ Pacific Heights
- ☐ Civic Center
- ☐ Asian Arts Museum

[MAP](#) [BOOK NOW](#)

\$28

Golden Gate Park/Alamo S. Loop



Departs from Union Square
 Stop #1 at 10:00a, 11:00p.
 Duration: 1 hour

- ☐ Japan Town
- ☐ De Young Museum
- ☐ Academy Of Science
- ☐ Conservatory Of Flowers
- ☐ Haight & Ashbury
- ☐ Alamo Square Park
- ☐ Civic Center
- ☐ Asian Arts Museum

[MAP](#) [BOOK NOW](#)

\$14

Evening Loop



Departs from Union Square
 Stop #1 at 5:00p.
 Duration: 1 hour

- ☐ Union Square
- ☐ China Town
- ☐ Financial District
- ☐ North Beach
- ☐ Coit Tower
- ☐ Fisherman's Wharf
- ☐ Pier 39
- ☐ The Embarcadero
- ☐ Bay Bridge
- ☐ Ferry Building
- ☐ Civic Center
- ☐ Asian Arts Museum

[MAP](#) [BOOK NOW](#)

\$20

All Loops - Blue, Red, Green & Purple lines - 3 days



Get all four tours and an extra 3rd day when you book our all loops package online
 Departs from Union Square

- ☐ Union Square
- ☐ China Town
- ☐ Financial District
- ☐ North Beach
- ☐ Coit Tower
- ☐ Fisherman's Wharf
- ☐ Pier 39
- ☐ Ghirardelli Square
- ☐ Fort Mason
- ☐ Palace Of Fine Arts
- ☐ Golden Gate Bridge
- ☐ Lombard Street
- ☐ Pacific Heights
- ☐ Civic Center
- ☐ Asian Arts Museum
- ☐ The Embarcadero
- ☐ Bay Bridge
- ☐ Ferry Building
- ☐ Japan Town
- ☐ De Young Museum
- ☐ Academy Of Science
- ☐ Conservatory Of Flowers
- ☐ Haight & Ashbury

HOME MAP TOURS & STOPS CONTACT BUY TICKET

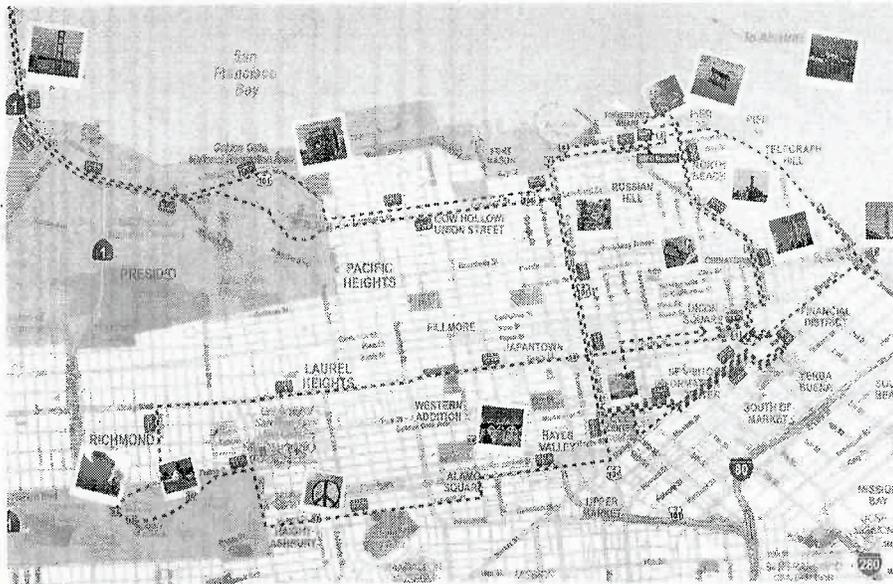
Deluxe Sightseeing stops

Attractions & Stops

- 1 UNION SQUARE**
- HOTELS, SHOPPING CENTER, THEATERS, CABLE CAR
- 2 CHINA TOWN**
- SHOPPING, PAGODA GATES, RESTAURANTS, FINANCIAL DISTRICT
- 3 FINANCIAL DISTRICT**
- BANK OF AMERICA BUILDING, TRANSAMERICA PYRAMID
- 4 NORTH BEACH**
- COIT TOWER, ITALIAN RESTAURANTS, TRANSAMERICA PYRAMID
- 5 FISHERMAN'S WHARF**
- PIER 39, SHOPPING, SOUVENIRS, SEA LIONS, SEA FOOD
- 6 GHIRARDELLI SQUARE**
- ART GALLERIES, RESTAURANTS, PUBS & WINE BARS
- 7 FORT MASON**
- NATIONAL PARK, MUSEUMS, THEATERS
- 8 PALACE OF FINE ARTS**
- ARCHITECTURE, THE EXPLORATORIUM

- 9 GOLDEN GATE BRIDGE**
- VISTA POINT, MARIN HEADLANDS
- 10 LOMBARD STREET**
- CROOKEDEST STREET, HYDE STREET CABLE CAR, RUSSIAN HILL
- 11 PACIFIC HEIGHTS**
- SHOPPING, PANORAMIC VIEWS
- 12 CIVIC CENTER**
- CITY HALL, OPERA HOUSE, ASIAN ART MUSEUM
- 13 JAPAN TOWN**
- HOTELS, SHOPS, THEATERS, RESTAURANTS
- 14 15 16 GOLDEN GATE PARK**
- DE YOUNG MUSEUM, ACADEMY OF SCIENCE, CONSERVATORY
- 17 HAIGHT & ASHBURY**
- VICTORIAN ARCHITECTURE, ART, SHOPPING
- 18 ALAMO SQUARE**
- VICTORIAN HOUSES 'PAINTED LADIES'
- 19 FERRY BUILDING**
- FARMERS MARKET, MERCHANTS, EMBARCADERO

Full Map



Downtown Loop



Departs from Union Square
Stop #1 every 20-30 minutes
Duration: 1 hour

- ⊗ Union Square
- ⊗ China Town
- ⊗ Financial District
- ⊗ North Beach
- ⊗ Coit Tower
- ⊗ Fisherman's Wharf
- ⊗ Pier 39
- ⊗ Ghirardelli Square
- ⊗ Fort Mason
- ⊗ Lombard Street
- ⊗ Pacific Heights
- ⊗ Civic Center
- ⊗ Asian Arts Museum

Downtown/Golden Gate B. Loop



Departs from Union Square
at 10:00a, 11:00a, 1:00p, 3:30p.
Departs from Fisherman's Wharf
stop #5 - 11:30a, 1:30p, 4:00p.
Duration: 2 hour

- ⊗ Union Square
- ⊗ China Town
- ⊗ Financial District
- ⊗ North Beach
- ⊗ Coit Tower
- ⊗ Fisherman's Wharf
- ⊗ Pier 39
- ⊗ Ghirardelli Square
- ⊗ Fort Mason
- ⊗ Palace Of Fine Arts

Golden Gate Park/Alamo S. Loop



Departs from Union Square
Stop #1 at 10:30a, 1:30p.
Duration: 1 hour

- ⊗ Japan Town
- ⊗ De Young Museum
- ⊗ Academy Of Science
- ⊗ Conservatory Of Flowers
- ⊗ Haight & Ashbury
- ⊗ Alamo Square Park
- ⊗ Civic Center
- ⊗ Asian Arts Museum

MAP BOOK NOW \$14

EXHIBIT 4

**AUGUST 9, 2010 CEASE AND
DESIST LETTER TO
SAN FRANCISCO DELUXE
SIGHTSEEING**

WILLIAM D. TAYLOR
PARTNER
DIRECT DIAL 916 551 2939
DIRECT FAX 916 551 3391
E-MAIL wtaylor@hansonbridgett.com



August 9, 2010

VIA OVERNIGHT DELIVERY

Manana Kozlova Copart
San Francisco Deluxe Tours
88 South Broadway, Unit #2107
Millbrae, CA 94030

Re: Demand to Cease and Desist Illegal Services

Dear Ms. Copart:

As you know, my firm represents Open Top Sightseeing San Francisco ("Open Top") which provides a scheduled Hop-On/Hop-Off passenger service between San Francisco and Marin Counties pursuant to the TCP authority issued to it by the California Public Utilities Commission ("PUC") in PSC-21880 (see California PUC Code Section 226). In fact, Open Top is the only passenger carrier holding such a certificate to conduct Hop-On/Hop-Off operations within a service area that encompasses both points in the City of San Francisco, as well as the County of Marin. For such purposes, Open Top has on file at the PUB a tariff that designates the points of service, accessible using a two-day unlimited ticket for the convenience of its passengers. Open Top has invested considerable resources to accommodate the needs of its customers for such regulated services and is prepared to forcibly act to protect that interest.

Your company currently advertises and provides a similar Hop-On/Hop-Off service which virtually mirrors that operated by my client, including traveling over the Golden Gate Bridge into Marin County. In addition, your company allows passengers to off-load or board a coach at your designated stops, using only a Class A Certificate to support such services. That type of PUC authority does not permit the operations currently conducted by San Francisco Deluxe Tours.

Clearly, San Francisco Deluxe Tours does not have the proper authority that would permit its passenger services. Instead, your company must first obtain a PSC to conduct same. Apparently, you are of the view that the Class A Charter authority issued to San Francisco Deluxe Tours in PSG22409 is sufficient to legally allow your company to operate a Hop-On/Hop-Off service. It is not.

The clear legal and regulatory distinction between the PSC issued to Open Top and the Charter Party Certificate held by San Francisco Deluxe Tours is that a PSC allows passengers to access or depart the coach at the various service points within the schedule, including the use of a two-day pass for that purpose. On the other hand, a Charter Party authority is limited in service to only sightseeing round-trips, whereupon a passenger must begin and end a trip on the same vehicle at the same time, from start to finish, without ever leaving or boarding the bus at any point along the route traversed by the vehicle. As a fundamental and legal condition to compete the market served by Open Top, San Francisco Deluxe Tours must first apply for and

Hanson Bridgett LLP
500 Capitol Mall, Suite 1500, Sacramento, CA 95814 hansonbridgett.com

2503122.1

Manana Kozlova Copart
August 9, 2010
Page 2

obtain a PSC under PUC Code Sections 1031, 1034 and 1035. Until San Francisco Deluxe Tours complies with these basic regulatory requirements, any Hop-On/Hop-Off service conducted without the PSC is illegal under PUC Code Section 1034 and 1034.5, and, furthermore, is actionable under California Business and Professions Code Section 17200.

Your company's illegal services have caused measurable economic harm to my client. Section 17200 provides a significant recourse to seek damages for Super Sightseeing Tour's continuous violation of the relevant provisions of California's Public Utilities Code. In addition, Open Top has available other remedies, including injunctive relief to protect its interest. Before initiating such actions, Open Top is willing to give San Francisco Deluxe Tours an opportunity to cease all further illegal services on a voluntary basis, thereby avoiding the administrative, enforcement, and civil options available to Open Top.

In order to demonstrate the consequences of conducting passenger stage services without appropriate PUC authority, please note the attached copy of the complaint recently filed in the Superior Court for the County of San Mateo, entitled Silverado Stages, Inc. v. El Camino Charter Lines, Case No. CIV 490353 action is premised on similar causes of action available to my client to seek redress for your company's on-going unlicensed services which are diverting significant revenue from Open Top. Moreover, as the Complaint notes, the defendants in that action were the subject of formal cease and desist orders issued by the PUC. Likewise, the PUC has been requested to conduct a similar investigation into the unauthorized services described herein.

Accordingly, my client demands that your company immediately cease and desist from any and all further illegal services until it obtains the required PSC authority necessary to conduct lawful Hop-On/Hop-Off transportation in the nature of the current operations of your company.

Please confirm that San Francisco Deluxe Tours has immediately ceased to provide any Hop-On/Hop-Off operations without proper PUC authority to do so.

Very truly yours,


William D. Taylor

WDT/klh

Enclosure

cc: Anders Nielsen

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 4 San Luis Obispo, CA 93401
 5 (805) 512-9606
 6 (805) 512-9607 facsimile
 7 Email: dan@mcgeez.net
 8 Attorney for Plaintiff Silverado Stages, Inc.

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 10 FOR THE COUNTY OF SAN MATEO

11 SILVERADO STAGES, INC.,
 12 A California Corporation, on behalf of itself and the
 13 general public

14 Plaintiff

15 v.

16 EL CAMINO CHARTER LINES, INC.
 17 (dba EL CAMINO TRAILWAYS), ACCELLAR,
 18 INC., and DOES 1-50 inclusive,

19 Defendants.

Case No.: CIV 490353

COMPLAINT

1. Tortious Interference with Business
2. Unfair Business Competition
3. Violation of Public Utilities Code (§1301, et seq.)

20 Plaintiff SILVERADO STAGES, INC., a California Corporation (hereinafter referred to as
 21 "SILVERADO") files this Complaint and for causes of action alleges as follows:

22 1. Plaintiff SILVERADO is now, and at all times mentioned in this complaint, a corporation
 23 qualified to do business in California.

24 2. Plaintiff is informed and believes, and thereon alleges, that Defendants EL CAMINO
 25 CHARTER LINES, INC. (hereinafter referred to as "EL CAMINO"), and ACCELLAR, INC. (hereinafter
 26 referred to as "ACCELLAR"), are business organizations, form unknown, doing business in California,
 27 including but not limited to San Mateo County.

28 ///

1 designated location and time pursuant to and in reliance upon the schedule set forth by Silverado. Upon
2 investigation of the situation, Silverado immediately sent a "cease and desist" demand upon Defendant El
3 Camino. (Attached as Exhibit "B" and incorporated herein by this reference.) Additionally, the
4 California Public Utilities Commission was notified. The CPUC handled their own investigation of the
5 matter, resulting in their formal "Notice to Cease and Desist" to El Camino. (Attached as Exhibit "C" and
6 incorporated herein by this reference.) Despite the CPUC notice of misdemeanor and potential fine of up
7 to \$1,000 for each violation, as well as the obvious and egregious issue of wrongfully diverting
8 Silverado's passengers, El Camino continued and continues to operate and transport passengers to
9 subsequent 49er football games. However, in the subsequent football game days of November 8, 12 and
10 29, El Camino attempts to contravene the CPUC regulatory violations by claiming to be under the
11 auspices of Defendant Accelar as a "chartered" bus service. Both Accelar and El Camino are owned and
12 operated to some degree by Mr. Kumar Shah, and despite this obvious attempt to find a "loop hole" in the
13 CPUC requirements the Defendants still remain in violation of CPUC licensing requirements for their
14 specific activities pursuant to Public Utilities Code Sections 1031 and 1034.1.¹ These continuing,
15 intentional and wrongful acts of El Camino result in continuing damage to Plaintiff Silverado and the
16 general public. Furthermore, Plaintiff Silverado invokes its right as a private attorney general pursuant to
17 California's Unfair Competition Law, Business and Professions Code §17200, et seq., to enjoin
18 Defendant from continued violations of the statute and regulations of the CPUC, and bring this action on
19 behalf of the public.

20
21 ¹ El Camino currently holds a Charter-Party Carrier of Passengers Class A certificate that authorizes it to transport passengers
22 between any points in the State of California and round-trip sightseeing tour services (Public Utilities Code §§5371 and 5383).
23 Section 5401 of the Public Utilities Code prohibits a Charter-party carrier from "assessing fares on an individual fare basis". The
24 difference between the PSC (which Plaintiff holds) and the Charter services (which Defendants hold) is that the PSC can charge
25 individual passenger fares while the Charter rents or charters the whole bus for its services on a time or mileage basis. A good
26 example of the individual fare PSC services are the share-ride door-to-door airport shuttle operations. When a Charter carrier
27 seeks to provide a service involving individual passenger fares the usual tactic is to sell the individual fares through a third party
28 such as a travel agency (such as Defendant Accelar). It is also usual for the individual passenger fare to be part of a package
allowing the carrier to argue that the individual fare is an incidental part of the package. The leading PUC decision on such an
arrangement is *Greyhound Lines, Complainant vs. Santa Cruz Travel Agency*, Decision 70712, May, 1966. The only court
appeal available to challenge PUC decision is to the California Supreme Court and that court usually refuses to hear or rarely
grants appeals from Commission decisions. The package procedure was adopted by El Camino because it gave the company a
basis for arguing that it believed the service was being conducted lawfully and challenging the expected decision of the CPUC
staff.

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FIRST CAUSE OF ACTION

(Tortious Interference with Business)

(Against all Defendants, and Does 1-50, inclusive)

7. Plaintiffs hereby reallege and incorporate by reference each and every allegation set forth at Paragraphs 1 through 6, above, as though fully set forth herein.

8. Having engaged in the business of soliciting and transporting passengers along a specified route and at specified times and locations, Plaintiff fully complied with all California Public Utilities Commission ("CPUC") licensing requirements to allow for the solicitation of and transporting passengers to and from Candlestick Park for the football games of the 49ers. Furthermore, Plaintiff entered into contractual arrangements with the 49ers for certain aspects of the service being provided by Plaintiff. Having entered into these arrangements, and by obtaining the appropriate CPUC licenses, there existed a probability of economic benefits to Plaintiff in providing this service. Defendants knew that Plaintiffs engaged in the business as alleged herein, and further knew of the existence of the CPUC licensing requirements.

9. Defendants intentionally infringed upon and slanderously informed passengers awaiting pick-up by Silverado that Silverado buses were not picking up passengers. Furthermore, Defendants actions caused confusion and uncertainty amongst existing and prospective customers, all of which caused Silverado customers to be pre-empted from boarding Plaintiff's buses.

10. As a proximate result of the above, the existing and prospective customers failed or refused to purchase bus transportation services from Plaintiff. Consequently, Plaintiff has suffered substantial injury to its business, including but not limited to substantial loss of business and income in excess of \$100,000.00.

11. These actions by Defendants were done with malice, oppression and fraud, in that they knew or should have known that said actions would result in substantial injury to Plaintiff.

SECOND CAUSE OF ACTION

(Violation of Unfair Competition Law, Business and Professions Code §17200, et seq.)

(Against All Defendants and Does 1-50, Inclusive)

12. Plaintiff hereby realleges and incorporates by reference each and every allegation set

1 forth at Paragraphs 1 through 11, above, as though fully set forth herein.

2 13. Defendant's actions as complained of herein, constitute unfair trade practices that have
3 the capacity to and do deceive consumers in violation of the Unfair Competition Law pursuant to
4 §§17200, et seq., of the Business and Professions Code. "Unfair competition" is defined in Section 17200
5 as encompassing any one of the following five types of business "wrongs": (1) an "unlawful" business act
6 or practice; (2) an "unfair" business act or practice; (3) a "fraudulent" business act or practice; (4) "unfair,
7 deceptive, untrue or misleading advertising"; and (5) any act prohibited by Sections 17500-17577.5.

8 14. By not obtaining proper licensure, Defendants actions are statutory violations punishable
9 by fines and/or imprisonment. Additionally, Defendants are guilty of unfair business practices and
10 fraudulently deceiving the public by holding itself out to be fully licensed while not being so.

11 15. As a proximate result of the above, Plaintiff has suffered substantial injury to its business,
12 including but not limited to substantial loss of business and income in excess of \$100,000.00

13 THIRD CAUSE OF ACTION

14 (Violation of Public Utilities Code, §1031 and §1034.1)

15 (Against All Defendants and Does 1-50, Inclusive)

16 16. Plaintiff hereby realleges and incorporates by reference each and every allegation set
17 forth at Paragraphs 1 through 15, above, as though fully set forth herein.

18 17. Business and Professions Code, §17200 et seq., enables a plaintiff to bring an action
19 against another party for unfair competition on behalf of the public as a "private attorney general."

20 18. The CPUC has ordered that Defendants cease and desist from their operations in
21 violation of Public Utilities Code, §1031 and §1034.1. Defendants have nonetheless ignored these
22 demands, and Plaintiff now seeks to bring forth and include this action on behalf of the public in its
23 complaint against Defendants.

24 19. As a direct and proximate result of the Defendants' activities as alleged hereinabove,
25 Plaintiff and the public at large has suffered general damages.

26 PRAYER FOR RELIEF

27 WHEREFORE Plaintiff requests the following relief and damages against Defendants, and each
28 of them, as follows:

- 1 1. For an award of general, special, and/or consequential damages from the defendants, and
- 2 each of them, in the amount of \$200,000.00 plus prejudgment interest thereon, according
- 3 to proof or by operation of law;
- 4 2. For an award of exemplary and punitive damages to the extent allowed by law and in an
- 5 amount according to proof (Code of Civil Procedure section 425.10);
- 6 3. For attorneys' fees and costs of suit herein pursuant to statute or as otherwise may be
- 7 allowed by law; and,
- 8 4. For such other relief as this Court may deem just and proper.

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DATED: December 10, 2009

Respectfully submitted,

By: _____
DANIEL M. MCGEE
Attorney for Plaintiff SILVERADO

1 Daniel M. McGee, Esq. (SBN 182486)
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 7 Email: dan@mcgeez.net
 8 Attorney for Plaintiff Silverado Stages, Inc.

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF SAN MATEO

11 SILVERADO STAGES, INC.,
 12 A California Corporation, on behalf of itself and the
 13 general public

13 Plaintiff

14 v.

16 EL CAMINO CHARTER LINES, INC.
 17 (dba EL CAMINO TRAILWAYS), ACCELAR,
 18 INC. and DOES 1-50 inclusive,

18 Defendants.

Case No.:

PLAINTIFF'S EX PARTE APPLICATION
 FOR TEMPORARY RESTRAINING ORDER
 AND ORDER TO SHOW CAUSE RE:
 PRELIMINARY INJUNCTION;
 MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT THEREOF;
 DECLARATION OF JIM GALUSHA

Hearing

Date: December 10, 2009

Time: 2:00 pm

Dept. 11

22 EX PARTE APPLICATION

23 Pursuant to California Code of Civil Procedure (C.C.P.) §§525, 526 and 527, Plaintiff hereby
 24 applies *ex parte* for a Temporary Restraining Order and Order to Show Cause why a preliminary
 25 injunction should not issue enjoining Defendants EL CAMINO CHARTER LINES, INC. ("EL
 26 CAMINO") and ACCELAR, INC. ("ACCELAR") from continued violations of the California Business
 27 and Professions Code Unfair Competition Law (§17200, et seq.), and tortiously interfering and
 28 encroaching upon Plaintiff's California Public Utilities Commission ("CPUC") authorized bus

1 transportation route, specifically with regard to game day transportation of passengers to the 49ers
2 football games at Candlestick Park, and specifically in violation of required CPUC authority to do so.

3 This application is made on the following grounds: Absent immediate injunctive relief
4 preserving the status quo pending a final decision in this matter, there is and continues to be serious
5 irreparable injury to Plaintiff SILVERADO STAGES, INC. ("SILVERADO") as a result of Defendants'
6 intentional and wrongful solicitations, interference and infringement upon Plaintiff SILVERADO's
7 lawful bus transportation service to the 49ers football games at Candlestick Park. Despite demands by
8 Plaintiff and the California Public Utilities Commission ("CPUC") to cease and desist this unlawful
9 activity, Defendants have ignored and nonetheless continued to pick up and transport passengers to the
10 49ers' games on October 11, November 8, November 12 and November 29. Not only was this a violation
11 of California Public Utilities Code Sections 1031 and 1034.5, Defendants' actions directly interfered with
12 Plaintiff's lawful bus services by taking Plaintiff's solicited passengers from Plaintiff's designated pick-
13 up and drop-off points along the scheduled bus route.

14 The balance of harms tips sharply in favor of Plaintiff given the nature and timing of the injuries
15 continuing to be caused upon Plaintiff. Only two scheduled games remain to be played at Candlestick
16 Park this football season, and if Defendants are allowed to continue to operate in violation of licensing
17 requirements, all the while encroaching upon Plaintiff's pick-up points and falsely holding themselves out
18 to the public to be lawfully in compliance with CPUC requirements, Defendants will be unjustly enriched
19 to the detriment of Plaintiff, making it extremely difficult to determine appropriate damages and harm.
20 Furthermore, the CPUC administrative process to thwart this sort of unlawful activity by Defendants is
21 not timely enough to prevent Defendants from ignoring the CPUC's demands to cease and desist before
22 the end of the football season, absent immediate court action in the form a Temporary Restraining Order.
23 Plaintiff has a substantial likelihood of success on the Complaint because Defendant's actions are clearly
24 in violation of the CPUC "Cease and Desist" order, and amount to a tort against Plaintiff and the general
25 public when Defendant ignores the CPUC order and continues to illegally divert Plaintiff's customers to
26 Defendant's buses.

27 This application is based upon this application, the attached Memorandum of Points and
28 Authorities, the Declaration of Jim Galusha, as well as the Complaint in this action, and such other

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 SUMMARY OF FACTS

4 Plaintiff Silverado Stages, Inc. ("Silverado") underwent a costly and arduous process of obtaining
5 proper licensure and authority under the regulatory auspice of the California Public Utilities Commission
6 pursuant to California Public Utilities Code Sections 1031 and 1034.1. Silverado's licensure and
7 authority allows for proper transportation of passengers as a Passenger Stage Coach ("PSC") carrier, and
8 allows Silverado to advertise and pick-up passengers along certain routes. As one of the only bus services
9 with PSC authority desiring to transport passengers to the San Francisco 49ers football games at
10 Candlestick Park, Silverado also negotiated directly with the 49ers organization to assure travelers to the
11 football stadium could occur.

12 Silverado advertised and secured advance reservations for travel to the 49er games with the
13 general public. Additionally, Silverado picked up and sold travel to the games to unreserved, cash-basis
14 travelers along a specified schedule and route. On October 11, 2009, buses of Defendant El Camino
15 Trailways ("El Camino") entered into (minutes in advance of the Silverado buses) the prescribed
16 Silverado bus stops, and informed the travelers that Silverado would not be picking up passengers, and
17 that passengers should take the El Camino bus to the 49ers game. (Declaration of Jim Galusha, Exhibit
18 "A.") When the Silverado buses arrived, the remaining passengers informed Silverado that an El Camino
19 bus came and left with the passengers. (*Id.*) The passengers at the Silverado bus stop were at the
20 designated location and time pursuant to and in reliance upon the schedule set forth by Silverado. Upon
21 investigation of the situation, Silverado immediately sent a "cease and desist" demand upon Defendant El
22 Camino. (Attached as Exhibit "B" and incorporated herein by this reference.) Additionally, the
23 California Public Utilities Commission was notified. The CPUC handled their own investigation of the
24 matter, resulting in their formal "Notice to Cease and Desist" to El Camino. (Attached as Exhibit "C"
25 and incorporated herein by this reference.) Despite the CPUC notice of misdemeanor and potential fine
26 of up to \$1,000 for each violation, as well as the obvious and egregious issue of wrongfully diverting
27 Silverado's passengers, El Camino continued and continues to operate and transport passengers to
28 subsequent 49er football games. However, in the subsequent football game days of November 8, 12 and

1 29, El Camino attempts to contravene the CPUC regulatory violations by claiming to be under the
2 auspices of Defendant Accelar as a "chartered" bus service. Both Accelar and El Camino are owned and
3 operated to some degree by Mr. Kumar Shah, and despite this obvious attempt to find a "loop hole" in the
4 CPUC requirements the Defendants still remain in violation of CPUC licensing requirements for their
5 specific activities pursuant to Public Utilities Code Sections 1031 and 1034.1.¹ These continuing,
6 intentional and wrongful acts of El Camino result in continuing damage to Plaintiff Silverado and the
7 general public. Furthermore, Plaintiff Silverado invokes its right as a private attorney general pursuant to
8 California's Unfair Competition Law, Business and Professions Code §17200, et seq., to enjoin
9 Defendant from continued violations of the statute and regulations of the CPUC.

10 II.

11 THIS COURT SHOULD ENJOIN DEFENDANTS FROM OPERATING ITS BUS 12 TRANSPORTATION SERVICE TO PREVENT FURTHER AND CONTINUING HARM TO 13 PLAINTIFF AND THE GENERAL PUBLIC IN VIOLATION OF CPUC AUTHORITY AND 14 CALIFORNIA'S UNFAIR COMPETITION LAWS

15 Section 526 (a)(1) of the California Code of Civil Procedure ("C.C.P.") states that an injunction
16 may be granted, "when it appears by the complaint that the plaintiff is entitled to the relief demanded."
17 Plaintiff has shown that it is entitled to the relief demanded *per se*. Public Utilities Code §1034 states in
18 pertinent part that, "no passenger stage corporation shall operate or cause to be operated any passenger
19 stage over any public highway in this state without first having obtained from the commission a certificate
20 declaring that public convenience and necessity require such operation." Public Utilities Code §1034.5
21 states that, "...any passenger stage corporation that operates and/or advertises without authority is guilty

22 ¹ El Camino currently holds a Charter-Party Carrier of Passengers Class A certificate that authorizes it to transport passengers
23 between any points in the State of California and round-trip sightseeing tour services (Public Utilities Code §§5371 and 5383).
24 Section 5401 of the Public Utilities Code prohibits a Charter-party carrier from "assessing fares on an individual fare basis". The
25 difference between the PSC (which Plaintiff holds) and the Charter services (which Defendants hold) is that the PSC can charge
26 individual passenger fares while the Charter rents or charters the whole bus for its services on a time or mileage basis. A good
27 example of the individual fare PSC services are the share-ride door-to-door airport shuttle operations. When a Charter carrier
28 seeks to provide a service involving individual passenger fares the usual tactic is to sell the individual fares through a third party
such as a travel agency (such as Defendant Accelar). It is also usual for the individual passenger fare to be part of a package
allowing the carrier to argue that the individual fare is an incidental part of the package. The leading PUC decision on such an
arrangement is *Greyhound Lines, Complainant vs. Santa Cruz Travel Agency*, Decision 70712, May, 1966. The only court
appeal available to challenge PUC decision is to the California Supreme Court and that court usually refuses to hear or rarely
grants appeals from Commission decisions. The package procedure was adopted by El Camino because it gave the company a
basis for arguing that it believed the service was being conducted lawfully and challenging the expected decision of the CPUC
staff.

1 of a misdemeanor." Defendants clearly are operating without PSC authority, which requires formal
2 process by and through the CPUC. Plaintiff Silverado, on the other hand, has full PSC authority, and in
3 reliance upon this authority has established a bus service in coordination with the 49ers football games.
4 Plaintiff Silverado rightfully advertises and markets this service to the public, and yet Defendants (in
5 violation of the Public Utilities Code) has interfered with and encroached upon Plaintiff's bus service
6 resulting in lost profits and detriment to the public at large. Implicit in the basis for relief is the court's
7 determination that (a) plaintiff will suffer irreparable harm absent injunctive relief, and (b) plaintiff has a
8 reasonable likelihood of prevailing on the merits of the action. See, e.g. *Family Record Plan, Inc. v.*
9 *Mitchell*, 172 Cal.App.2d 235, 242 (1957). It is clear that Plaintiff Silverado has suffered and will
10 continue to suffer irreparable harm if Defendants are allowed to continue to blatantly disregard the CPUC
11 requirements, and given the violations that have occurred that, as a minimum, Defendants must be
12 enjoined to support and protect the interests of the public pursuant to the authority of the CPUC.

13 **A. PLAINTIFF WOULD SUFFER IRREPARABLE HARM IF DEFENDANTS ARE
14 ALLOWED TO CONTINUE ITS UNLAWFUL ENCROACHMENT ACTIVITIES.**

15 When the San Francisco 49ers' season at Candlestick Park ends, it will be too late and too
16 difficult to remedy the damage to Silverado. Furthermore, it would be too difficult to remedy violations
17 of the public trust if Defendants are allowed to ignore the demands of the CPUC because they know that
18 the enforcement actions of the CPUC are not quick enough to prevent Defendants from being unjustly
19 enriched through the end of the 49ers football season. Defendants will simply pay the fines imposed by
20 the CPUC, but the damages to Plaintiff and the public will be irreparable. Thus, Plaintiff will suffer great
21 hardship if the Court does not exercise its equitable powers to protect Plaintiff now, pending the outcome
22 of the action.

23 Defendant's actions as complained of herein, constitute unfair trade practices that have the
24 capacity to and do deceive consumers in violation of the Unfair Competition Law pursuant to §§17200, et
25 seq., of the Business and Professions Code. "Unfair competition" is defined in Section 17200 as
26 encompassing any one of the following five types of business "wrongs": (1) an "unlawful" business act or
27 practice; (2) an "unfair" business act or practice; (3) a "fraudulent" business act or practice; (4) "unfair,
28 deceptive, untrue or misleading advertising"; and (5) any act prohibited by Sections 17500-17577.5. The
reach of Section 17200 is broad and imposing; "the Legislature apparently intended to permit courts to

1 enjoin ongoing wrongful business conduct in whatever context such activity might occur." *Committee on*
2 *Children's Television, Inc. v. General Foods Corp.*, 35 Cal. 3d 197, 210 (1983). Violation of Public
3 Utilities Code §1031 and §1034.1 is a business "wrong" covered by the Unfair Competition Law. An
4 examination of the Defendants' wrongful business actions and its harmful impact on Plaintiff meets the
5 "unfairness" prong. Under the "unfairness" standards a business act may be considered unfair and
6 enjoined by the courts even if the practice is not prohibited by law, but the purpose and scheme behind the
7 practice violates the spirit of the law. *Hernandez v. Atlantic Fin. Co.*, 105 Cal. App. 3d 65, 81 (1980). In
8 the present case, despite Defendants contentions that a "loop hole" exists to allow them to pick-up
9 passengers along a route, it is clear that Defendants intentions are to circumvent the CPUC's requirement
10 for PSC licensure. Also, in *Cel-Tech Communications, Inc. v. Los Angeles Cellular Tel. Co.*, 20 Cal. 4th
11 163, 185 (1999), the California Supreme Court addressed the definition of unfairness sympathizing with
12 "the need for California businesses to know, to a reasonable certainty, what conduct California law
13 prohibits and what it permits." If Defendants are allowed to circumvent CPUC requirements in flagrant
14 disregard of CPUC cease and desist demands, the "flood gates" will open for other businesses to operate
15 without regulation. Lastly, under the Unfair Competition Law, Defendants can be found to be guilty of
16 fraudulently deceiving the public by soliciting for and providing a bus service in violation of CPUC
17 licensing requirements. A business act or practice is deemed "fraudulent" under Section 17200 if
18 "members of the public are likely to be deceived." *Committee on Children's Television, Inc. v. General*
19 *Foods Corp.*, 35 Cal. 3d 197, 214 (1983). And, establishing a Section 17200 claim premised on
20 "fraudulent" or deceptive conduct does not require proof of intent, scienter, actual reliance or damages.
21 *Id. at 211*. Thus, Defendants can not rely on a false belief that its practices fall into a self-serving
22 definition that might allow them to operate as a bus service with PSC authority. Defendants do not have
23 PSC authority, and they must be enjoined from operating as such. Given the above, the Court should
24 exercise its equitable powers to protect Plaintiff and the public now, pending the outcome of the action.

25 **B. PLAINTIFF HAS A REASONABLE PROBABILITY OF SUCCEEDING ON THE**
26 **MERITS.**

27 Based on the facts and the declarations filed concurrently herewith, Plaintiff has shown that there
28 is a reasonable probability that it will succeed on the merits. The CPUC "Notice to Cease and Desist"

1 places Defendants in violation by continuing its operations in flagrant disregard of the order. It is
 2 unlikely that Defendants would prevail against the CPUC's authority to demand Defendants to cease and
 3 desist their operations pursuant to CPUC requirements. Pursuant to §17203 of the Business and
 4 Professions Code, Plaintiff is entitled to preliminary and permanent injunctive relief ordering Defendant
 5 to cease this unfair competition, as well as disgorgement of all of Defendants' profits associated with said
 6 unfair competition activities. And, so long as Defendant continues to operate without appropriate license,
 7 Plaintiff and the public continue to be irreparably harmed and damaged.

8 III.

9 CONCLUSION

10 For all of the reasons set forth above, Plaintiff respectfully requests that the Court grant the *ex*
 11 *parte* application as follows: First, Plaintiff requests that the Court issue an immediate Temporary
 12 Restraining Order to stop Defendants from soliciting for and operating bus transportation services to the
 13 49ers games in violation of the CPUC notice to cease and desist. Second, Plaintiff requests that the Court
 14 schedule for briefing and a hearing on a preliminary injunction.



15 Respectfully submitted,

16
 17 By: _____
 18 DANIEL M. MCGEE
 19 Attorney for Plaintiff Silverado
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 26
 27
 28

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 4 San Luis Obispo, CA 93401
 5 (805) 512-9606
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 7 Email: dan@mcgeez.net
 8 Attorney for Plaintiff Silverado Stages, Inc.

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF SAN MATEO

11 SILVERADO STAGES, INC.,
 12 A California Corporation, on behalf of itself and the
 13 general public

14 Plaintiff

15 v.

16 EL CAMINO CHARTER LINES, INC.
 17 (dba EL CAMINO TRAILWAYS), ACCELLAR,
 18 INC., and DOES 1-50 inclusive,

19 Defendants.

Case No.:

**[PROPOSED] ORDER TO SHOW CAUSE
 RE: PRELIMINARY INJUNCTION AND
 TEMPORARY RESTRAINING ORDER**

Hearing

Date: December 10, 2009

Time: 2:00 p.m.

Dept. 11

20 This matter having come before the Court on Plaintiff SILVERADO STAGES, INC.'s ex parte
 21 application for temporary restraining order and order to show cause re preliminary injunction
 22 ("Application") against Defendants EL CAMINO CHARTER LINES, INC., (dba EL CAMINO
 23 TRAILWAYS), and ACCELLAR, INC. The Application was presented to the Court on December 10,
 24 2009, at or about 2:00 p.m. Plaintiff was represented by Daniel M. McGee, Esq.

25 The Court having considered the Application, and any other papers, evidence or arguments
 26 presented by the parties in connection with Plaintiff's Application; and, the Court having found that good
 27 cause exists, the Court orders as follows:

1 IT IS HEREBY ORDERED that Defendants EL CAMINO CHARTER LINES, INC., (dba EL
 2 CAMINO TRAILWAYS) and ACCELAR, INC., and each of them, appear in Department ____ of this
 3 Court, located at 400 County Center, Redwood City, California 94063, on _____, 2009, at
 4 ____ a.m./p.m., or as soon thereafter as the matter may be heard, then and there to show cause, if any
 5 exists, why they and their officers, agents, servants, employees, and representatives, and all persons acting
 6 in concert or participating with them, should not be enjoined and restrained during the pendency of this
 7 action from engaging in, committing, or performing, directly or indirectly, from advertising and operating
 8 a bus service as a passenger stage coach carrier of passengers to/from the San Francisco 49ers football
 9 team games at Candlestick Park.

10 IT IS FURTHER ORDERED that, pending the hearing and determination of the order to show
 11 cause, the Defendants, and each of them, and their respective officers, directors, stockholders, owners,
 12 subsidiaries, agents, servants, employees and attorneys and all those in active concert or participation with
 13 the Defendants, are enjoined and restrained during the pendency of this action from engaging in,
 14 committing, or performing, directly or indirectly, from advertising and operating a bus service as a
 15 passenger stage coach carrier of passengers to/from the San Francisco 49ers football team games at
 16 Candlestick Park.

17 IT IS FURTHER ORDERED that Plaintiff serve this order and moving papers on Defendants as
 18 soon as practicable, and in the same manner as the service of the complaint has been or will be
 19 accomplished. Proof of service must be delivered to the Court hearing the OSC pursuant to California
 20 Rules of Court. The parties shall adhere to the following briefing schedule: Any opposition papers to the
 21 Order to Show Cause shall be filed and served on plaintiff by personal service no later than _____.
 22 Any reply papers to the opposition shall be filed and served on defendants by personal service no later
 23 than _____. The temporary restraining order shall expire on: _____.

25 DATED: _____

By: _____
JUDGE OF THE SUPERIOR COURT

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The Open Top Sightseeing buses afford you the best view and the best picture of San Francisco.

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From the time you board the bus, your Open Top Sightseeing Ticket is valid for two consecutive days for unlimited rides.

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30 stops along the route allow you to spend time and explore areas and sites of your interest.

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WHERE TO BOARD
Hop on our tour buses at any stop along the route or come and see us at stop number 1.

FISHERMAN'S WHARF
Open Top Sightseeing 209 Taylor St. (Corner of Market St.)
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Get the most out of your trip!
Hop on our tour buses at any stop along the route or come and see us at stop number 1.

GOLDEN GATE BRIDGE INCLUDED
When Golden Gate Park is closed due to special events
Hight Tour. Only boarding at stop 17 and 8



More value for your money: Golden Gate Bridge included
More frequent departures • New state-of-the-art OPEN TOP buses • HOP ON HOP OFF • Fully narrated tour
Don't fool yourself — makes sure to board a new red bus on at tour including Golden Gate Bridge — departure every 20 minutes (90 during winter)

2 DAYS unlimited and guided HOP ON - HOP OFF Sightseeing

This is how it works:
• Bus departs every 20 minutes from stop 1 at Fisherman's Wharf
• 30 minutes return to stop 1
• 30 minutes return to stop 1
• 30 minutes return to stop 1

Low departure stops throughout San Francisco
• 30 designated stops throughout San Francisco
• Ticket is valid for unlimited rides for consecutive days
• Small tour buses approximately 1 hour and 30 minutes

Why Open Top Sightseeing?
• One bus per stop throughout San Francisco attractions
• It's charming to participate in a relaxed atmosphere
• Sightseeing at your own pace
• Great for business

Reliable
• Great customer service
• Comfortable seats
• Seats for all ages and everyone

Heating and Air conditioning
• ADA accessible
• Green and eco-friendly fuel

Gold Gate Bridge included
• Gold Gate Bridge (from 17th St. to Sausalito)
• Golden Gate Bridge (from 17th St. to Sausalito)
• Golden Gate Bridge (from 17th St. to Sausalito)

ADULTS ONLY \$35
CHILDREN 4 - 12 YEARS \$18
Includes guide & 90 minutes

Where to buy your ticket
• As any of our 20 tour buses without our brand new Open Top Officer
• Sightseeing Tour buses all make credit cards accepted

Open Top Sightseeing at Fisherman's Wharf 29
• Fisherman's Wharf (Corner of Market St.)
• Open Top Sightseeing 209 Taylor St. (Corner of Market St.)
• Open Top Sightseeing 294 Fisherman's Wharf (Corner of Market St.)
• www.sanfrancisco.com/transportation

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Bay Quackers
is a fun-filled, memorable 80-min Surf & Surf Deck Tour of San Francisco and the Bay.
2 Days unlimited HOP ON HOP OFF Sightseeing Tour + 80 minutes Surf & Surf Deck Tour
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CHILDREN 4-12 years \$34

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While enjoying your time in Golden Gate Park feel free to explore the Academy of Sciences.
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EXHIBIT 5

**WEBSITE DETAILING CUSTOMER
COMMENTS REGARDING SERVICES
USED BY SAN FRANCISCO
DELUXE SIGHTSEEING**



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San Francisco Deluxe Tours: Traveler Reviews

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#477 of 457 attractions in San Francisco

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Reviews you can trust

“AVOID Deluxe Sightseeing Tour”

Las Vegas, Nevada

Mar 20, 2010

2 people found this review helpful

We should have known better.

Having been to SF numerous times, we were anxious to get hop-on/hop-off bus tickets because we usually use those buses as transportation around the city. We saw **San Francisco Deluxe Sightseeing Tour in Union Square**, and we bought their ticket because they told us we could use it for 3 days instead of 2. Lucky us.

That is the only positive thing I have to say about the tour. . . .that they gave us an extra day. The negatives:

1-The stops are not really stops. If you don't tell a driver that you want to get off at a certain point, he'll say, "This is Stop No. 2" as he flies by it. Great. As someone else mentioned, many of the stops are not marked.

2-The bus drivers' commentary is horrible. You can tell that they just wing it as they all tell different stories. Some barely say anything. We had four different drivers, and only two of them said the same thing about one particular landmark. Great.

3- They tell you that the buses will come by every 20-30 minutes. Ha. We waited at their Fisherman's Wharf stop almost an hour one day. Three passengers called the office only to get voice mail.

4- They ask for tips more than once. Please. If you're good enough for a tip, you won't have to ask for it.

5- The buses are so old the door don't close or open by themselves. The drivers put broomsticks in them to keep them closed. The sound systems are horrible. Many seats are torn or faded.

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Here's a hint:

San Francisco's MUNI system offers one-day (\$13), three-day (\$20) and seven-day MUNI passes that are good for the cable cars, trolleys, buses, trains, etc. For the same amount of money that you'd waste on Deluxe Sightseeing, you can get a three-day pass on reliable transportation that will take you all over the city. It's much more worth that unless you really need a guide.

This review is the subjective opinion of a TripAdvisor member and not of TripAdvisor LLC.

Was this review helpful? Yes

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“ Hop on hop off with Deluxe Sightseeing Bus Tour ”

Chester, England

Aug 22, 2009

2 people found this review helpful

As with other reviews of this company, ours was not a good experience. They park at the front of the bus queue at Union Square and appear slightly cheaper than the other tours, but I would recommend that you choose one of the other tours available.

They are poorly organised and offer contradictory, confusing information between the salespeople who are only keen to get your cash. Some of the people can be obnoxious, particularly the woman supervisor.

The buses are of poor quality with dire sound systems, sometimes resorting to a karaoke PA amp.....quality stuff.

The poorly chosen routes around the city seemed to focus on the sleazier areas of the city which are not really suitable for family sightseeing. This, together with dreadful commentary which showed a lack of local knowledge, sealed it for us.

The offer of 48 hours validity of the tickets is also ambiguous - we had to argue the time the tickets were actually bought which showed a lack of trust on their part.

There are much better tour operators - choose with caution.

This review is the subjective opinion of a TripAdvisor member and not of TripAdvisor LLC.

Was this review helpful? Yes

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“ San Francisco Deluxe Sightseeing ”

NYC

Apr 29, 2009

2 people found this review helpful

To Whom It May Concern,

I just recently came back from a fantastic trip to San Francisco. We had such an amazing time - the city offered beauty, culture, great food and the friendliest and most helpful people I've come across in a long time. This is one incredible city!

I usually never write letters, but I needed to inform other visitors to your lovely city not to take the "Hop-On, Hop-Off" Bus Tour with San Francisco Deluxe Sightseeing. They were unprofessional, uncourteous and contentious to deal with from the beginning of our experience with them. The first day we took the tour the young man who was the guide on the bus did not know a lot about the various areas we were

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seeing. He let us know it was his first day and he was new to this company and if we had complaints to call the phone number on the ticket. We've all had first days at work and how nerve-wracking they can be, so no big deal. But then the bus failed to stop at any of the "hop on-hop off" stops they were scheduled to make. The tour guide and the driver were not communicating and a lot of people that wanted to get off were angry they missed their designated stop and had to walk back. The same thing happened to us and we again just chalked it up to this being the young man's first day. No big deal.

The second day, we were told to wait an hour for the bus to take us on a designated route that it only takes once a day. When we returned in an hour, I seemed to have misplaced my ticket. I told the woman who I showed my ticket to earlier that I misplaced my ticket but since she just saw my ticket, could I get on the bus. She said NO. I believe she was the owner. I searched my pockets and found it. The bus arrived 30 minutes late, and I went to get on. She started screaming at me that I didn't have a ticket, that I accused other people of taking it and I could not get on the bus. She was ranting and at one point actually got in my friend's face and was raising her voice. After her husband calmed her down, I was finally let on the bus. Other people on the bus started talking to us about similar experiences they had with the company. Again, the bus failed to stop at the designated stops, and after a lady complained and asked to be let off, the tour guide and another operator called her crazy in front of everyone. It was unclassy behavior from a very unprofessional company.

Please tell tourists to take another sightseeing tour - there are plenty available. Do not take San Francisco Deluxe Sightseeing/ [--]

This review is the subjective opinion of a TripAdvisor member and not of TripAdvisor LLC.

Was this review helpful? Yes

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🔊 Hop on hop off with Deluxe Sightseeing 🔊

Vancouver, Canada

Mar 22, 2009

2 people found this review helpful

I call this the Hop on Hop off Hide and Seek bus. This company offers hop on hop off tours at a slightly lower price than others (20\$ US compared to \$26 or higher). Note they charged an extra \$1 per ticket to pay with VISA. We purchased the tickets at the same spot on Union Square as other companies. The City Tour had all the top spots and we were able to board the Golden Gate tour and get off at Fisherman's Wharf with the intention of picking up City Tour bus later on, at their suggestion. They provided us a map for pick up areas, they promised 30 min. intervals. The guide asked people to sit closer because there was only one small amp at the front, attached by bungee cords to the stair rail. Individual speakers did not work. This was the same on the other bus, too. This guide was friendly and helpful. We went to pick up the City Bus tour in front of Ghirardelli at 2:50 (just missed it by a minute). Note that there is no sign to indicate this is a tour bus stop, we did find this on the map. If we hadn't seen the bus leave we wouldn't have known for sure. We walked to the next stop at Fort Mason, also on map. Once again, no special sign to indicate tour bus stop. Both these stops are MUNI bus stops. Fort Mason stop is opposite a very large high school that gets out at 3:00. Ater at 45 minute wait , we called the company to ask if there was a problem. They said a bus was at Fisherman's Wharf and would be there soon. After 15 more minutes the Golden Gate bus came...wouldn't let us on because we had City Tour tickets. We had spoken to MUNI bus driver by then who helped out by showing us the no. 30 bus across the street and gave us free transfers. City Bus tour came by after over an hour wait. This bus was old, rickety (one seat had the bench broken) and loud. That meant that we missed most of the guide's narrative over shaking and rattling, and we were not far from the little amp. The next day we meant to take the City Bus into North Beach for dinner but that tour stops at 5:30 p.m. You get what you pay for and next time we'll do more research.

This review is the subjective opinion of a TripAdvisor member and not of TripAdvisor LLC.

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PROOF OF SERVICE

I, Kim Hering, declare that I am a resident of the State of California. I am over the age of 18 years and not a party to this matter; that my business address is 500 Capitol Mall, Suite 1500, Sacramento, CA 95814. On October 4 2010, I served a true and accurate copy of the document(s) entitled:

PROTEST OF OPEN TOP SIGHTSEEING SAN FRANCISCO, LLC, A DELAWARE LIMITED LIABILITY COMPANY (PSC-21880) IN OPPOSITION TO APPLICATION OF SAN FRANCISCO DELUXE SIGHTSEEING, LLC, DESIGNATED NO. A. 10-08-025

on the party(ies) in this action by placing said copy(ies) in a sealed envelope, each addressed to the last address(es) given by the party(ies) as follows:

KAREN CLOPTON

Chief Administrative Law Judge
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102-3214

EBI ESULE

Consultant
dba Transportation Information Center
P.O. Box 1789
Hollywood, CA 90078-1789
**[FOR SAN FRANCISCO DELUXE
SIGHTSEEING, LLC]**

PATRICK A. FAULKNER, ESQ.

County Counsel
County of Marin
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PAUL WUERSTLE

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RICHARD CLARK

California Public Utilities Commission
Transportation Enforcement Branch
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DENNIS HERRERA, ESQ.

City of San Francisco
Office of the City Attorney
City Hall, Room 234
San Francisco, CA 94102

SUONG T. LE

California Public Utilities Commission
Transportation Enforcement Branch
Area 2-C
505 Van Ness Avenue
San Francisco, CA 94102-3214

GREG BRAGG

California Highway Patrol
P.O. Box 942898
Sacramento, CA 94289-0001

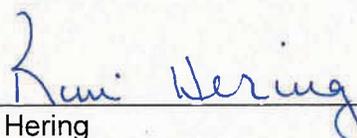
MANANA KOZLOVA COPART

Chief Executive Officer
San Francisco Deluxe
Sightseeing, LLC
88 South Broadway, Unit #2107
Millbrae, CA 94030



(By First Class Mail pursuant to Code of Civil Procedure section 1013.) I am readily familiar with Hanson Bridgett's practices for collecting and processing documents for mailing with the United States Postal Service. Following these ordinary business practices, I placed the above referenced sealed envelope(s) for collection and mailing with the United States Postal Service on the date listed herein at 500 Capitol Mall, Suite 1500, Sacramento, California 95814. The above referenced sealed envelope(s) will be deposited with the United States Postal Service on the date listed herein in the ordinary course of business.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.



Kim Hering