

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

ANDRES GOMEZ,
On His Own Behalf, and On Behalf of All
Other Individuals Similarly Situated,

Plaintiff,
vs.

SIMON PROPERTY GROUP, L.P.,
Defendant.

CLASS ACTION COMPLAINT

Plaintiff Andres Gomez, on his own behalf and on behalf of all Other Individuals Similarly Situated, by and through his undersigned counsel, hereby sues Defendant Simon Property Group, L.P. for injunctive relief, monetary damages, attorney's fees and costs (including, but not limited to, court costs and expert fees) pursuant to Title III of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§s 12181-12189 ("ADA"), 28 C.F.R. Part 36; pursuant to Florida Civil Rights Act of 1992 and allege as follows:

INTRODUCTORY STATEMENT

1. This class action seeks to end the civil rights violations committed by Defendant Simon Property Group, L.P. (also referenced throughout as "Defendant"), against blind and visually impaired individuals. Defendant is denying blind individuals the opportunity to participate in or benefit from the aid, benefit, or service provided

through the Proactiv kiosk which Defendant has located within the Miami International Mall (also referenced herein as “Miami Mall”).

2. The Proactiv kiosk installed in the Miami Mall provides an array of services to thousands of customers who visit the Miami Mall on a daily basis. These services include the ability to browse, select, and pay for an assortment of Proactiv brand skincare products. The Proactiv kiosk makes use of an exclusively visual, touch-screen interface that is inaccessible to the blind. Defendant failed to provide an accessible self-service kiosk or any alternative means such as the training of qualified readers to assist visually impaired and blind customers.

3. In the wave of automation and accessible vending services made possible by technological advances in recent years, kiosks are becoming an increasingly prominent part of the retail service that shopping malls provide to customers. Service providers such as banks and theaters are among the many employing kiosks to better serve consumers.

4. Many blind people enjoy retail services just as sighted people do. The lack of opportunity to participate in the services provided through kiosks means that blind people are excluded from the rapidly expanding retail services offered in the Miami Mall and are excluded from purchasing goods from the kiosks.

5. Despite readily available accessible technology such as the technology in use at accessible ATMs¹ (which makes use of tactile controls and screen reading software), Defendant has chosen to install a Proactiv kiosk which relies on an exclusively

¹ “ATM” refers to “Automated Teller Machines” used by banks/financial institutions

visual interface. Sighted customers can independently browse, select, and pay for Proactiv brand skincare products at the Miami Mall Proactiv kiosk. However, blind customers are denied the opportunity to participate in this retail service. Moreover, Defendant has failed to provide an alternative channel for blind customers to enjoy the retail service provided through the Proactiv kiosk, such as the training of qualified readers to assist visually impaired and blind² customers.

6. Approximately 8.1 million people in the United States are visually impaired, including 2.0 million who are blind.³ There are approximately 494,900 visually impaired persons in Florida State.⁴

7. Blind people must rely on sighted companions or audio guides to assist them in purchasing products from kiosks.

8. By failing to provide an audio guide to the Proactiv kiosk or an alternative channel for blind customers to enjoy the retail service, Defendant is violating basic equal access requirements under federal law.

9. Congress provided a clear and national mandate for the elimination of discrimination against individuals with disabilities when it enacted the Americans with Disabilities Act. Such discrimination includes barriers to full integration, independent living, and equal opportunity for persons with disabilities, including those barriers

² The use of the terms “blind person” or “blind people” and “the blind” to refer to all persons with visual impairments who meet the legal definition of blindness in that they have a visual acuity with correction of less than or equal to 20 x 200. Some blind people who meet this definition have limited vision, others have no vision.

³ Americans with Disabilities: 2010 Report, U.S. Census Bureau Reports

⁴ American Foundation for the Blind, State-Specific Statistical Information, <https://nfb.org/blindness-statistics>

created by kiosk retail services in shopping malls and other public accommodations that are inaccessible to blind and visually impaired persons.

10. Defendant has discriminated against Plaintiff and other similarly situated individuals by denying qualified individuals with visual disabilities the opportunity to participate in, or benefit from, products and services as offered to the public. Defendant has failed to provide blind individuals the opportunities to participate in services provided by the Proactiv kiosk installed in the Miami Mall.

11. As such, Plaintiff brings this action to stop Defendant's discriminatory practice.

12. This complaint seeks declaratory and injunctive relief to correct Defendant's policies and practices to include measures necessary to ensure compliance with federal law, and to update channels of retail services provided in the Miami Mall so that Plaintiff and the proposed Class and Subclass of customers who are blind will have opportunity to participate in, or benefit from, the products and services provided by Defendant in the Miami Mall. This complaint also seeks compensatory damages to compensate Class and Subclass members for having been subjected to such unlawful discrimination.

JURISDICTION & VENUE

13. This Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. § 1331, for Plaintiff's claims arising under Title III of the Americans with Disabilities Act, 42 U.S.C. §§ 12181-12189 ("ADA")

14. Further, this Court has jurisdiction pursuant to 28 U.S.C. § 1332, because this is a class action as defined by 28 U.S.C § 1332(d)(1)(B).

15. This is also an action with supplemental jurisdiction over related state law claim pursuant to 28 U.S.C. §1367.

16. Venue in this Court is proper pursuant to 28 U.S.C. §1391(b) because Defendant is authorized to conduct business within the state of Florida, is conducting business within the jurisdiction of this court, and the acts constituting the violation of the ADA occurred in this District.

THE PARTIES

Plaintiff Andres Gomez

17. Plaintiff Andres Gomez is a resident of the state of Florida, resides within the Southern judicial district, is *sui juris*, and is disabled as defined by the ADA and the Rehabilitation Act.

18. Plaintiff Andres Gomez is legally blind and a member of a protected class under the ADA, 42 U.S.C. § 12102(1)-(2), and the Rehabilitation Act. Plaintiff Gomez suffers from macular degeneration and therefore is substantially limited in performing one or more major life activities, including but not limited to accurately visualizing his world, adequately traversing obstacles and walking without assistance.

19. On February 12, 2017, Plaintiff Andres Gomez attempted to utilize and purchase from the Proactiv kiosk in the Miami Mall operated by Defendant but was not able to do so due to the inaccessible nature of the Proactiv kiosk, which utilizes an exclusively visual, touch-screen interface that is inaccessible to the blind. There is no other alternative channel for Plaintiff to participate in the retail service provided by Defendant.

Other Plaintiffs Similarly Situated – Class Members

20. Other plaintiffs similarly situated to Plaintiff (“Class Members”) are qualified individuals with disabilities under, and as defined by, the ADA.

21. Other plaintiffs are similarly situated to Plaintiff (and therefore are Class Members) by virtue of the fact that they are visually impaired and require available accessible technology, such as the technology in use at blind accessible ATMs (which makes use of tactile controls and screen reading software) in order to access the retail goods and services provided by Defendant through its provision of the Proactiv kiosk in the Miami Mall (as operated by Defendant).

Defendant Simon Property Group, L.P.

22. Defendant Simon Property Group, L.P. is organized under the laws of Delaware and is authorized to transact business within the state of Florida as a foreign limited partnership.

23. Defendant owns, operates, and/or maintains the Miami International Mall located at 1455 NW 107th Ave, Doral, Florida 33172. The Miami International Mall (“Miami Mall”) is defined as a place of public accommodation because it is open to the public as a retail sales establishment as defined at 42 U.S.C. §12181(7)(E). Further, the Miami Mall also provides retail services through the Proactiv kiosk installed within the Miami Mall facility.

24. The Miami Mall houses a food court and various restaurant facilities, therefore is also defined as a place of public accommodation being “[A] restaurant, bar, or other establishment serving food or drink” pursuant to 42 U.S.C. §12181(7)(B).

25. As the owner and operator of the Miami Mall shopping center which also houses restaurants and other establishments serving food or drink, Defendant is defined as a "Public Accommodation" within meaning of Title III because Defendant Corporation, IncSimon Property Group, L.P. is a private entity which owns and/or operates "[A] "bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment," 42 U.S.C. §12181(7)(B) and §12181(7)(E).

26. The Proactiv kiosk provides to the public access to Proactive brand merchandise which consists of skincare products. Plaintiff seeks opportunities to participate in or benefit from the aid, benefit or service provided by Defendant through the Proactiv kiosk.

CLASS ACTION ALLEGATIONS

27. Plaintiff Andres Gomez brings this case as a class action pursuant to Federal Rule of Civil Procedure Rule 23, in that the class is so numerous that joinder of all members is impracticable F.R.C.P. Rule 23(a)(1), there are questions of law and fact common to the class F.R.C.P. Rule 23(a)(2), the claims and defenses of the representative party is typical of those of the class F.R.C.P. Rule 23(a)(3), and Plaintiff Andres Gomez (as a representative party) will fairly and adequately protect the interests of the class F.R.C.P Rule 23(a)(4).

28. Pursuant to the F.R.C.P. Rule 23(a), (b)(1), (b)(2), and (b)(3), Plaintiff brings this action as a class action on behalf of himself and all others similarly situated as members of the Class ("Class Members'), defined as follows:

“All legally blind individuals in the United States who have been and/or are being denied opportunity to participate in or benefit from the aid, benefit or service provided by Defendant through the Proactiv kiosk installed in the Miami Mall during the relevant statutory period.”

29. Excluded from the Class are: Defendant, its employees, its legal representatives, assigns, and successors, any entity which owns/controls Defendant and its agents and assigns, and any entities in which Defendant has a controlling interest. Also excluded is the Judge to whom this matter has been assigned, and including the Judge’s immediate family.

30. Plaintiff seeks certification of the following Florida Subclass pursuant to Fed.R.Civ.P. Rule 23(a), 23(b)(2), and, alternatively, Rule 23(b)(3): “all legally blind individuals who have been and/or are being denied opportunity to participate in or benefit from the aid, benefit or service provided by the Proactiv kiosk installed in the Miami Mall during the relevant statutory period.”

31. Plaintiff reserves the right to revise the Class and Subclass definitions based upon facts learned in the course of litigating this matter and through the discovery process.

32. According to the National Federation for the Blind⁵, there are 7,327,800 Americans with visual disabilities within the United States and 494,900 within the state of Florida.

⁵ Statistics for 2013, see <http://www.NFB.org/blindness-statistics>

33. Thus, the Class Members to be represented by Plaintiff Andres Gomez consist of visually impaired individuals nationwide. As such, the Class is so numerous that a joinder of each individual member is impracticable; F.R.C.P. Rule 23(a)(1).

34. Plaintiff Andres Gomez is a representative of the Class due to the fact that he suffers from a qualified disability, in that he is visually impaired.

35. Defendant has discriminated against Plaintiff Andres Gomez and the members of the Class by denying blind individuals opportunity to participate in (or benefit from) the aid, benefits, products, or services provided through the Proactiv kiosk installed in the Miami Mall.

36. The questions of law and fact relating to the representative Plaintiff Andres Gomez are similar and common to the law and fact questions which would be raised by other members of the Class if they were individually named Plaintiff herein.

37. Similarly, the claims and defenses to be raised by and against the parties herein are typical of the claims or defenses which would be raised by the members of the Class if they were a party to this action.

38. Plaintiff Andres Gomez seeks injunctive relief for the implementation of the relief provide by the ADA which is the same relief which would be sought by each Class member if he or she brought a claim individually. Accordingly, Plaintiff Andres Gomez (as a representative party for the Class) will fairly and adequately protect the interests of the Class.

39. The relief sought herein is for the benefit of all members of the Class and consistent injunctive relief should be provided for each member of the Class.

40. Absent this matter being pursued as a Class Action, most of the Class Members would find the cost of litigating their claims to be prohibitive and would have no effective remedy.

41. Further, prosecution of this matter by individual members of the Class would only create a risk of inconsistent and varying adjudications, which would establish incompatible standards of conduct for Defendant and would be dispositive of the interest of the other Class members.

42. This case arises out of Defendant's common policy and practice of denying blind individuals the benefit or service provided through the Proactiv kiosk installed at its Miami Mall by the very nature of the Proactiv kiosk's visual touchscreen format as well as by Defendant's failure to provide any assistive devices or alternative means of use of the Proactiv kiosk (such as the training of qualified readers to assist visually impaired and blind customers). Due to Defendant's policy and practice of failing to remove access barriers and to provide assistive devices, blind persons have been denied (and are continually being denied) the opportunity to participate in (or benefit from) the aid, benefits, products, or services provided by Defendant.

43. There are common questions of law and fact common to the class, including without limitation, the following:

- a. Whether Defendant is a "public accommodation" under the ADA;
- b. Whether Defendant denies a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit or service due to the lack of accessible features with the Proactiv kiosk installed within its Miami Mall in violation of the ADA; and

c. Whether Defendant denies blind individuals the opportunity to participate in (or benefit from) the aid, benefits, products, or services provided through the Proactiv kiosk due to the absence of any auxiliary aids associated with the Proactiv kiosk in violation of the ADA.

44. The claims of the named Plaintiff are typical of those of the Class. The Class similarly situated to the Plaintiff is severely visually impaired or otherwise blind, and claim that Defendant has violated the ADA by failing to make the Proactive kiosk accessible to the Class of people who are severely visually impaired or otherwise blind.

45. Plaintiff will fairly and adequately represent and protect the interests of the members of the Class because Plaintiff has retained and is represented by counsel competent and experienced in complex class action litigation, and because Plaintiff has no interests antagonistic to the members of the Class. Class certification of the claims is appropriate pursuant to Fed. R. Civ. P. Rule 23(b)(2) because Defendant has acted or refused to act on grounds generally applicable to the Class, making appropriate both declaratory and injunctive relief with respect to Plaintiff and the Class as a whole.

46. Alternatively, class certification is appropriate under Fed. R. Civ. P. Rule 23(b)(3) because questions of law and fact common to Class members clearly predominate over questions affecting only individual class members, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation.

47. Judicial economy will be served by maintenance of this lawsuit as a class action in that it is likely to avoid the burden that would be otherwise placed upon the

judicial system by the filing of numerous similar suits by people with visual disabilities throughout the United States.

48. References to Plaintiff shall be deemed to include the named Plaintiff and each member of the class, unless otherwise indicated.

49. The questions of law and fact common to Class Members predominate over any questions affecting the individual Plaintiff or individual Class Members. As a result, this class action is the optimal method for reaching a fair and efficient adjudication of the controversy raised herein.

50. Plaintiff Andres Gomez and Class Members have no plain, adequate, or complete remedy at law to redress the wrongs alleged herein and this suit for declaratory judgment and injunctive relief is their only means to secure adequate redress from Defendant's unlawful and discriminatory practices.

51. Plaintiff and Class Members will continue to suffer irreparable injury from Defendant's intentional acts, policies, and practices set forth herein unless enjoined by the court.

FACTUAL ALLEGATIONS

52. The Proactiv kiosk installed in the Miami Mall is a self-service automated machine that allows sighted customers to purchase Proactiv brand skincare products independently by using a touch-screen interface without the assistance of a store clerk or any other third party. Due to the provision of the Proactiv kiosk by Defendant, sighted customers have no need to enter any of the Miami Mall stores in order to purchase Proactive skincare products since they can purchase Proactiv brand merchandise using the Proactiv kiosk.

53. The Proactiv kiosk installed in the Miami Mall is inaccessible to blind and visually impaired individuals. The Proactiv kiosk makes use of an exclusively visual interface that requires users to identify and interact with command icons to browse film titles visually, on the screen, without any adaptive features, such as a screen reader with audio description or tactile buttons used to control commands. As a result, the services and features provided by the Proactiv kiosk are only available to sighted customers.

54. The technology needed to make the touch-screen Proactiv kiosk accessible to blind customers is readily achievable and is already in use by other sales establishments and at automated bank teller machines (“ATMs”) throughout the nation. This technology includes an audio interface system, a tactile keyboard, and/or interactive screen reader technology for use with touch screens.

55. Defendant is aware of means by which its Proactiv kiosk could be made accessible to blind individuals. Defendant could have provided any alternative means such as the training of qualified readers to assist visually impaired and blind customers. Nevertheless, Defendant has refused to make its Proactiv kiosk accessible to blind individuals.

56. Thus. Defendant has provided accommodations, advantages, facilities, privileges, and services to the public that contain access barriers. These barriers deny Plaintiff and blind individuals the opportunity to participate in, or benefit from, the products and services provided through the Proactiv kiosk installed in the Miami Mall.

57. The Proactive kiosk is shown below:



Fig. 1



Fig.2

58. As shown at Fig. 1 and Fig. 2, the Proactiv makes use of an exclusively touch-screen interface, and the kiosk is devoid of a jack for headphones (as is standard on the ATM machine configurations currently in use with standard 3.55 mm jacks). Therefore, the Proactiv kiosk does not utilize audio technology.

59. Sighted customers who use the Proactiv kiosk have access to a variety of accommodations, advantages, facilities, privileges, and services, including the ability to purchase Proactive brand skincare products, without the assistance of a sales associate, Miami Mall employee, or another third party.

60. In contrast, blind customers were not provided any alternative means to enjoy the products and services provided through the Proactiv kiosk.

61. Under Title III of the ADA, Plaintiff and Class members are entitled to the opportunity to participate in (or benefit from the aid, benefit or service) provided by Defendant in the Miami Mall. Under Title III of the ADA, 42 U.S.C. § 12182(b)(1)(A)(II), it is unlawful discrimination to deny individuals with disabilities or a class of individuals with disabilities an opportunity to participate in, or benefit from, the goods, services, facilities, privileges, advantages, or accommodations, which is equal to the opportunities afforded to other individuals.

62. Defendant has failed to provide services and accommodation (such as the provision of readers, much less “qualified readers”) to assist visually impaired individuals to access the touch-screen technology for the Proactiv kiosk within its Miami Mall. Defendant has failed to provide the assistance of a sales associate or Miami Mall employee, or any other party, to assist visually impaired customers with purchasing items from the Proactiv kiosk within its Miami Mall.

63. As such, Defendant has provided accommodations, advantages, facilities, privileges, and services to customers that contain access barriers. By failing to remove barriers to access to renter the Proactiv kiosk within Miami Mall accessible to blind customers, Defendant has denied Plaintiff and similarly situated blind customers’ the opportunity to participate in, or benefit from the aid, benefit, or service provided in Defendant’s Miami Mall.

64. Defendant has engaged in acts of intentional discrimination, including but not limited to the following policies or practices:

- a. implementing and maintaining services that discriminate against members of the putative class and subclasses with knowledge of such discrimination; and/or
- b. implementing and maintaining services that are sufficiently intuitive and/or obvious as to constitute intentional conduct; and/or
- c. failing to act in the face of the substantial likelihood of harm to class and subclass members' rights protected under federal law.

65. Defendant utilizes standards, criteria or methods of administration that have the effect of discriminating or perpetuating the discrimination of others.

COUNT I – VIOLATIONS OF THE AMERICANS WITH DISABILITIES ACT

66. Plaintiff Andres Gomez, on his own behalf and on behalf of Class Members re-allege and hereby incorporate all other paragraphs as fully stated herein.

67. Title III of the ADA prohibits discrimination on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of places of public accommodation. 42 U.S.C. § 12182.

68. Defendant owns and operates the Miami Mall, which is a place of public accommodation within the statutory definition 42 U.S.C. § 12181(7)(E) as “[A] bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment” and within the statutory definition as “[A] restaurant, bar, or other establishment serving food or drink” pursuant to 42 U.S.C. §12181(7)(B).

69. The Proactiv kiosk located within the Miami Mall provides the public with the ability to purchase Proactiv brand merchandise, therefore the Proactiv kiosk is a

place of public accommodation as defined at 42 U.S.C. §§ 12181(7)(B) and (E) as is the Miami Mall.

70. As the lessor of space and/or provider of retail shopping services through the Proactiv Kiosk within the Miami Mall, Defendant is meets the definition of a "Public Accommodation" under 42 U.S.C.

71. There is readily available accessible technology, such as the technology in use at blind accessible ATM machines, which makes use of tactile controls and auxiliary aids, which can be integrated into the Proactiv kiosk in the Miami Mall to make it independently accessible to blind people. Providing the auxiliary aids and services mandated by the ADA would neither fundamentally alter the nature of Defendant's business nor result in an undue burden to Defendant.

72. Under Title III of the ADA, 42 U.S.C. § 12182(b)(1)(A)(i), it is unlawful discrimination to deny individuals with disabilities or a class of individuals with disabilities the opportunity to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of an entity.

73. Patrons of Defendant who are blind have been denied the opportunity to participate in or benefit from aid, benefit or services that are provided to other patrons of the Miami Mall who are not disabled, and/or have been provided services that are inferior to the services provided to non-disabled patrons.

74. Defendant has discriminated and continues to discriminate against Plaintiff and Class Members by excluding blind individuals the opportunity to participate in or benefit from of the services, programs or activities of Defendant, namely as related to the Proactiv kiosk within the Miami Mall.

75. Plaintiff Andres Gomez is an individual with a disability within the meaning of the ADA. Plaintiff Andres Gomez has an impairment that substantially limits the major life activity of seeing. 42 U.S.C. § 12102(2)(A).

76. Defendant has failed to take any prompt and equitable steps to remedy its discriminatory conduct. These violations are ongoing.

77. As such, Defendant discriminates, and will continue in the future to discriminate against Plaintiff and members of the proposed class and subclass on the basis of disability by denying visually impaired individuals the opportunity to participate in or benefit from aid, benefit or services that are provided to other patrons who are not disabled in violation of Title III of the Americans with Disabilities Act, 42 U.S.C. §§ 12182 *et seq.* and/or its implementing regulations.

78. Unless the Court enjoins Defendant from continuing to engage in these unlawful practices, Plaintiff and members of the proposed Class and Subclass will continue to suffer irreparable harm.

79. Modifying its policies, practices, and services to make the Proactive kiosk within the Miami Mall accessible to blind individuals would not fundamentally alter the nature of Defendant's business, nor would it pose an undue burden to this flourishing company.

80. The actions of Defendant were and are in violation of the ADA and therefore Plaintiff invokes his statutory right to injunctive relief to remedy the discrimination.

81. Plaintiff is also entitled to reasonable attorneys' fees and costs.

82. Pursuant to 42 U.S.C. § 12188 and the remedies, procedures, and rights set

forth and incorporated therein Plaintiff prays for judgment as set forth below.

83. Pursuant to 42 U.S.C. § 12188, this Court is vested with the authority to grant the Plaintiff and Class Members injunctive relief; including an order to:

a) Require Defendant to cease and desist discriminatory practices and if necessary to cease and desist operations of its Proactive touch screen kiosk until the requisite modifications are made such that the retail services provided through the kiosk becomes accessible to persons with disabilities.

b) Plaintiff has been obligated to retain the undersigned counsel for the filing and prosecution of this action. Plaintiff is entitled to have reasonable attorneys' fees, costs and expenses paid by Defendant.

COUNT II - VIOLATION OF FLORIDA CIVIL RIGHTS ACT OF 1992

84. Plaintiff Andres Gomez, on his own behalf and on behalf of Class Members re-allege and hereby incorporate all other paragraphs as fully stated herein.

85. The Miami Mall is defined as a place of public accommodation pursuant to 42 U.S.C. §§ 12181(7)(B) and (E) and under F.S. § 760.02(11)(d)⁶, therefore the Miami Mall and Defendant fall under the prevue of F.S. §760.08.

86. Therefore, Defendant has violated Florida Civil Rights Act of 1992 §760.08, which provides all persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, and advantages in any public accommodation, without discrimination or segregation on the grounds of handicap.

⁶ § 760.02(11)(d) states: "Any establishment which is physically located within the premises of any establishment otherwise covered by this subsection, or within the premises of which is physically located any such covered establishment, and which holds itself out as serving patrons of such covered establishment."

87. The violations of Florida law were deliberate and knowing.

88. Defendant's actions were intentional, with reckless disregard, and with deliberate indifference to the rights and needs of the Plaintiff herein.

DEMAND FOR RELIEF

WHEREFORE, Plaintiff Andres Gomez, on his own behalf and on behalf of the Class Members, hereby demand judgment against Defendant Simon Property Group, L.P. and request the following injunctive and declaratory relief:

- a) The Court to certify this matter as a Class action on behalf of the Class defined above, appoint Plaintiff Andres Gomez as the Class representative, and appoint the undersigned as Class counsel;
- b) The Court to issue a declaratory judgment that Defendant has violated the Plaintiff's and Class Members' rights as guaranteed by the ADA and Florida Civil Rights Act of 1992;
- c) A preliminary and permanent injunction to prohibit Defendant from violating the Americans with Disabilities Act, 42 U.S.C. §§ 12181, *et seq.* and Florida Civil Rights Act of 1992;
- d) A preliminary and permanent injunction requiring Defendant to take the steps necessary to make the kiosk service readily accessible to and usable by blind individuals;
- e) A declaration that Defendant is owning, maintaining, and/or operating the Proactiv kiosk in the Miami Mall in a manner which discriminates against blind individuals and which fails to provide access for persons with disabilities as required by the Americans with Disabilities Act, 42 U.S.C.

§§ 12181, *et seq.* and Florida Civil Rights Act of 1992;

- f) An order certifying this case as a class action under Fed. R. Civ. P. Rule 23(a) & (b)(2) and/or (b)(3), appointing Plaintiff as Class Representative, and his attorney as Class Counsel;
- g) Plaintiff's reasonable attorneys' fees, expenses, and costs of suit as provided by federal law;
- h) For pre and post-judgment interest to the extent permitted by law; and
- k) The Court to award damages, including statutory damages where applicable, to Plaintiff and Class Members in an amount to be determined at trial;
- l) The Court to award Plaintiff and the Class their reasonable litigation expenses and attorneys' fees; pre- and post-judgment interest to the extent allowable; and other equitable relief as the Court deems proper; compensatory damages sustained by Plaintiff and the Class; statutory damages, including punitive damages; and permanent injunctive relief prohibiting Defendant from engaging in the conduct and practices complained of herein; and
- m) That the Court award such other and further relief as it deems necessary, just and proper.

Dated this 5th day of April, 2017.

Respectfully submitted,

s/Scott Dinin

Scott R. Dinin, Esq.

Scott R. Dinin, P.A.

Florida Bar No. 97780

4200 NW 7th Avenue

Miami, Florida 33127

Tel: (786) 431-1333

inbox@dininlaw.com

Attorney for Plaintiff and the Class

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS Andres Gomez, on his own behalf and on behalf DEFENDANTS Simon Property Group, L.P.

of all other individuals similarly situated

County of Residence of First Listed Defendant Broward

(b) County of Residence of First Listed Plaintiff Miami-Dade

(EXCEPT IN U.S. PLAINTIFF CASES)

(IN U.S. PLAINTIFF CASES ONLY)

NOTE:

IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)

Attorneys (If Known)

Scott R. Dinin, P.A., Scott R. Dinin, P.A. 4200 NW 7 Avenue, Miami, Florida 33127; Tel: 786-431-1333; Email: inbox@dininlaw.com

(d) Check County Where Action Arose: [X] MIAMI-DADE [] MONROE [] BROWARD [] PALM BEACH [] MARTIN [] ST. LUCIE [] INDIAN RIVER [] OKEECHOBEE [] HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- 1 U.S. Government Plaintiff [X] 3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant [] 4 Diversity (Indicate Citizenship of Parties in Item III)

- Citizen of This State [] 1 [] 1
Citizen of Another State [] 2 [] 2
Citizen or Subject of a Foreign Country [] 3 [] 3
Incorporated or Principal Place of Business In This State [] 4 [] 4
Incorporated and Principal Place of Business In Another State [] 5 [] 5
Foreign Nation [] 6 [] 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Grid of categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, OTHER STATUTES. Includes sub-categories like Insurance, Motor Vehicle, Personal Injury, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding [X] 2 Removed from State Court [] 3 Re-filed (See VI below) [] 4 Reinstated or Reopened [] 5 Transferred from another district (specify) [] 6 Multidistrict Litigation Transfer [] 7 Appeal to District Judge from Magistrate Judgment [] 8 Multidistrict Litigation - Direct File [] 9 Remanded from Appellate Court []

VI. RELATED/ RE-FILED CASE(S) (See instructions): a) Re-filed Case [] YES [X] NO b) Related Cases [] YES [X] NO JUDGE: DOCKET NUMBER:

VII. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity): 42 U.S.C. Sec 12181-12189; 28 C.F.R. Part 36; Barriers to Access LENGTH OF TRIAL via 4 days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 [X] DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: [] Yes [X] No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE DATE: 4/5/17 SIGNATURE OF ATTORNEY OF RECORD: [Signature]

FOR OFFICE USE ONLY: RECEIPT # AMOUNT IFP JUDGE MAG JUDGE

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

ANDRES GOMEZ, On His Own Behalf, and)
On Behalf of All Other Individuals Similarly)
Situated)
) Civil Action No.
Plaintiffs,)
v.)
SIMON PROPERTY GROUP, L.P.)
Defendant.)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) SIMON PROPERTY GROUP, L.P.
c/o C T Corporation System, as resident agent
1200 South Pine Island Road
Plantation, Florida 33324

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Scott R. Dinin, Esq.
Law Offices of Scott R. Dinin, P.A.
4200 NW 7th Avenue
Miami, Florida 33127
Tel: (786) 431-1333
E-mail: inbox@dininlaw.com

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Claims Simon Property Group-Operated Kiosk Violates ADA](#)
