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16
17 BEFORE THE UNITED STATES DEPARTMENT OF TRANSPORTATION
18 FEDERAL TRANSIT ADMINISTRATION

19
20 BUS RIDERS UNION;) COMPLAINT UNDER TITLE VI OF THE
LABOR/COMMUNITY STRATEGY) CIVIL RIGHTS ACTION OF 1964,
21 CENTER, KOREATOWN IMMIGRANT) EXECUTIVE ORDER 12898, AND
WORKERS ALLIANCE and LOS ANGELES) FEDERAL TRANSIT ADMINISTRATION
22 COMMUNITY ACTION NETWORK) CIRCULAR 4702.1A

23 Complainants,)

24 v.)

25 LOS ANGELES COUNTY)
26 METROPOLITAN TRANSPORTATION)
AUTHORITY)

27 Respondent.)
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1 **I. INTRODUCTION**

2 This Complaint is brought against the Los Angeles County Metropolitan Transportation
3 Authority (“Metro” or “MTA”) by the Bus Riders Union (“BRU”), its parent organization, the
4 Labor/Community Strategy Center (the “Strategy Center”), Koreatown Immigrant Workers
5 Alliance (“KIWA”) and Los Angeles Community Action Network (“LACAN”). In violation of
6 Title VI of the Civil Rights Act of 1964, Executive Order 12898 (the “Environmental Justice
7 Executive Order”), and implementing Department of Transportation (“DOT”) regulations, orders
8 and guidance, Metro has persisted in a three-year practice of cutting service to predominantly low-
9 income and minority bus riders. At the same time, Metro has not only maintained but actually
10 increased the service it provides to its rail riders, who are more than twice as likely to be White and
11 far less likely to live in poverty.

12 As part of its Fiscal Year 2011 Budget, effective July 1, 2010, Metro cut 387,500 hours of
13 bus service. At first, Metro stated that the loss of a source of state transit operating assistance,
14 known as California State Transit Assistance (“STA”), was a major factor necessitating these cuts;
15 yet when that funding source was restored by the Governor, Metro nevertheless proceeded with the
16 cuts as planned. This most recent action came on top of the cumulative impacts of prior bus
17 service cuts over the last three years; all told, completed and presently contemplated actions will
18 result in 564,000 bus service hours cuts since 2008. As a result of these cuts, low-income bus
19 riders of color are subjected to ever longer waits, ever fewer routes, and ever greater travel time.
20 These hardships acutely impact the quality of life for Metro Bus riders by cutting them off from job
21 opportunities, schools, medical care, grocery stores, places of worship, and other essential
22 destinations. The harms already incurred will be exacerbated when the next contemplated wave of
23 bus service cuts, amounting to 137,500 of the 564,000 total service hours cuts, takes effect on
24 December 12, 2010.

25 In contrast, Metro’s new budget does not cut rail service. Indeed, Metro light rail service
26 has grown by 8% during the same three-year period.

27 The disproportionate adverse impacts of Metro’s ongoing pattern and practice of balancing
28 its budget on the backs of its bus riders violates both Title VI and the Environmental Justice

1 Executive Order. The bus riders’ repeated pleas for fairness and equality have fallen on deaf ears
2 at Metro, forcing them to seek the intervention of Federal Transit Administration’s (“FTA”) Office
3 of Civil Rights.

4 Complainants request that FTA (1) undertake an expedited investigation of Metro’s
5 discriminatory actions in order halt the next round of cuts that is set to take effect on December 12,
6 (2) order Metro to take corrective action to remediate both past and future harms that bus riders
7 have suffered by bearing the disproportionate burden of service cuts, including putting a halt to
8 additional service cuts to Metro Bus until Metro has adopted a fair and balanced plan of such
9 service cuts (assuming any are still needed after the restoration of STA funding), a plan that will
10 not unfairly burden low-income bus riders of color, and (3) prevent future discrimination against
11 bus riders by the adoption and implementation of appropriate Title VI and Environmental Justice
12 policies governing future service cuts.

13 **II. STATEMENT OF FACTS**

14 **A. METRO RUNS BUS AND RAIL TRANSIT SERVICES IN LOS ANGELES**
15 **COUNTY.**

16 Los Angeles County Metropolitan Transportation Authority (Metro) “serves as
17 transportation planner and coordinator, designer, builder and operator for one of the country’s
18 largest, most populous counties.”¹ In particular, Metro is the operator of both bus and rail services
19 in Los Angeles County.² Metro Bus includes local and rapid bus lines as well as bus rapid transit
20 (the Orange and Silver Lines).³ Metro Rail includes both Heavy Rail (the Red and Purple lines),
21 and Light Rail (the Blue, Gold, and Green lines).⁴

24 ¹ Ex. 1 (Metro: About Us, available at <http://www.metro.net/about/> (last visited Oct.
25 26, 2010)).

26 ² See, e.g., Ex. 2 (Los Angeles Metropolitan Transportation Authority: Adopted
27 Budget, Fiscal Year 2011, available at
28 http://www.metro.net/about_us/finance/images/FY11BudgetBook.pdf) at 12.

³ Ex. 3 (Metro Sept. 2009 Transit Service Policy) 4-5.

⁴ *Id.* at 21.

1 In FY 2010, Metro projected nearly 500 million boardings across its system, 81% on Metro
2 Bus and 19% on Metro Rail.⁵ In FY 2011, Metro projects 446 million boardings across its system,
3 80% on Metro Bus and 20% on Metro Rail.⁶

4 **B. METRO BUS RIDERS ARE FAR MORE LIKELY TO BE LOW-INCOME**
5 **PEOPLE OF COLOR THAN METRO RAIL RIDERS.**

6 Metro Bus riders are overwhelming low-income people and people of color for whom the
7 bus system is the primary or exclusive means of transportation.⁷ By contrast, Metro Rail riders are
8 far less likely to be low income and more than twice as likely to be White.

9 Ninety-two percent (92%) of Metro Bus riders are people of color, compared to 81% of
10 Metro Rail riders.⁸ The race and ethnic demographics of the two systems are as follows:

11

	Bus	Rail
<i>Latino</i>	<i>59%</i>	<i>45%</i>
Black	19%	22%
Asian/Pacific Islander	8%	9%
American Indian	1%	1%
<i>White</i>	<i>8%</i>	<i>19%</i>
Other	4%	4%

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20 In short, while the share of riders in several demographic categories is roughly the same as between
21 Metro Bus and Metro Rail, Metro Rail's proportion of ***White*** ridership is nearly two and a half

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24 ⁵ Ex. 2 (Los Angeles Metropolitan Transportation Authority: Adopted Budget, Fiscal
25 Year 2011) at 11.

26 ⁶ *Id.*

27 ⁷ *See, e.g.,* Ex. 4 (Spring 2009: Metro BUS Customer Satisfaction Survey Results).

28 ⁸ Ex. 4 (Spring 2009: Metro BUS Customer Satisfaction Survey Results); Ex. 5
(Spring 2009: Metro RAIL Customer Satisfaction Survey Results).

1 times that of Metro Bus, while Metro Rail's proportion of *Latino* ridership is 30% lower than that
2 of Metro Bus.

3 The same surveys show that **70%** of Metro Bus riders have an annual household income
4 below \$26,000, compared to only **46%** of Metro Rail riders.⁹ The federal poverty level for a
5 family of four is \$22,050.¹⁰

6 **C. METRO IMPOSES LARGE BUS SERVICE CUTS, BUT NOT CUTS IN**
7 **RAIL SERVICE.**

8 Claiming that a budget deficit based in part on the loss of California State Transit
9 Assistance (STA) operating funds made service cuts necessary, Metro proposed in early 2010 its
10 largest single package of cuts in over fifteen years. Metro included in its adopted FY 2011 Budget
11 a reduction of **387,500 revenue service hours (RSH)**.¹¹ Those cuts fell solely on bus riders,
12 amounting to 5% of the total system. Metro imposed no cuts to any rail service.¹²

13 Of the total reduction of 387,500 RSH of bus service, approximately **88,500 RSH** have
14 been or will be achieved through complete or partial elimination or other changes to lines; 25,000
15 RSH in such cuts were implemented in December 2009, and the remaining 63,500 RSH are
16 scheduled to take effect on December 12, 2010.¹³ Among these cuts are the elimination of five

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18 ⁹ Ex. 4 (Spring 2009: Metro BUS Customer Satisfaction Survey Results); Ex. 5
19 (Spring 2009: Metro RAIL Customer Satisfaction Survey Results).

20 ¹⁰ See Ex. 6 (U.S. Department of Health & Human Services, The HHS Poverty
21 Guidelines of 2010 (August 2010), at 2, available at, <http://aspe.hhs.gov/poverty/10poverty.shtml>).

22 ¹¹ Ex. 2 (Los Angeles Metropolitan Transportation Authority: Adopted Budget, Fiscal
23 Year 2011) at 11.

24 ¹² *Id.* at 11 (showing under "Service Level Details" a reduction of 197 rail revenue
25 service hours, which equals less than one thirtieth of one percent of the total service), 38 (showing
26 under "Modal Operating Statistics" that when the service hours cuts are rounded off to the nearest
27 thousand, there is no change on rail RSH between FY 2010 and FY 2011).

28 ¹³ Ex. 2 (Los Angeles Metropolitan Transportation Authority: Adopted Budget, Fiscal
Year 2011) at 11; Ex. 7 (email string between Metro and BRU; see Oct. 8, 2010 email from S.
Page of Metro to E. Romann of BRU forwarding email from D. Woodbury of Metro from Oct. 6,
2010). In a correspondence from D. Woodbury of Metro forwarded by S. Page of Metro to E.
Romann of BRU on Oct. 8, 2010, Woodbury explains that of the 100,000 RSH reduction in
December, 2009, approximately three quarters (75,000 RSH) is from capacity adjustments, *i.e.*,
trip-thinning and short-lining. By deduction, a cumulative reduction of approximately 25,000 RSH
is attributed to changes on specific lines. Woodbury also explains that the 137,500 RSH reduction

(cont'd)

1 Rapid Bus lines, including three in historically underserved heavily Black and Latino South Los
2 Angeles, and service reductions on three others.¹⁴

3 The remainder of the 387,500 hour service cut, **299,000 RSH**, has been or will be achieved
4 through “trip-thinning” and “short-lining” taking effect in December, 2009, June 2010, and
5 December 2010. “Trip thinning” means reducing the number of trips per hour or per day on a
6 given bus line and therefore increasing the “headway,” or wait time, for riders of that line. For
7 example, a bus that used to run every six minutes and now runs every ten minutes has experienced
8 a 40% reduction in service. “Short lining” is the practice of ending service on a particular line
9 before the end of the route. For example, the complete route for the Wilshire Rapid Bus (720) in
10 Los Angeles is from the Commerce Center in East Los Angeles to 4th Street and Colorado in the
11 City of Santa Monica, a total length of 23 miles and 33 stops. But during the window of 7 a.m. to 5
12 p.m. roughly half of the buses in service now finish their trip and turn around 4 to 5 miles before
13 the end of the route, cutting out the final nine stops in one direction and seven in the other direction.

14 This total 387,500 cut in RSH is not an isolated service reduction, but only the latest -- and
15 largest -- in a series of cuts that have been imposed on Metro Bus riders over the last three years.
16 In the two prior Fiscal Years, Metro had eliminated 177,000 hours of service: 57,000 RSH in FY
17 2009, and 120,000 RSH in FY 2010.¹⁵

18 In short, over three years, Metro has cut **a total of 564,000 RSH in bus service.**

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21 to be implemented in December, 2010 is half of the 275,000 RSH reduction that extends into the
22 first six months of FY 2012. Of this 275,000 RSH reduction, 148,000 RSH is achieved through
23 capacity adjustments and 127,000 RSH is achieved through changes to lines approved on
24 September 23, 2010. By deduction, 74,000 RSH out of the total 137,000 RSH is achieved through
capacity adjustments and 63,500 RSH is achieved through approved line changes. Adding the
25,000 RSH reduction in December, 2009 to the 63,500 RSH reduction in December, 2010, the
total reduction achieved through line changes in FY 2011 is estimated to be 88,500 RSH.

25 ¹⁴ Ex. 10 (Los Angeles Metropolitan Transportation Authority Proposed Changes to
26 Tier 1 Bus Service, September 16, 2010.) This proposal was approved by the Metro Board of
Directors on September 23, 2010.

27 ¹⁵ See Ex. 8 (excerpt of Los Angeles Metropolitan Transportation Authority: Adopted
28 Budget, Fiscal Year 2009 p. IV-2; Los Angeles Metropolitan Transportation Authority: Adopted
Budget, Fiscal Year 2010 p. IV-2; Los Angeles Metropolitan Transportation Authority: Adopted
Budget, Fiscal Year 2011 at 11).

1 During the same period, however, Metro not only spared rail riders any cuts, but has
2 actually **increased rail service by 55,000 RSH**. In FY 2009, Metro increased its rail service by
3 13,000 RSH; Metro’s rail service again grew in FY 2010, this time by 42,000 service hours.¹⁶

4 Overall, Metro is running 8% more rail service hours than in FY 2008. During that same
5 period, Metro has cut its bus service by more than 7%. (*See* App. A hereto.)

6 The same extreme disparities appear when service levels are measured in revenue service
7 miles (RSM), instead of hours. By this metric, Metro Bus revenue service miles dropped
8 2,623,000 RSM from FY 2010 to FY 2011, a 3% decrease, while Metro Rail revenue service miles
9 increased 4% to 629,000. Since FY 2008, Metro Bus RSM have seen a cumulative cut of
10 4,682,000 revenue service miles, a 5% reduction. At the same time, Metro Rail has increased
11 1,204,000 revenue service miles from FY 2008 to FY 2011, a 6% rise.¹⁷ (*See* App. B hereto.)

12 While Metro claims that it has avoided a significant reduction in bus *seat capacity*, by
13 virtue of running larger buses (i.e., more 45-seat and 60-seat buses instead of the traditional 40-seat
14 buses), that step addresses only one of many adverse impacts, increased overcrowding. Other very
15 significant adverse impacts on bus riders caused by these service cuts, however, that have not been
16 avoided or mitigated, include: reduced headways and longer waits, reduced evening and weekend
17 service, reduced mobility and connectivity, elimination of stops on “short-lined” routes, and the
18 complete elimination of routes. Moreover, the *cumulative impacts* of these cuts over the past three
19 years are very significant, and fall especially hard on low-income bus riders of color with much
20 greater social vulnerability.

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27 ¹⁶ *Id.*

28 ¹⁷ *Id.* & Ex. 16 (email string between Metro and BRU; *see* Nov. 12, 2010 email from D. Woodbury of Metro to E. Romann of BRU).

1 **D. METRO PERSISTS IN ITS PATTERN OF DISPROPORTIONATE BUS**
2 **CUTS DESPITE THE RESTORATION OF STATE TRANSIT OPERATING**
3 **ASSISTANCE, AND IN THE FACE OF REPEATED WARNINGS BY BUS**
4 **RIDERS THAT ITS ACTIONS ARE UNFAIR AND DISCRIMINATORY.**

5 One of the main justifications Metro gave for imposing \$25 million in bus service cuts was
6 the loss of STA funding.¹⁸ In late March, however, shortly before the Metro Board adopted the
7 budget, the Governor and the California State Legislature restored STA funding. As a result, just
8 under \$100 million in transit operating funding became available to Metro for FY 11. Despite the
9 availability of this major source of previously-unanticipated operating funding, Metro proceeded
10 with the bus service cuts.

11 Metro also proceeded in the face of repeated concerns raised by the Bus Riders Union that
12 it was unfair and discriminatory to cut bus service only. BRU began raising those concerns from
13 the time Metro first floated its budget proposal in January 2010. In a letter to Metro Board
14 Member, and Los Angeles Mayor, Antonio Villaraigosa on January 17, 2010, BRU wrote:

15 The MTA knows very well that it will not have money to operate rail
16 projects . . . and will turn to the bus system to raid its resources. The
17 clearest most recent example of this is [the] proposal to cut 145,000
18 bus revenue service hours in FY 11 and the proposal to add 53,000
19 hours to the Expo Light Rail.¹⁹

20 At the January 28, 2010 Board meeting, BRU member Rosa Miranda testified against the
21 plan to cut bus service and not cut rail:

22 You say that you'll have the biggest deficit in [this agency's] history.
23 You say that it's the result of a recession and lack of funds from the
24 [the state government]. And that everyone has to take a hit. Let's
25 remember that 50% of the state operations funds that you lost were
26 used for rail, but what a coincidence that the only operations cuts
27 we're seeing are on the bus system.

28 (Decl. of Esperanza V. Martinez, ¶ 13.)

BRU again wrote the Metro Board in February, stating:

26 ¹⁸ See Ex. 17 (Los Angeles County Metropolitan Transportation Authority Fiscal Year
27 2011 Budget Progress Report, April 14, 2010) at 4. This preparatory document for the FY 2011
28 budget places the total savings from 388,000 RSH reduction in bus service at \$25.2 million.

26 ¹⁹ Ex. 9 (Letter from M. Criollo and E. Martinez to A. Villaraigosa, date Jan. 17, 2010)
27 at 1.

1 [C]utting bus service to close the so-called operations deficit
2 effectively means forcing bus riders to bear the burden of these cuts.
3 When 80% of your boarding's are on the bus system and 88% of
4 transit riders are people of color, including 58% Latino/a, 20%
5 African American, and 8% Asian/Pacific Islander, the impacts of this
6 proposal will be felt disproportionately by people of color,
7 potentially constituting a violation of civil rights²⁰

8 On August 31, BRU submitted petitions to Metro with 800 signatures collected from bus
9 riders opposing the cuts. And on September 1, several weeks before the Metro Board voted to
10 approve the actual cuts, BRU again wrote, stating:

11 With 80% of the boardings on the whole MTA system, the bus
12 system remains the backbone of the public transit system in LA
13 County. Bus riders, who have an average annual household income
14 of \$12,000 and are 90% people of color, already face major obstacles
15 to achieving stability and prosperity due to the inadequacy of mass
16 transit in Los Angeles. These cuts...and 120,000 hours in service
17 cuts last year, will be a major blow to bus riders. It will create even
18 more difficulty accessing job and educational opportunities, health
19 care, and simply navigating their daily lives. These cuts will force
20 bus riders into longer walks to the bus, longer travel times, additional
21 transportation costs incurred from additional transfers. . . . *We have
22 strong concerns that the proposed service cuts will cause civil rights
23 harms to Black and Latino communities given both the high
24 percentage of Blacks and Latinos among the population of bus riders
25 and the disproportionate concentration of cuts in South LA and East
26 LA, where many Blacks and Latinos lives.*²¹

27 Despite these repeated pleas, the Metro Board voted, on May 19, 2010, to budget, and then
28 on September 23, 2010, to adopt, service cuts that fell solely on bus riders.²²

19 **III. JURISDICTIONAL FACTS**

20 **A. THE COMPLAINANTS**

21 Founded in 1994, the Bus Riders Union is a membership-based grassroots civil rights and
22 environmental justice organization that has recruited and mobilized a base of low-income Black,
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24 ²⁰ Ex. 11 (Letter from E. Martinez and B. Lott-Holland to A. Najarian, dated Feb. 25,
25 2010) at 1.

26 ²¹ Ex. 12 (Letter from E. Martinez and B. Lott-Holland to D. Knabe, dated Sept. 1,
27 2010) at 1 (emphasis in original).

28 ²² On September 23, 2010, the Metro Board approved the recommendations of Metro
staff on how to implement an important portion of these cuts without any serious discussion of
restoring bus service hours.

1 Latino, Asian-Pacific Islander and White bus riders in Los Angeles County to advocate for a first-
2 class bus system. It is a project of the Labor/Community Strategy Center, a think tank/act tank
3 rooted in Los Angeles' working class communities of color, and addressing the totality of urban
4 life with a particular focus on civil rights, environmental justice, public health, global warming,
5 and the criminal legal system. In 1994, the Strategy Center and Bus Riders Union were appointed
6 by a federal court as the class representative of approximately 500,000 Los Angeles County bus
7 riders in a ground-breaking Title VI class action civil rights lawsuit they filed against Metro. The
8 Strategy Center and Bus Riders Union continued to serve as the class representative of the county's
9 bus riders until 2006, when the federal civil rights Consent Decree entered in that case expired.
10 The Strategy Center and Bus Riders Union continue to be the largest and most well-known
11 grassroots transit advocacy organization in Los Angeles. They are also co-founder and national
12 coordinator of a national campaign, Transit Riders for Public Transportation. The campaign is
13 mobilizing grassroots transit justice advocates to promote civil rights and environmental justice
14 priorities in the re-authorization of the federal surface transportation bill.

15 Koreatown Immigrant Workers Alliance (KIWA) is a multi-ethnic community union that
16 empowers low wage Korean, Latino, and other immigrant workers in Los Angeles' Koreatown
17 neighborhood for dignity and justice in the workplace and the community. KIWA does grassroots
18 organizing and leadership development with workers from targeted local low-wage industries,
19 engaging in strategic industry-based campaigns that target employers directly. It also engages in
20 other forms of worker and community advocacy, as well as multi-ethnic coalition building. KIWA
21 was founded in 1992 in the aftermath of the civil unrest in Los Angeles. KIWA organizes in
22 communities with high transit dependency and was a co-plaintiff in *Labor/Community Strategy*
23 *Center, et al vs. Los Angeles County Metropolitan Transportation Authority*.

24 Los Angeles Community Action Network (LACAN) is a grassroots organization based in
25 downtown Los Angeles working primarily with very low income African Americans and Latinos
26 to address lack of affordable housing-gentrification, and the problems facing homeless people,
27 especially their civil rights and civil liberties on the street. LACAN is also a leader in the Los
28 Angeles Right to Housing Coalition and in regional and national coalitions addressing housing and

1 homelessness. Founded in 1999, LACAN's mission is to help people dealing with poverty create
2 and discover opportunities, while serving as a vehicle to ensure they have voice, power and opinion
3 in the decisions that are directly affecting them. Close to 100% of LACAN's members and base
4 are transit-dependent.

5 **B. FEDERAL FINANCIAL ASSISTANCE**

6 Metro is a substantial recipient of federal financial assistance. In FY 2011, the agency will
7 receive \$283.5 million in recurring federal grants: Federal Section 5307 and 5309, Growing State
8 Section 5340, Job Access/Reverse Commute Grant Program, and New Freedoms Section 5316-
9 17.²³ Metro also will receive \$225.1 million in non-recurring federal grants in FY 2011:
10 Congestion Mitigation & Air Quality Improvement Program, American Recovery & Reinvestment
11 Act, Homeland Security, and other grant revenues not considered annual entitlements.²⁴

12 **C. TIMELINESS**

13 Metro has engaged in an ongoing pattern and practice of discriminatory service cuts over
14 the past three years. The most recent of those service cuts were adopted as part of the FY 2011
15 Budget, which was approved on May 19, 2010, covering the Fiscal Year running from July 1, 2010
16 through June 30, 2011.²⁵ For a portion of these cuts, Metro staff made recommendations
17 concerning the specific routes and times for which service would be cut, and held public hearings
18 in August, 2010 to solicit public input on those recommendations. Metro's Board of Directors
19 approved Metro staff recommendations for this portion of the service cuts on September 23, 2010.
20 Before making that decision, the Metro Board refused to restore unfair bus service cuts, as
21 requested by BRU. This complaint is timely filed within 180 days of the adoption of the budget,
22 the decision to cut specific bus service hours, and the refusal to restore unfair cuts.

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25 ²³ See Ex. 2 (Los Angeles Metropolitan Transportation Authority: Adopted Budget,
26 Fiscal Year 2011) at 19.

27 ²⁴ *Id.*

28 ²⁵ See Ex. 2 (Los Angeles Metropolitan Transportation Authority: Adopted Budget,
Fiscal Year 2011).

1 **IV. ARGUMENT**

2 **A. TITLE VI AND THE ENVIRONMENTAL JUSTICE EXECUTIVE ORDER**
3 **PROHIBIT SERVICE CUTS THAT FALL DISPROPORTIONATELY ON**
4 **LOW-INCOME AND MINORITY BUS RIDERS.**

5 Metro bus riders enjoy two-fold protection against service cuts that balance Metro’s budget
6 on their backs alone, while rail service continues to increase. First, as riders of color, they are
7 protected, by Title VI and DOT’s implementing regulations, from actions by a recipient of federal
8 funds that have an adverse disparate impact on them. Second, as low-income riders of color they
9 are protected, by Executive Order 12898 on Environmental Justice and DOT’s implementing order,
10 against actions that deny them a fair share of the benefits of Metro’s programs and activities.
11 Metro’s decision to impose service cuts on bus riders, but not rail riders, violates both prohibitions.

12 **1. Title VI Requirements and Remedies**

13 Title VI of the Civil Rights Act of 1964 provides that:

14 No person in the United States shall, on the ground of race, color or
15 national origin, be excluded from participation in, be denied the
16 benefits of, or be subjected to discrimination under any program or
17 activity receiving Federal financial assistance.

18 42 U.S.C. § 2000d. The U.S. Department of Transportation’s Title VI regulations (49 C.F.R. part
19 21) prohibit actions by recipients of DOT financial assistance that have a discriminatory effect on
20 minority populations. Specifically, those regulations provide:

21 A recipient, in determining the types of services . . . or other
22 benefits . . . which will be provided under any such program, or the
23 class of persons to whom, or the situations in which, such services,
24 financial aid, other benefits, or facilities will be provided under any
25 such program . . . may not, directly or through contractual or other
26 arrangements, utilize criteria or methods of administration *which*
27 *have the effect*, of subjecting persons to discrimination because of
28 their race, color, or national origin, or *have the effect* of defeating or
substantially impairing accomplishment of the objectives of the
program with respect to individuals of a particular race, color, or
national origin.

49 C.F.R. § 21.5(b)(2)(i), (iv) (emphasis added).

The Title VI regulations make it clear that, “in determining . . . the types of services . . . or
other benefits” it will provide, Metro may not “utilize criteria or methods of administration which
would have the effect of subjecting persons to discrimination because of their race, color, or

1 national origin” 49 C.F.R. § 21.5; *see also* Ex. 13 (Federal Transit Administration: Title VI,
2 FTA C 4702.1A (May 13, 2007)) at II-3 (“Disparate Impact refers to facially neutral policies or
3 practices that have the effect of disproportionately excluding or adversely affecting members of a
4 group protected under Title VI, and the recipient’s policy or practice lacks a substantial legitimate
5 justification.”). Prohibited acts of discrimination include “[p]roved[ing] any service . . . or other
6 benefit to a person which is different, or is provided in a different manner, from that provided to
7 others under the program” 49 C.F.R. § 21.5(b). In particular, Metro may not “[d]eny a person
8 the opportunity to participate in the program through the provision of services . . . which is
9 different from that afforded others under the program,” *id.*, nor discriminate “with regard to the
10 routing, scheduling, or quality of service of transportation service furnished . . .” to its patrons. *Id.*
11 at app. C (a)(3)(iii).

12 The Title VI regulations afford a remedy to “[a]ny person who believes himself or any
13 specific class of persons to be subjected to discrimination prohibited” under the regulations, by
14 filing a written complaint with DOT. *Id.* at § 21.11(b). If the Department determines, upon
15 investigation, that a complaint against a recipient is well-founded, that the recipient must not only
16 cease the discriminatory action going forward, but also “must take affirmative action to remove or
17 overcome the effects of the *prior* discriminatory practice or usage.” 49 C.F.R. §21.5(b)(7)
18 (emphasis added).

19 **2. Executive Order 12898 Requirements and Remedies**

20 Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority
21 Populations and Low-Income Populations,” provides an additional layer of protection to
22 Environmental Justice populations. The Executive Order provides:

23 To the greatest extent practicable and permitted by law, . . . each
24 Federal agency shall make achieving environmental justice part of its
25 mission by *identifying and addressing, as appropriate,*
26 *disproportionately high and adverse human health or*
environmental effects of its programs, policies, and activities on
minority populations and low-income populations in the United
States

27 Ex. 14 (59 Fed. Reg. 7626 (Feb. 11, 1994)) at 1 (emphasis added).
28

1 As implemented by the Secretary in DOT Order 5610.2, the duty to “identify and address”
2 disproportionately high and adverse effects extends to agencies like Metro that receive “financial
3 assistance provided by the DOT.” (DOT Order 5610.2, 62 Fed. Reg. (Apr. 15, 1997) at p. 18381;
4 *see also* Ex. 13 (FTA C 4702.1A) at 1 (an objective of Circular 4702.1A is to provide FTA
5 grantees with guidance and instructions to “integrate into their programs and activities the
6 considerations in [DOT] (Order 5610.2).”).

7 The DOT Order defines the relevant terms in the Executive Order. It provides, first, that
8 “[a]dverse effects means the totality of significant individual or cumulative human health or
9 environmental effects,” and includes in its definition of an adverse effect “the denial of, *reduction*
10 *in*, or significant delay in the receipt of benefits of DOT programs, policies, or activities.” Ex. 15
11 (DOT Order 5610.2, App. § 1(f)) (emphasis added). An adverse effect such as a reduction in
12 benefits is “[d]isproportionately high” if it “will be suffered by the minority population and/or low-
13 income population and is appreciably more severe or greater in magnitude than the adverse effect
14 that will be suffered by the non-minority population and/or non-low-income population.” *Id.* at
15 App. § 1(g). Finally, the Order defines “Low-Income” to mean “a person whose median household
16 income is at or below the Department of Health and Human Services poverty guidelines,” and
17 “Minority” to include a person who is Hispanic, regardless of race. *Id.* at App. § 1(b) & § 1(c)(2).

18 The Order requires that any actions “that will have a disproportionately high and adverse
19 effect on minority populations or low-income populations will only be carried out if further
20 mitigation measures or *alternatives that would avoid or reduce* the disproportionately high and
21 adverse effect *are not practicable*.” *Id.* at § 8(c) (emphasis added). “Impracticable” means
22 “incapable of being performed or accomplished by the means employed or at command.”²⁶

23 In sum, these overarching Title VI and Environmental Justice protections impose two
24 concurrent duties on Metro. While the agency may reduce transit service to achieve budgetary
25 objectives that are in the public interest, (1) it must do so in a manner that does not result in
26 unjustified disparate impacts on riders of color, and (2) it must adopt alternatives that will avoid or

27
28 ²⁶ Accessed at <http://www.merriam-webster.com/dictionary/impracticable>.

1 reduce disproportionately high and adverse effects on minority and low-income populations unless
2 those alternatives and mitigation measures are “impracticable.” Metro has breached both of these
3 duties.

4 **B. METRO’S BUS SERVICE REDUCTIONS VIOLATE ITS OBLIGATIONS**
5 **UNDER BOTH TITLE VI AND THE ENVIRONMENTAL JUSTICE ORDER.**

6 **1. Metro Bus Riders are Protected by Title VI and the Environmental**
7 **Justice Order**

8 Metro Bus riders are less than half as likely as Metro Rail riders to be White, and Metro
9 Rail riders are 30% less likely to be Hispanic than Metro Bus riders. Moreover, nearly 70% of
10 Metro Bus riders are at or below the federal poverty line for a family of four (\$22,050), compared
11 to only 46% of Metro Rail riders.

12 Accordingly, Metro Bus riders are protected both by Title VI and by the Environmental
13 Justice Executive Order against disproportionately high adverse impacts.

14 **2. The FY 2011 Bus Service Cuts Have a Disproportionately High and**
15 **Adverse Effect on Low-Income and Latino Bus Riders.**

16 The disproportionate impact of the FY 2011 cuts is clear on its face. Metro knowingly
17 placed the entire burden of these service reductions on the transit mode that carries the far greater
18 share of Metro’s low-income and Latino riders, while reducing no service whatsoever for the
19 transit mode that carries more than twice the proportion of Whites, a third fewer Latinos, and a
20 disproportionate share of higher-income riders. All of the 387,500 hours in transit service subject
21 to elimination in FY 2011 will be borne solely by Metro bus riders – 70 percent of whom have an
22 annual household income of \$26,000 or less, and 91 percent of whom are people of color. In
23 contrast, Metro rail riders, who are significantly less likely to have annual household incomes of
24 \$26,000 or less compared to their Metro bus counterparts (46 percent to 70 percent), and are
25 disproportionately White (19 percent to 8 percent), will experience no adverse effects associated
26 with their levels of rail service. Put another way, the *burdens* of the service cut fall
27 disproportionately on low-income Latinos, while the *benefits* of service expansion are received
28 disproportionately by higher-income Whites.

1 The disproportionate impact of Metro’s elimination of 387,500 service hours from the bus
2 system, moreover, is plainly adverse. It will subject low-income and minority bus riders to longer
3 waits at the bus stop, decreased service frequency, fewer bus routes, fewer bus trips that complete
4 their full route, greater travel time resulting from reduced or eliminated Rapid Bus routes, reduced
5 mobility and connectivity to other transit routes, and other predictable hardships resulting from the
6 complete or partial elimination of bus routes and hundreds of thousands of service hours cut
7 through “trip thinning” and “short-lining” changes. Together, these increased hardships will
8 acutely impact the quality of life of Metro bus’ overwhelmingly low-income Black, Latino, and
9 Asian riders by reducing, on a daily basis, their access to employment, schools, medical care,
10 grocery stores, places of worship, and other essential destinations. The magnitude of these
11 reductions cannot be overstated. This is the largest single package of service cuts Metro in fifteen
12 years. It is imposed at a time of severe economic hardship on the most socially vulnerable riders,²⁷
13 who are least able to absorb these cuts.

14 As provided in the Secretary’s Order implementing the Environmental Justice Executive
15 Order, the cumulative impacts of these bus service cuts must also be taken into account. Over the
16 past three years, Metro has cut its bus service by more than 7%.

17 Meanwhile, Metro has not only not cut any of its rail service, it is running 8% more rail
18 service hours (including 17% more light rail service hours) than it was three years ago. Unlike
19 Metro’s bus riders, its rail patrons will not be subject to longer waits at the station, decreased
20 service frequencies, longer travel times, reduced connectivity, or other hardships resulting from the
21 complete or partial elimination of rail lines or hundreds of thousands of hours cut through “trip
22 thinning” or “short lining.” The only cumulative impacts they will experience are those resulting

23 _____
24 ²⁷ For a discussion of U.S. EPA’s “Environmental Justice Strategic Enforcement
25 Screening Tool” (EJSEAT), created by EPA’s Office of Enforcement and Compliance Assurance
26 (OECA) to serve as “a consistent methodology that would enable OECA to identify communities
27 or areas experiencing disproportionate environmental and public health burdens for the purposes of
28 enhancing and focusing OECA’s enforcement and compliance activities in those areas,” see
National Environmental Justice Advisory Council, A Federal Advisory Committee to the U.S.
Environmental Protection Agency, **NATIONALLY CONSISTENT ENVIRONMENTAL
JUSTICE SCREENING APPROACHES** (May 2010) at 1 (citation omitted), available at
[http://www.epa.gov/compliance/environmentaljustice/resources/publications/nejac/ej-screening-
approaches-rpt-2010.pdf](http://www.epa.gov/compliance/environmentaljustice/resources/publications/nejac/ej-screening-approaches-rpt-2010.pdf).

1 from service increases in recent years. Rail riders will experience no changes in their schedules,
2 routes, or the quality of services provided to them, while minority and low-income bus riders
3 shoulder the entire brunt of the cut backs.

4 **3. Metro Failed to Adopt Available Less-Discriminatory Alternatives to**
5 **Balance its Budget.**

6 Metro originally justified the bus service cuts on the basis of an operating budget shortfall
7 occasioned by the loss of State Transit Assistance, a source of transit operating funding. Much of
8 that funding source was later restored, yet Metro proceeded with bus-only service cuts anyway.
9 Complainants believe that some or all of these service cuts are not necessary at all, since the \$25
10 million in savings they were to realize in FY 2011 has been amply made up by the provision of
11 nearly \$100 million in STA operating funds

12 To the extent that fiscal circumstances might still require some service cuts, however,
13 Metro plainly had, and continues to have, the ability to adopt cuts on a non-discriminatory basis.
14 As BRU pointed out in public comments to Metro last January, Metro itself stated that “everyone
15 has to take a hit” due to the recession and loss of the now-restored STA funds. (Martinez Decl. ¶
16 13.) But, as BRU also pointed out, “cutting bus service to close the so-called operations deficit
17 effectively means forcing bus riders to bear the burden of these cuts.” (*Id.*) Metro, in short, knew
18 full well that it could have done what the law requires: implement service cuts and service growth
19 in a manner that equitably burdened and benefited all riders, regardless of race and income.
20 Instead, Metro adopted cuts that fell disproportionately on Latino and low-income bus riders. In
21 other words, it knowingly targeted only low-income and minority bus riders with cuts, effectively
22 balancing a system-wide budget deficit on the backs of those least able to bear service cuts.

23 **V. REMEDIES**

24 Complainants request that FTA undertake an expedited investigation of Metro’s
25 discriminatory actions, in advance of the scheduled implementation of the final phase of Metro’s
26 FY11 service cuts (eliminating 137,500 RSH) on December 12, 2010. Complainants further
27 request that FTA require Metro to take immediate corrective action to remediate the past,
28 cumulative and ongoing harms suffered by bus riders as a result of Metro’s discriminatory cuts,

1 both by halting further bus service cuts, and by restoring an equitable balance in any necessary
2 service cuts among all its modes and services. This remedy should not only be forward-looking,
3 but should also “overcome the effects of the *prior* discriminatory practice” (49 C.F.R. § 21.5(b)(7))
4 (emphasis added), by taking into account the cumulative impacts of disproportionate service cuts to
5 bus service over the past several years. The appropriate remedy – given that the STA funds, the
6 loss of which was a major factor necessitating the cuts, have been restored in an amount four times
7 greater than the amount to be saved by the cuts – would be to restore all bus service that has been
8 cut. FTA should further require Metro to put in place and implement polices designed to prevent
9 future disparities in service cuts and adjustments.

10 Complainants respectfully request that they be provided with copies of all correspondence
11 to or from Metro throughout the course of the investigation, deliberation, and disposition of this
12 Complaint.

13 **VI. CONCLUSION**

14 In violation of its federal Title VI and Environmental Justice obligations, Metro’s pattern
15 and practice of cutting hundreds of thousands of service hours from Metro Bus while preserving
16 and expanding rail service has an unjustified and disproportionate adverse impact on Latino bus
17 riders, as well as a disproportionately high and adverse effects on Metro’s Latino and low-income
18 bus riders. Far from pursuing less discriminatory alternatives in cutting service, or avoiding or
19 reducing the disproportionate and adverse harms associated with the FY 2011 service reductions,
20 Metro chose to lay the entire burden of the service cuts on bus riders, its most vulnerable riders.

21 It appears that these cuts were, in fact, not necessary at all. To the extent that cuts had to be
22 made, however, FTA should require Metro to remediate these discriminatory impacts by halting
23 further bus service cuts while it implements a plan of corrective action that will restore an equitable
24 balance in any necessary service cuts among all transit modes and services.

25 //

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27
28

1 Respectfully submitted,

2 DATED: November 15, 2010

3 BUS RIDERS UNION

4 By: _____
5 Esperanza V. Martinez
6 Eric Romann

7 DATED: November 15, 2010

8 LABOR/COMMUNITY STRATEGY CENTER

9 By: _____
10 Manuel Criollo
11 Eric Mann

12 DATED: November 15, 2010

13 KOREATOWN IMMIGRANT WORKERS ALLIANCE

14 By: _____
15 Danny Park
16 Eileen Ma

17 DATED: November 15, 2010

18 LOS ANGELES COMMUNITY ACTION NETWORK

19 By: _____
20 Pete White
21 Becky Dennison

22
23
24
25
26
27
28