



UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

J. PAUL CHARLEBOIS,
Plaintiffs,
v.
ANGELS BASEBALL, LP; CITY OF
ANAHEIM, ET AL,
Defendants.

CASE NO. SACV 10-0853 DOC
(ANx)

**ORDER GRANTING
PLAINTIFF'S MOTION FOR
CLASS CERTIFICATION**

Before the Court is Plaintiff J. Paul Charlebois ("Plaintiff")'s Motion for Class Certification. After considering the moving, opposing, replying, and supplemental papers, and two rounds of oral argument by counsel in January 2011 and June 2011, the Court hereby GRANTS Plaintiff's Motion.

I. FACTUAL BACKGROUND

In 2003 the current Angels ownership acquired the Major League Baseball team known as the Anaheim Angels. The Stadium underwent several renovations, most recently in 1998. Defendants' Opposition to Plaintiff's Original Motion for Class Certification ("Opp'n"), 2. The

1 City of Anaheim approved these renovations at multiple stages. Plaintiff's Original Motion for
2 Class Certification ("Motion"), 3.

3 Plaintiff is a longtime baseball fan living in Los Angeles County who relies on a
4 wheelchair for mobility. Declaration of J. Paul Charlebois ("Charlebois Decl."), ¶ 2. Plaintiff
5 has attended several Angels home games over the past four years. *Id.* at ¶ 3. This lawsuit arises
6 out of an experience he had on July 12, 2009, when he attended a baseball game (the Yankees
7 vs. Angels) at Anaheim Stadium with Scott Schutzman ("Schutzman") and Eugene Feldman
8 ("Feldman"). *Id.* Plaintiff alleges that he was provided a seat in Section 322 on the Club level
9 and that he expected to sit near that seat and to have the option of using the services provided to
10 other ticket holders in that section. Instead, when Schutzman accompanied him and Feldman to
11 the Section, Plaintiff found that the seats were not wheelchair accessible. After inquiring from
12 the usher about where to obtain wheelchair accessible seating on the Club levels, he was
13 informed that only two seats on the entire Club level were wheelchair accessible, and that both
14 were occupied. According to Plaintiff, the usher then told him that if he wished to use the seats
15 in Section 322, he would need to be carried down to them. Plaintiff found this to be humiliating
16 and insensitive. *Id.* at ¶¶ 5-6. As a result, Plaintiff went to the Terrace level, where he knew
17 there were accessible seats, but missed much of the game during the time it took to get there.
18 Furthermore, Plaintiff alleges that the sight lines in the Terrace level were inferior, as they were
19 in the last row of the level. *Id.* at 6. There were also no waiting services in that level, as on the
20 Club level. *Id.*

21 Plaintiff further alleges that Defendants Angels Baseball LP ("Angels") and Defendant
22 City of Anaheim ("Anaheim") (collectively "Defendants") fail to provide a reasonable means for
23 wheelchair users to purchase or exchange wheelchair accessible seats. There is no way for
24 wheelchair users to purchase accessible seats electronically or to exchange tickets without
25 appearing physically at the box office or mailing the tickets to the Stadium before the game. *See*
26 Declaration of Eugene Feldman ("Feldman Decl.") at ¶¶ 4, 6.

27 Plaintiff avers that Defendants have violated the law by failing and refusing to properly
28 disperse wheelchair and companion seating throughout the Stadium. Motion, 3-4. More

1 specifically, Plaintiff argues that the Stadium only includes two wheelchair accessible seats on
2 the entire Club level section—a section that also provides waiting services, which are particularly
3 valuable to those in wheelchairs. *Id.* at 4. Plaintiff argues that that small number of seats falls
4 significantly below the Americans with Disabilities Act (“ADA”) requirement that each level
5 have 1% wheelchair accessible seats available. *See* Corrected Declaration of Mark J. Mazz
6 (“Mazz Decl.”), 6. According to Plaintiff’s evidence, Angels’ Stadium has a total of 287
7 wheelchair spaces, but is required under the ADA to have at least 439 spaces. *Id.* at 7. Plaintiff
8 also notes that two levels in the Stadium have no accessible seating, and that 64% of the
9 wheelchair accessible seating is in the Terrace level, where the views are obstructed. Motion, 4.

10 Plaintiff’s Complaint alleges violations of the Unruh Civil Rights Act, Cal. Civ. Code §§
11 51-52; the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.*; the Disabled Persons Act,
12 Cal. Civ. Code § 54.1; the California Business and Professions Code § 17200; and alleges
13 discrimination by a state funded program or activity under Cal. Gov. Code § 1135. The class
14 claims are “those disability related claims” in the Complaint: (1) that the Stadium fails to provide
15 adequate wheelchair accessible seating throughout the Stadium and in the Club level; (2) that
16 Defendants lack an accessible ticketing system for wheelchair users to purchase and exchange
17 accessible seats; and (3) that Defendants failed to train all of its employees in order to properly
18 accommodate the requests of wheelchair users. In its present Motion, Plaintiff asks the Court to
19 certify its class so that Plaintiff may proceed to seek injunctive relief.

20 II. LEGAL STANDARD

21 Federal Rule of Civil Procedure 23 governs class actions. Fed. R. Civ. P. 23. A party
22 seeking class certification must demonstrate the following prerequisites: “(1) numerosity of
23 plaintiffs; (2) common questions of law or fact predominate; (3) the named plaintiff’s claims and
24 defenses are typical; and (4) the named plaintiff can adequately protect the interests of the class.”
25 *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992) (citing Fed. R. Civ. P. 23(a)).
26 A district court must engage in a “rigorous analysis” to determine whether the party seeking
27 certification has met the prerequisites of Rule 23(a). *Valentino v. Carter-Wallace, Inc.*, 97 F.3d
28 1227, 1233 (9th Cir. 1996) (quoting *In re Am. Med. Sys.*, 75 F.3d 1069, 1079 (6th Cir. 1996)).

1 The party may not rest on mere allegations, but must provide facts to satisfy these requirements.
2 *Doninger v. Pac. Northwest Bell, Inc.*, 564 F.2d 1304, 1309 (9th Cir. 1977).

3 In addition to satisfying the four prerequisites of numerosity, commonality, typicality, and
4 adequacy, a party must also demonstrate either: (1) a risk that separate actions would create
5 incompatible standards of conduct for the defendant or prejudice individual class members not
6 parties to the action; or (2) the defendant has treated the members of the class as a class, making
7 appropriate injunctive or declaratory relief with respect to the class as a whole; or (3) common
8 questions of law or fact predominate over questions affecting individual members and that a
9 class action is a superior method for fairly and efficiently adjudicating the action. Fed. R. Civ.
10 P. 23(b).

11 The decision to grant or deny a motion for class certification is committed to the trial
12 court's broad discretion. *See, e.g., Yamamoto v. Omiya*, 564 F.2d 1319, 1325 (9th Cir. 1977). In
13 determining whether a plaintiff has satisfied the requirements of Rule 23, a court may not inquire
14 into whether the plaintiff will prevail on the merits of the case. *Eisen v. Carlisle & Jacquelin*,
15 417 U.S. 156, 177-78, 94 S. Ct. 2410 (1974). However, though a court must accept the
16 substantive allegations in the complaint as true, *In re Coordinated Pretrial Proceedings in*
17 *Petroleum Prods. Antitrust Litig.*, 691 F.2d 1335, 1342 (9th Cir. 1982), in some cases it may be
18 necessary for the court to look beyond the pleadings to determine whether the plaintiff has
19 satisfied the certification requirements. *Gen. Tel. Co. of S.W. v. Falcon*, 457 U.S. 147, 160, 102
20 S. Ct. 2364 (1982).

21 **III. DISCUSSION**

22 **A. Ascertainability**

23 In order to properly ascertain a class, the definition must specify a "distinct group of
24 plaintiffs whose members [can] be identified with particularity." *Campbell v.*
25 *PricewaterhouseCoopers, LLP*, 253 F.R.D. 586, 593 (E.D. Cal. 2008) (quoting *Lerwill v. Inflight*
26 *Motion Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir. 1978)). "A class definition is sufficient if the
27 description of the class is 'definite enough so that it is administratively feasible for the court to
28 ascertain whether an individual is a member.'" *In re TFT-LCD (Flat Panel) Antitrust Litigation*,

1 267 F.R.D. 583 (N.D. Cal. 2010) (quoting *O'Connor v. Boeing North American Inc.*, 184 F.R.D.
2 311, 319 (C.D.Cal.1998)). Objective criteria must be used to ascertain class members. 5 James
3 W. Moore, Moore's Federal Practice, § 23.21[1].

4 Plaintiff's Motion defines the Proposed Class as follows:

5 Any mobility impaired person who has attended or desires to attend a baseball
6 game at the Stadium but who has been or may be denied equal access to
7 wheelchair accessible seating, amenities, privileges, services and facilities of the
8 Stadium on account of his/her disability.

9 Defendants argue that this definition does not provide for an ascertainable class. Defendants
10 first insist that the term "mobility impaired person" will necessarily demand a factualized inquiry
11 into each class member's disability. Opp'n, 5. In his reply brief, Plaintiff refutes Defendants'
12 objection but also proposes an amended version of his class definition for the Court's
13 consideration:

14 Any *wheelchair user* who has attended or desires to attend a baseball game at the
15 Stadium but who has been or may be denied equal access to wheelchair accessible
16 seating, amenities, privileges, services and facilities of the Stadium on account of
17 his/her disability.

18 Reply, 3 (emphasis added).

19 As a threshold matter, the Court can consider Plaintiff's amended class definition. *See*
20 *Greenwood v. Compucredit Corp.* 2010 WL 291842 (N.D. Cal. 2010) (noting that the plaintiffs
21 amended their class definition in their reply brief); *Briggs v. U.S.*, 2009 WL 113387 (N.D. Cal.
22 2009) (considering language plaintiff inserted in a reply brief over the language in the motion);
23 *Mortimer v. F.D.I.C.*, 197 F.R.D. 432 (W.D. Wash., 2000) (granting a motion for class
24 certification on the condition that the parties submit further briefing, noting that "[i]n his reply
25 brief, Plaintiff has changed his proposed definition of the class"); *Conant v. McCaffrey*, 172
26 F.R.D. 681, 693 (N.D. Cal. 1997) (finding that plaintiffs "substantially alleviated" the problem
27 resulting from an overly broad class definition by "revising the class definition in their reply
28 brief"). Furthermore, the Court is free to limit the class definition or give Plaintiffs leave to do

1 so; as such there is no reason the Court should not consider the language Plaintiff has already
2 offered by way of amendment. *See Kamar v. Radio Shack Corp.*, 254 F.R.D. 387, 391 n.2 (C.D.
3 Cal. 2008) (“It is well within the court’s authority to redefine Plaintiffs’ proposed class”).

4 The Court finds that this definition adjusts for Defendants’ concerns about the ambiguity
5 of the term “mobility impaired” and sufficiently narrows the class to those whose experiences
6 closely resemble that of Plaintiff. Defendants articulated specifically that language like “persons
7 who use wheelchairs because of a disability” would be a “more objective standard.” Opp’n, 5.
8 Though Plaintiff’s amended language excludes the latter half of Defendants’ language, the Court
9 believes that Defendants’ language would actually require more of a factual analysis than
10 Plaintiff’s latest terminology.

11 Defendants also argue that the proposed class definition’s inclusion of person who
12 “desire” to attend Angel Stadium and “may be” denied equal access in the future hinges on a
13 class member’s state of mind. *Id.* This argument, pardon the pun, strikes out. Plaintiff’s
14 language simply aims to include all future class members who have not yet been injured. Reply,
15 3. Such inclusions are common in class actions; at the time at which future class members
16 emerge, their claims will necessarily be ripe. *See, e.g., Rodriguez v. Hayes*, 591 F.3d 1105, 1118
17 (9th Cir. 2010) (“The inclusion of future class members in a class is not itself unusual or
18 objectionable.”).

19 Nevertheless, Plaintiff once again supplies amended language to more clearly state the
20 class definition in a future tense, rather than in what Defendants classify as a “state of mind”
21 defense:

22 Any wheelchair user *who has attended or will attend* a baseball game at the
23 Stadium but who has been or will be denied equal access to wheelchair accessible
24 seating, amenities, privileges, services and facilities of the Stadium on account of
25 his/her disability.

26 Reply, 4 n.1 (emphasis added). The Court prefers this modified language as it clarifies that
27 Plaintiff is not defining a class by examining intent, but rather is specifying that future class
28

1 members are included.¹

2 Finally, “[t]he fact that class members will be required to submit some information in
3 order to determine whether they are members of the class does not render the class definition
4 unascertainable.” *In re TFT-LCD (Flat Panel) Antitrust Litigation*, 267 F.R.D. 583 (N.D. Cal.
5 2010). The Court therefore finds that Defendants’ objections to Plaintiff’s uncertainty about the
6 class members lack merit.

7 **B. Numerosity**

8 The requirement that “the class [be] so numerous that joinder of all members is
9 impractical” is known as the “numerosity” requirement. Fed. R. Civ. P. 23(a)(1). There is no
10 specific minimum number of plaintiffs asserted to obtain class certification; “[w]hether joinder
11 [is] impracticable depends on the facts and circumstances of each case and does not, as a matter
12 of law, require the existence of any specific minimum number of class members.” *Arnold v.*
13 *United Artists Theatre Circuit, Inc.*, 158 F.R.D. 439, 448 (N.D. Cal. 1994); *see also Espinoza v.*
14 *Domino’s Pizza, LLC*, 2009 WL 882845, *6 (C.D. Cal. Feb. 18, 2009). Nonetheless, courts
15 have recognized that the numerosity requirement is generally satisfied when the class is in
16 excess of forty members. *See Jordan v. Los Angeles County*, 669 F.2d 1311, 1319 (9th Cir.
17 1982)(finding that 39 individuals was likely sufficient on basis of number alone), *vacated on*
18 *other grounds, County of Los Angeles v. Jordan*, 459 U.S. 810, 103 S. Ct. 35 (1982); *Slaven v.*
19 *BP America, Inc.*, 190 F.R.D. 649, 654 (C.D. Cal. 2000); *see also e.g. Gay v. Waiters’ & Dairy*
20 *Lunchmen’s Union* , 549 F.2d 1330 (9th Cir. 1997). Furthermore, “[w]here the exact size of the
21 class is unknown but general knowledge and common sense indicate that it is large, the
22 numerosity requirement is satisfied.” *Orantes-Hernandez v. Smith*, 541 F. Supp. 351, 370 (C.D.
23 Cal. 1982); *see also In re Abbott Laboratories Norvir Anti-Trust Litigation*, 2007 WL 1689899,
24 *6 (N.D. Cal.2007) (quoting *Orantes-Hernandez*). Indeed, “[t]he sheer number of potential
25 class members justifies [a] Court’s finding” of numerosity. *Tchoboian v. Parking Concepts*,

26
27 ¹That being said, the Court agrees with Plaintiff that the “desire” referenced in the
28 original definition of the class does not call for speculative state of mind inquiries akin to
those in the cases cited by Defendants.

1 *Inc.*, 2009 WL 2169883, *4 (C.D. Cal. 2009).

2 Moreover, the size of the class is not the only relevant factor in determining that joinder is
3 impracticable. *Jordan*, 669 F.2d at 1319. In *Jordan*, the Ninth Circuit noted that in cases
4 involving a smaller number of class members, other factors can weigh in favor of finding
5 numerosity, “such as the geographical diversity of class members, the ability of individual
6 claimants to institute separate suits, and whether injunctive or declaratory relief is sought, should
7 be considered in determining impracticability of joinder.” *Id.* (citing 1 H. Newberg, *Class*
8 *Actions* § 1105 (1977)).

9 In his initial Motion, Plaintiff only named four declarations of class members, but he
10 provided a great deal of statistics suggesting that there are likely to be far more than forty class
11 members, given the fact that there are over 2,000 wheelchair users who purchased tickets to an
12 Angels baseball game at the Stadium in the past two years. *See* Chasworth Decl., 5; Plaintiff’s
13 Supplemental Motion, (“Supp. Motion”), 1. Plaintiff argued that even if just 15% of wheelchair
14 accessible seats are sold at the Stadium each year, there would still be over 3,000 class
15 members—and more likely, will be anywhere from 4,500 to over 280,000 people. *See* Chasworth
16 Decl.; Helene Susan Weiss Declaration; Mazz Decl. ¶¶ 25-26. These types of data are
17 frequently relied upon in finding that there is numerosity for class certification. *See, e.g.*
18 *National Federation of the Blind v. Target*, 582 F. Supp.2d 1185 (N.D. Cal. 2007) (relying upon
19 census data to find that thousands of class members were likely based on evidence of the number
20 of blind people in the country).

21 Though the Court tentatively found numerosity at the January hearing on Plaintiff’s
22 Motion for Class Certification, the Court nonetheless requested that the parties cooperate to
23 develop a survey to be sent to potential class members to help the Court in determining whether
24 there is numerosity. The parties agreed to conduct a survey (“shared survey”) through the help
25 of Disability Rights Legal Center (“DRLC”) to be sent to those who purchased or may have
26 purchased wheelchair-accessible seating in the 2009-2010 seasons.

27 The survey included thirteen agreed-upon questions soliciting information about the
28 survey respondents’ general experience at Angels’ games and Stadium and their level of

1 satisfaction with the seating options. It was sent to a total of 2,050 people, most of whom had
2 been identified by Defendants as having purchased accessible seating during the 2009-2010
3 seasons. Of these 2,050, approximately 30 were wheelchair users identified by DRLC's
4 database. Declaration of Maggie Hui ("Hui Decl."), ¶ 2. The DRLC received 206 responses to
5 the survey, and prepared a report summarizing the responses. Exh. A to Hui Decl. The parties
6 heavily dispute the implications of that survey. Plaintiff argues that the results of the shared
7 survey suggest that more than forty plaintiffs will emerge. He emphasizes that fifty-eight people
8 responding to the shared survey expressed some level of dissatisfaction with the wheelchair
9 seating options. Defendants, however, point to the fact that the overall percentages of survey
10 respondents indicating dissatisfaction with accessibility was relatively low.

11 In addition to having differing interpretations of the survey results, each party has also
12 collected additional data without consulting with the opposing side. Unbeknownst to Plaintiff,
13 Defendants asked DRLC to prepare two additional reports ("sub-reports") further breaking down
14 the survey results for the 16 individuals who responded unfavorably to question 3 (involving
15 overall experiences at Angels' Stadium) and the 58 people who responded unfavorably to
16 question 8 (rating satisfaction with wheelchair accessible seating options). Meanwhile, Plaintiff
17 conducted his own independent outreach to obtain additional surveys ("independent survey") for
18 an additional 29 people. Plaintiff's counsel's staff then interviewed additional individuals and
19 completed affidavits referencing those conversations. Through the contact information provided
20 by all of the survey responses, as well as his prior data, Plaintiff obtained a total of 29
21 declarations of wheelchair-users. In total, Plaintiff purports to have identified 48 individuals
22 who have given statements of some sort indicating they are potential class members. *See*
23 Supplemental Declaration of V. James DeSimone ("Supp. DeSimone Decl."), 3-4. Both parties
24 accuse the other of hiding their independently-collected data until the week before the Court's
25 second hearing on Plaintiff's Motion.

26 Data Analysis

27 Defendants purport to defeat Plaintiff's case for numerosity with their sub-reports.
28 However, some of the data from the sub-reports may even support a finding of numerosity. For

1 example, Defendants argue that, according to their results, only 31 people generally could not
2 get a ticket in the section of the stadium they preferred. Hui Decl., Exh. C, question 9.
3 However, that mischaracterizes the survey results. It is true that 31 people responded to
4 Defendants' independent sub-survey by responding with a 1 and 2 rating of how often a ticket
5 was available for purchase in their preferred section of the stadium (on a scale of 1 to 5, with 1
6 being never). Yet an additional 18 people responded with a score of 3, suggesting that on at
7 least one occasion they were unable to find seating in their preferred section. *Id.* This may
8 mean that they could be class members as well, depending on their experiences. This is just one
9 example of the way in which Defendants' sub-survey does not necessarily discredit Plaintiff's
10 argument in favor of numerosity. More importantly, the survey suffers from inherent design
11 flaws; respondents answer in what is necessarily a subjective scale. A response of "2" from one
12 respondent may be the equivalent of a "3" from another. As a result, the data are not as useful as
13 they could have been—a reality that ultimately favors a heavier reliance on the more elaborate
14 responses obtained from declarations as opposed to surveys.

15 Moreover, to the extent that Defendants point to low *percentages* of dissatisfaction across
16 survey responses, they miss the point. It may or may not be true that many or even most
17 respondents were generally satisfied with the accessibility options at the Stadium. But such a
18 focus is a red herring; in order to obtain class certification or, more specifically, to show
19 numerosity, a plaintiff need not show that a certain threshold percentage of potential class
20 members have suffered or will suffer a harm. Rather, a plaintiff must demonstrate that he is
21 likely to obtain a sufficient number of class members to make joinder infeasible, or alternatively,
22 must show that other factors weigh in favor of a finding of impracticability of joinder. *Jordan*,
23 669 F.2d at 1319.

24 Nonetheless, it is indisputable that Plaintiff's results from his independent outreach
25 efforts yield much stronger support for numerosity. Of the 29 additional people who received
26 Plaintiff's independent survey, 17 expressed dissatisfaction with Angels' wheelchair seating
27 options. This is, of course, a much higher percentage than found in the shared survey results.
28 Furthermore, Plaintiff contends that all of these data are necessarily limited by the fact that they

1 focused on the 2009-2010 season, despite the fact that the class definition includes plaintiffs
2 from 2006 to the present. *See* Supp. Motion, 4 n.3. Likewise, the Court believes that the
3 minimal sample size surveyed of the total population eligible for class membership suggests a
4 likelihood of more than forty plaintiffs.² Furthermore, as mentioned above, the declarations lend
5 support for the idea that even where a respondent may have not indicated total dissatisfaction
6 with their experiences at the Stadium on the survey, they may still have faced experiences
7 sufficient to render them a class member. For example, one declaration by a wheelchair-user
8 explains that the declarant “has never had a really bad experience” in terms of service at the
9 Stadium, but then proceeds to describe significant barriers to equal access at the Stadium. *See*
10 Declaration of Mary Ann Bennett. Likewise, another declaration reveals an undoubtedly sunny
11 disposition towards Angels’ games by a fan who “enjoy[s] attending Angels’ games as often as
12 [he] can” but then describes never being able to obtain a seat in the Club Level, where there
13 would be a “wonderful atmosphere and a great day at the ballpark.” Declaration of David
14 Dodds, ¶¶ 3, 5. Other survey respondents who were not interviewed may have indicated overall
15 satisfaction with the Stadium and their experiences in the survey, but that may reveal more about
16 their team loyalty than whether or not they had an unequal experience that would render them
17 class members. In other words, survey results may mask true experiences of discrimination.

18 However, as debated heavily at the second hearing on Plaintiff’s Motion, the results of
19 Plaintiff’s independent outreach are less reliable than the shared survey results. To start,
20 Plaintiff did not notify Defendants of this independent outreach effort until just a week before
21 the second hearing date. Defendants’ Report of Survey Results in Re Plaintiff’s Motion for
22 Class Certification (“Defendants’ Supp. Response”), 3. The Court finds this concern to be de
23 minimus, however, given that Defendants also did not provide notice of their additional DRLC
24 sub-reports on the shared survey results until that same time. Next, Defendants object to the fact
25 that Plaintiff did not seek court approval prior to collecting additional survey responses and
26

27 ² Though, once again, the Court reiterates that Plaintiffs need not necessarily show
28 forty class members to obtain class certification.

1 obtaining declarations, in spite of the fact that the Court had explicitly authorized only the shared
2 survey conducted cooperatively by the parties. Though, at oral arguments, Plaintiff's counsel
3 strenuously defended his obligation to collect data to support his client's Motion—with which the
4 Court agreed—it is nonetheless striking that Plaintiff's counsel evaded Court supervision of a
5 process that the Court itself had requested. Nonetheless, the primary concern of the Court is the
6 fact that Plaintiff's independent results are arguably tainted in the way they were collected.

7 Plaintiff's independent survey included an introduction stating:

8 Please assist us in our effort to improve wheelchair accessible seating at Angels
9 Stadium. As part of our outreach effort, we are conducting a survey to assess
10 wheelchair users' experience at Angels Stadium. Currently there are only 2
11 wheelchair accessible seats out of 3,733 on the Club Level. This is the only level
12 that provides waiter and waitress service to ticket holders, a service very important
13 to those with limited mobility. We would appreciate it if you would assist us in
14 our outreach efforts by completing this survey.

15 Defendants argue that such an introduction necessarily biased respondents to believe that the
16 Stadium has inadequate accommodations for wheelchair users. Plaintiff insists that all the
17 information contained in the introductory statement is factually accurate, and that, as a result, it
18 cannot possibly mislead respondents. Yet Plaintiff misses the point. The question is not
19 whether the facts references are accurate or biased; the question is whether the emphasis—or even
20 inclusion-- of those particular facts just before respondents completed a survey suggested to
21 them the very answer which the survey purported to seek. Plaintiff's introduction is the
22 equivalent of telling baseball fans that “the only dessert offering served at the concession stands
23 is cotton candy” and that “enjoying dessert is an important part of many people's experiences at
24 baseball games” but then asking them their opinions on the available food selections.
25 Obviously, the inclusion of that introductory information impacts the responses people will
26 provide.

27 Likewise, Plaintiff's emphasis of certain facts before its independent survey necessarily
28 taints the responses—indeed, Plaintiff's introduction did not merely state objectively that there

1 are two wheelchair accessible seats out of 3,733, but instead said there were “only 2” such seats.
2 This phrasing and emphasis certainly suggests a conclusion that this number is insufficient. As a
3 result, survey respondents were likely influenced by the introduction and were more likely to
4 have responded negatively to their levels of satisfaction with Angels’ Stadium than if they had
5 not read such a biased introduction before the survey.

6 Finally, the Court has deep concerns with the unreliability of many of the declarations
7 completed by Plaintiff’s counsel’s law clerks and paralegals. Many such declarations were
8 unsigned, or were not even written by the declarants themselves, but were recounted by memory
9 of counsel’s staff after speaking with declarants. *See, e.g.* Declaration of Antoine Pitts (“Pitts
10 Decl.”), ¶ 12 (referencing a phone conversation between a law clerk and a “Man From Avalon
11 California”).³ Though Plaintiff is not obligated to comply with Federal Rules of Evidence for its
12 evidence in support of class certification, much of the evidence submitted lack any indicia of
13 reliability. The Court also does not find it appropriate to find class certification on the basis of
14 such unreliable, hearsay-based declarations. Therefore, the Court declines to consider any
15 evidence submitted by Plaintiff that comes by way of an unsigned declaration or of a
16 recollection of counsel or its staff.

17 As for the remaining supplemental evidence submitted by Plaintiff by way of signed
18 declarations, the Court does not exclude it entirely but affords it diminished weight given the
19 circumstances under which it was collected. Though Defendants’ counsel insisted that such
20 evidence must be excluded, the plain and simple truth is that such evidence certainly lends
21 further support to what the Court already believed was a sufficient showing of numerosity. To
22 exclude all of Plaintiff’s supplemental evidence altogether would be to undercut the likelihood
23 of a class numerosity which the Court already believed existed and now has a stronger basis for
24 finding.

25
26 ³ The Court by no means intends to discredit or disrespect the undoubtedly hard
27 work conducted by counsel’s staff--and law clerks in particular--to obtain the
28 supplemental support for Plaintiff’s Motion. Nonetheless, the Court will not grant class
certification on reliance of such unsubstantiated and unreliable evidence.

1 Defendants also challenge the sufficiency of the declarations that the Court does consider,
2 relying heavily on *Celano v. Marriot Int'l, Inc.* 242 F.R.D. 544 (N.D. Cal. 2007). In that case,
3 the court found that declarations from 21 individuals who had been unable to play golf in a hotel
4 were insufficient to establish numerosity. *Id.* at 549. But part of the court's reluctance to rely
5 upon the statistical data supplied by the plaintiff in that case had to do with the fact that the golf
6 course at issue was a "high-end" one, so there was little reason to believe that people with
7 disabilities would necessarily choose to play there. *Id.* Furthermore, the court in *Celano*
8 distinguished its finding from the *Arnold* case, which found statistical, speculative data sufficient
9 in establishing numerosity in a suit involving accessibility of a movie theater because
10 "movie-going is a more affordable and widespread activity than golf" *Arnold v. United*
11 *Artists Theatre Circuit, Inc.*, 158 F.R.D. 439, 448 (N.D. Cal.1994).

12 This Court believes that attending a baseball game is more akin to attending a movie than
13 it is to going to a golf course. Baseball is often referenced as America's favorite past-time, and
14 given that Plaintiff's class includes future attendees, it is reasonable to presume that many
15 wheelchair-using baseball fans will emerge as future class members based on the statistical
16 evidence provided by Plaintiff through the shared survey and, to a limited extent, Plaintiff's
17 supplemental data. Therefore, like the court in *Arnold* noted, "[b]y the very nature of this class,
18 its members are unknown and cannot be readily identified" and the numerosity factor can be met
19 based on statistical, speculative evidence.

20 Upon careful consideration of the issues raised above, the Court finds that Plaintiff has
21 demonstrated numerosity for purposes of class certification. The declarations submitted—albeit
22 not all of them given equal weight by this Court—show that numerosity has been established.
23 This is especially true in light of the fact that numerosity requirements are often "relaxed" when
24 only injunctive or declaratory relief is sought. *See Sueoka v. U.S.*, 101 Fed. Appx. 649, 653 (9th
25 Cir. 2004) (quoting 5 *Moor's Federal Practice* § 23.22[3][b]) (finding that a district court abused
26 its discretion in not finding sufficient numerosity). Given the fact that the data sampled did not
27 represent the entire time-frame for class membership, the Court is confident that many more
28 class members will emerge. Furthermore, the Court reemphasizes the fact that the nature of the

1 request sought in this action—injunctive relief, rather than damages of any sort—as well as the
2 likelihood of broad diversity of geographical locations of class members, who may have
3 attended games while visiting the Los Angeles area—weigh in favor of finding an
4 impracticability of joinder that is sufficient to establish numerosity. *See Jordan*, 669 F.2d at
5 1319. Therefore, Plaintiff has successfully demonstrated numerosity.

6 **B. Commonality**

7 Commonality exists where there are “questions of law or fact common to the class.” Fed.
8 R. Civ. P. 23 (a)(2). This commonality analysis is less rigorous than the companion requirement
9 of Rule 23(b)(3). *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998); *Local Joint*
10 *Exec. Bd. of Culinary Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1162 n.3
11 (9th Cir. 2001). “All questions of fact and law need not be common to satisfy this rule. The
12 existence of shared legal issues with divergent factual predicates is sufficient, as is a common
13 core of salient facts coupled with disparate legal remedies within the class.” *Hanlon*, 150 F.3d at
14 1019; *accord Staton v. Boeing Co.*, 327 F.3d 983, 952 (9th Cir. 2003).

15 Defendants did not challenge the commonality prong at this stage. *See Opp’n*, at 6 n.1.
16 Furthermore, the standard for commonality is easily met, since wheelchair users are likely to be
17 affected in the same ways by a lack of access to appropriate seating. *See Arnold*, 158 F.R.D. at
18 449 (“Inadequate wheelchair accommodations at particular theaters are very likely to affect all
19 wheelchair-users in the same way.”). Since the suit challenges Defendants’ policies towards
20 wheelchair users, common issues will undoubtedly be at issue. More specifically, Plaintiff has
21 raised a number of issues that will be common to all class members: the Stadium’s failure to
22 comply with federal guidelines about the placement of wheelchair seating; a failure by
23 Defendants to allow for wheelchair users and their companions to purchase or exchange tickets
24 to accommodate them; and a failure to train ushers appropriately to accommodate wheelchair
25 users.

26 **C. Typicality**

27 Typicality under Rule 23(a)(3) means that the class representative’s claims must be
28 typical of the class. “The purpose of the typicality requirement is to assure that the interest of

1 the named representative aligns with the interests of the class.” *Hanon v. Dataproducts Corp.*,
2 976 F.2d 497, 508 (9th Cir. 1992). “Under the rule’s permissive standards, the representative
3 claims are ‘typical’ if they are reasonably co-extensive with those of absent class members; they
4 need not be substantially identical.” *Hanlon*, 150 F.3d at 1020.

5 Once again, Defendants do not challenge the typicality of Plaintiff’s claims. Opp’n, 7,
6 n.1. Here, typicality is met as well, given that Plaintiff is challenging the accommodations of the
7 Stadium and the Stadium’s uniform policies towards wheelchair-users. *See Arnold*, 158 F.R.D. at
8 450 (noting that in a public accommodations suit involving the “legal permissibility of
9 architectural design features . . . any class member could satisfy the typicality requirement for
10 class representation”).

11 **D. Adequacy of Representation**

12 An adequate representative is one who “will fairly and adequately protect the interests of
13 the class.” Fed. R. Civ. P. 23(a)(4). Due process requires that absent class members have an
14 adequate representative. *See Hansberry v. Lee*, 311 U.S. 32, 43, 61 S. Ct. 115 (1940). A
15 representative is adequate where (a) there is no conflict of interest between the representative and
16 its counsel and absent class members, and (b) the representative and its counsel will “pursue the
17 action vigorously on behalf of the class.” *Hanlon*, 150 F.3d at 120 (citing *Lerwill v. Inflight Motion*
18 *Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir. 1978)).

19 Defendants raise no objection to the adequacy of the representation. Opp’n, at 6, n.1. As
20 the Declaration of V. James DeSimone establishes, Plaintiff’s counsel is both experienced in
21 disability and discrimination cases, as well as class action lawsuits—and recently was honored as
22 one of the Top Ten Employment Attorneys. *See DeSimone Declaration* at ¶ 4-13. Though this is
23 not an employment case, the Court believes that Plaintiff’s choice of counsel is adequate.

24 **E. Fed. R. Civ. P. 23(b)**

25 Plaintiff asserts that he meets the requirements under Rule 23(b) through Rule 23(b)(2).
26 Fed. R. Civ. P. 23(b)(2), which requires a showing that “the party opposing the class has acted or
27 refused to act on grounds that apply generally to the class, so that final injunctive relief or
28

1 corresponding declaratory relief is appropriate respecting the class as a whole” Fed. R. Civ.
2 P. 23(b)(2). Plaintiff alleges that Defendants have failed to comply with the ADA, and that they
3 have refused to comply with federal guidelines; have refused to create an appropriate system
4 through which wheelchair users can purchase or exchange tickets on the team’s website; and
5 have maintained a policy of not adequately training their ushers about proper accommodations
6 for wheelchair users at the Stadium. Plaintiff therefore has requested an injunction and
7 declaratory relief to force Defendants to comply with federal and state requirements to
8 accommodate persons with disabilities. Plaintiff’s allegations about Defendants apply to all class
9 members.

10 Defendants argue that Plaintiff has not complied with Rule 23(b)(2) because Plaintiff
11 could instead bring an individual action for injunctive relief, rather than a class action. The
12 Court declines to hold that plaintiffs are precluded from bringing class actions simply because
13 they request injunctive relief alone. Indeed, to do so would deem moot the language of Rule
14 23(b)(2)-- which specifically address class action lawsuits requesting injunctive relief. Indeed,
15 class certification is not withheld just because a class action is not the only means through which
16 the litigation could proceed. *See Park v. Ralph’s Grocery Co.*, 254 F.R.D. 112, 123 (C.D. Cal.
17 2008) (responding to a defendant’s argument that class treatment would “add no benefit” to the
18 case by “refus[ing] to deny certification simply because class adjudication is not strictly
19 necessary in this case”); *see also Disability Rights Council of Greater Washington v.*
20 *Washington Metropolitan Area Transit Authority*, 239 F.R.D. 9, 23 (D.D.C. 2006.) (“As
21 numerous courts have observed, whether certification is “necessary” is not a question Rule 23
22 directs the courts to consider.”); *Littlewolf v. Hodel*, 681 F. Supp. 929 (D.D.C.1988) (finding that
23 “the idea that a class may be certified only if ‘necessary’ flies in the face of the Federal Rules”).

24 **F. Class Counsel**

25 For the reasons stated above under Adequacy of Representation, the Court designates
26 Plaintiff’s counsel at Schonbrun Desimone Seplow Harris & Hoffman LLP as class counsel
27 pursuant to Rule 23(g)(1)(A). The Rule requires courts to consider “(i) the work counsel has
28 done in identifying or investigating potential claims in the action; (ii) counsel’s experience in

1 handling class actions, other complex litigation, and the types of claims asserted in the action;
2 (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit
3 to representing the class.” FED. R. CIV. P. 23(g)(1)(A). Counsel appear to have diligently
4 pursued this action and have met with experts and class members in order to investigate the
5 claim. *See* DeSimone Decl. As described above, counsel has been recognized for its
6 experience in class actions, thus earning the Court’s confidence as to both the second and third
7 prongs of the Rule. *Id.* at ¶¶ 5-10. Finally, counsel assures the Court that it has already and will
8 continue to commit adequate resources to the pursuit of this litigation. *Id.* at ¶¶ 19-23.

9
10 **IV. DISPOSITION**

11 For the reasons stated above, the Court holds that:

- 12 1. Certification is GRANTED. The class shall be defined as: Any wheelchair user
13 who has attended or will attend a baseball game at the Stadium but who has been
14 or will be denied equal access to wheelchair accessible seating, amenities,
15 privileges, services and facilities of the Stadium on account of his/her disability.
- 16 2. Plaintiff’s counsel of Schonbrun Desimone Seplow Harris & Hoffman LLP is
17 designated as class counsel.

18
19
20 IT IS SO ORDERED.

21 DATED: June 30, 2011

22
23
24 _____
25 DAVID O. CARTER

26 
27 United States District Judge
28