

UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF NEW YORK

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VIKTOR ZYBTSEV, individually and on  
behalf of all others similarly situated,

Plaintiff,

**COMPLAINT**

-against-

**CASE NO.: 18-CV-2178**

THE STAPLES GROUP, INC. and  
HSPR ASSOCIATES, LLC,

**JURY DEMAND**

Defendants.

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**CIVIL COMPLAINT**

Michael Grinblat, Esq. (4159752), Law Offices of Michael Grinblat, Attorney for the  
Plaintiff, 817 Broadway, Fifth Floor, New York, NY 10003, Tel: (347) 796-0712.

The plaintiff, Viktor Zybtssev, as and for his complaint against the defendants,  
respectfully brings before the Court the below allegations.

**STATEMENT OF THE PLAINTIFF'S CLAIMS**

1. This is an action under Title III of the Americans with Disabilities Act of 1990 (the  
“ADA”) to enjoin unlawful discrimination based on disability. The plaintiff, VIKTOR  
ZYBTSEV, was discriminated against on the basis of disability and denied full and equal  
enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of  
a place of public accommodation owned, leased, or operated by the defendants, THE  
STAPLES GROUP, INC. and HSPR ASSOCIATES, LLC.

2. The plaintiff files this action for himself, and those similarly situated, complaining of the violations of Title III of the ADA. This action is brought under the ADA, 42 U.S.C. §12182, §12183 and §12188(a) – incorporating by reference the remedies and procedures found in 42 U.S.C. 2000a-3, §204 of the Civil Rights Act of 1964 – the ADA’s Accessibility Guidelines, 28 CFR Part 36, subpart D, the 2004 ADA Accessibility Guidelines (“ADAAG”) at 36 CFR Part 1191, appendices B and D, 2010 ADA Standards for Accessible Design (hereinafter “2010 Standards”), the Building Code of the State of New York, as well as New York State Civil Rights Law §40-c and §40-d, New York State Human Rights Law §296 and New York City Human Rights Laws [Administrative Code] §8-107.
3. The plaintiff seeks compensatory and statutory damages, declaratory and injunctive reliefs, attorney’s fees, expert fees and costs against the defendants, as well as such other relief as the Court deems to be just and proper.

### **JURISDICTION AND VENUE**

4. This Court has jurisdiction over this action pursuant to 28 U.S.C. §451, §1331, §1337, §1343, §2201, §2202 and 42 U.S.C.A. §12181, *et seq.*, as it involves federal questions regarding the deprivation of the plaintiff’s rights under the ADA.
5. This Court has supplemental jurisdiction over the plaintiff’s allegations arising from the defendants’ state law violations pursuant to 28 U.S.C. §1367(a).
6. Venue is proper in this district pursuant to 28 U.S.C. §1391(b), because all events, or omissions, giving rise to this action, and alleged herein, occurred in this district. Venue is also proper in this district, because the defendants’ property, a public accommodation,

which is the subject of this action, is located in, and does business within, this judicial district.

7. The remedies provided by the New York State Human Rights Law Against Discrimination are not exclusive and state administrative remedies need not be exhausted in connection with suits brought under the Federal Civil Rights Act.

### **PARTIES**

8. The plaintiff, VIKTOR ZYBTSEV is, and has been at all times material hereto, a resident of Kings County, New York.
9. The plaintiff is disabled and is expressly authorized under §308 of the ADA, 42 U.S.C. §12188(a) – incorporating by reference the remedies and procedures found in 42 U.S.C. 2000a-3, §204 of the Civil Rights Act of 1964 – to bring this action.
10. Upon information and belief the defendant, THE STAPLES GROUP, INC., operates, and at all relevant times operated, the commercial property, a store, or a sales establishment, named Staples and, at all relevant times, had control over and maintained, an adjacent parking lot, which it designed and/or constructed, and/or painted, and/or placed markings on, and/or altered, for the purpose of providing parking spaces for its customers, and is located at 2892 Ocean Avenue, Brooklyn, NY 11235 (hereinafter also referred to as the “Subject Facility”). The defendant is an American for-profit corporation organized under the laws of Delaware. Its principal executive office is located at the following address: THE STAPLES GROUP, INC., 500 Staples Drive, Framingham, MA 01702. The defendant is registered to conduct business activities in New York State with the New

York State Department of State. Its registered agent is CT Corporation System, 111 Eighth Avenue, New York, NY 10011.

11. The defendant, THE STAPLES GROUP, INC. is an American multinational office supply retailing corporation. It currently comprises over 1,500 stores in North America and sells office supplies and machines, promotional products, technology and business services both in store and online. Upon information and belief, there are over 20 store locations in the New York City's boroughs.
12. The defendant, THE STAPLES GROUP, INC., operates the Subject Facility, which is a store and/or a sales establishment. It is a public accommodation within the meaning of Title III of the ADA, 42 U.S.C. §12181(7)(E) and 28 CFR §36.104(5), New York State Human Rights Law §292(9) and New York City Human Rights Law, Admin. Code of the City of New York, §8-102(9).
13. Upon information and belief the defendant, HSPR ASSOCIATES, LLC, at all relevant times was, and currently is, an owner of the commercial real estate lot in Kings County, on which the Subject Facility is located, and of the building in which it operates. Upon information and belief the company is a landlord and leases its building and land, on which the parking lot of the Subject Facility is located, to the defendant THE STAPLES GROUP, INC. The defendant HSPR ASSOCIATES, LLC is a New York company, registered in Suffolk County, New York. The website maintained by the NYS Department of State shows that there is no registered agent and that the address to which it will mail process, if accepted on behalf of the entity, is the following: C/O Ralph Esposito, 26 Cove Hollow Road, East Hampton, NY 11937.

14. The defendants are jointly and severally liable for the design, construction, maintenance, control and operation of the parking lot adjacent to the store. It is the subject of this lawsuit and, together with the store, a part of the Subject Facility.

**CLASS ACTION**

15. The plaintiff brings this suit for declaratory and injunctive relief and as a class action, pursuant to F.R.C.P. 23, on behalf of all those similarly situated who, as persons who must use wheelchairs by reason of various disabilities, and who use or desire to use the services and accommodations offered to the public by the defendants, are protected by, and are beneficiaries of, the ADA, the New York Civil Rights Laws, the New York State Human Rights Laws and the New York City Human Rights Laws.

16. The plaintiff, complaining for himself, and all other similarly situated disabled residents in the City and State of New York, hereby alleges the following:

- a. The class is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable;
- b. There are questions of law, or fact, common to the class, which predominate over any questions affecting only individual members;
- c. The claims or defenses of the representative parties are typical of the claims, or defenses, of the class;
- d. The representative parties will fairly and adequately protect the interests of the class; and
- e. A class action is superior to other available methods for the fair and efficient adjudication of the controversy.

17. The claims of the plaintiff are typical of those of the class. The class, similarly to the plaintiff, was also not able to have access to the Subject Facility because of the architectural barriers.
18. The plaintiff will fairly and adequately represent and protect the interests of the members of the class, because, in accordance with Fed. R. Civ. P. 23(g), he has retained, and is represented by, an experienced counsel, who has done the work in identifying and investigating potential claims in the action, who knows the applicable law, who may commit resources to representing the class, who would represent the plaintiff in complex class action litigation, and because the plaintiff has no interests antagonistic to the members of the class.
19. A class action may be maintained under Fed. R. Civ. P. 23(a), which is satisfied, as prosecuting separate actions by, or against, individual class members would create a risk of adjudications with respect to them that, as a practical matter, would be dispositive of the interests of the other members, not parties to the individual adjudications, or would substantially impair, or impede, their ability to protect their interests. That risk includes, but is not limited to, the defendants removing the architectural barriers without either compensating members of the class, or paying them statutory damages, for discrimination, discomfort, emotional distress, inconvenience and humiliation, which the class members have suffered as a result of the defendants' actions, which violated the ADA, the New York Civil Rights Laws, the New York State Human Rights Laws and the New York City Human Rights Laws.
20. Class certification of the claims is appropriate pursuant to Fed. R. Civ. P. 23(b)(2), because the defendants had acted, or refused to act, on grounds that apply generally to the

class, so that final injunctive relief, or corresponding declaratory relief, is appropriate respecting the class as a whole.

21. Alternatively, class certification is appropriate under Fed. R. Civ. P. 23(b)(3), because questions of law, or fact, common to class members clearly predominate over any 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.
22. 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 who use wheelchairs in the Eastern District of New York.
23. References to the plaintiff shall be deemed to include the named plaintiff and each member of the class, unless otherwise indicated.

#### **STATUTORY SCHEME**

24. On July 26, 1990, United States Congress enacted the ADA, establishing important civil rights for individuals with disabilities, including the right to full and equal enjoyment of goods, services, facilities, privileges and access to places of public accommodation.
25. Congress made the following findings:
  - a. Some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;
  - b. Historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;
  - c. Discrimination against individuals with disabilities persists in such critical areas as employment, housing, public

accommodations, education, transportation, communication, recreation, institutionalization, health services, voting and access to public services;

- d. Individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and regulation to lesser services, programs, activities, benefits, jobs or other opportunities; and
- e. The continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and non-productivity.

42 U.S.C. §12101(a)(1)-(3), (5) and (8)

26. Furthermore, Congress also explicitly stated that the ADA had to:

- a. Provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;
- b. Provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities; and
- c. Invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

42 U.S.C. §12101(b)(1)(2) and (4)

27. Furthermore, pursuant to 42 U.S.C. §12182 and 28 CFR §36.201(a), the congressional intent was to ensure that no place of public accommodation may discriminate against an individual on the basis of such individual's disability, with regard to the full and equal



enjoyment of the goods, services, facilities, privileges, advantages, or accommodations at that place of public accommodation.

28. Congress provided commercial businesses at least 18 months from enactment to make their facilities compliant with the regulations in the ADA. The effective date of Title III of the ADA was January 26, 1992, or January 26, 1993, if defendant has ten (10), or fewer, employees and gross receipts of \$500,000, or less. 42 U.S.C. §12183; 28 CFR §36.508(a).
29. The 2000 United States census indicates that in the civilian non-institutionalized population more than 49.7 million people in the United States have a disability. The census also indicates that more than 1.39 million New Yorkers have a mobility disability.
30. The ADA, the New York Civil Rights Laws, the New York State Human Rights Laws and the New York City Human Rights Laws recognize individuals with disabilities as a protected class. 42 U.S.C. §12182(a)
31. It is unlawful for a private entity, which owns, leases, leases to, or operates a place of public accommodation to discriminate against an individual with a disability. 42 U.S.C. §12182(b)(1)(A), 28 CFR §36.201(a) and (b)
32. Pursuant to the mandates of 42 U.S.C. §12134(a), on July 26, 1991, the Department of Justice, Office of the Attorney General, promulgated Federal Regulations to implement the requirements of the ADA, known as the ADAAG, 28 CFR §36, under which it may obtain civil penalties of up to \$110,000 for the first violation and \$150,000 for any subsequent violation.
33. The landlord, who owns the building that houses a place of public accommodation and the tenant, who owns, or operates the place of public accommodation, have a non-

delegable duty to comply with the ADA, the New York Civil Rights Laws, the New York State Human Rights Laws and the New York City Human Rights Laws. 28 CFR §36.201(a) and (b)

34. The Subject Facility affects interstate commerce within the meaning of the ADA. 42 U.S.C. §12181(7)(E) and 28 CFR §36.104(5)
35. Regardless of any contractual provisions stating otherwise, the landlord and owner of the property, which houses the public accommodation, cannot escape liability for the tenant's failure to comply with the ADA, the New York Civil Rights Laws, the New York State Human Rights Laws and the New York City Human Rights Laws. 28 CFR §36.201.
36. Discriminatory intent is not required to establish liability under the ADA, the New York Civil Rights Laws, the New York State Human Rights Laws and the New York City Human Rights Laws.
37. One type of disability discrimination is an owner's, or an operator's, of the public accommodation failure to remove those architectural barriers, removal of which is readily achievable.

A public accommodation shall remove architectural barriers in existing facilities, including communication barriers that are structural in nature, where such removal is readily achievable, i.e., easily accomplishable and able to be carried out without much difficulty or expense.

28 CFR §36.304

38. If an individual with a disability is dissuaded from entering, or receiving services of a public accommodation because of the existence of an architectural barrier, the landlord and tenant will be guilty of discrimination on the basis of disability.

39. The defendants must remove all barriers, removal of which is readily achievable, that deny an individual with a disability the opportunity to participate in, or benefit from, services, or accommodations, on the basis of their disability. 28 CFR §36.304
40. Removal of the architectural barriers was readily achievable by the defendants.
41. The plaintiff is informed and believes, and therefore alleges, that the Subject Facility has begun operations, and/or undergone substantial remodeling, repairs and/or alterations, since January 26, 1990, and/or has sufficient income to make readily achievable accessibility modifications.

## **FACTUAL ALLEGATIONS AND FIRST CAUSE OF ACTION**

### **Violations of the ADA**

42. The plaintiff, who was born in 1956, is an elderly man aged beyond his 61 years. He suffers from the debilitating diseases, chronic heart failure (“CHF”) and gout. Awaiting a heart transplant, he had eight stents inserted in his heart, together with a pace maker. Furthermore, a chip has been surgically implanted into his heart. Taking vital measurements regarding the plaintiff’s heart and fluid level in his body, it transmits that data to the hospital treating him. As a consequence of the CHF, the plaintiff’s body swells and he gains between 30 – 40 pounds of extra weight. In addition, due to the CHF and the swelling, it is extremely difficult for the plaintiff to breathe. That condition is still further exacerbated by constant cough, characteristic for people afflicted with the CHF. The plaintiff’s legs feel very heavy because of the CHF and are in constant pain due to the swelling and gout. He is not able to walk beyond eight to ten steps at a time before his heart beat is dangerously high. Because of that, the plaintiff must sit and calm down until

the rate of his heart beat is reduced. The plaintiff is disabled under the statute, which in pertinent part states that

*disability* means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual... . The phrase *major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

28 CFR §36.104

43. The plaintiff's treating physician prescribed him a large, heavy duty walker, which, upon information and belief, is the biggest one currently manufactured. It has a seat cushion on it, designed to allow a user to sit. The plaintiff has to sit down on it after walking eight to ten steps due to his medical condition and does it every few minutes. No smaller walker can be used by the plaintiff, as it would fail to support his weight, which with a body swollen due to the CHF, often exceeds 280 pounds. Only a heavy duty walker supports such a weight. With a wheel base of 28 inches the walker is two inches wider than a wheelchair, as defined by 28 CFR §36A4.2.4 Appendix A. The walker used by the plaintiff is also a wheelchair under the definition in 28 CFR §36.104, as it is a "manually-operated ... device designed primarily for use by an individual with a mobility disability for the main purpose of indoor or of both indoor and outdoor locomotion."
44. On March 25, 2018, the plaintiff attempted to enter the defendants' Subject Facility, to enjoy full and equal access to, and the benefits of, all the accommodations and services offered at the defendants' property.
45. The Subject Facility is a store and/or a sales establishment, which sells office and/or household supplies. Adjacent to the store is a parking lot, which comprises part of the

Subject Facility, as it was provided by the defendants for their customers. They own the store and the parking lot and/or lease, and/or operate it, and/or designed it, and/or altered it since 1992. The Subject Facility is a public accommodation within the meaning of Title III of the ADA, 42 U.S.C. §12181(7)(E) and 28 CFR §36.104(5), New York State Human Rights Law §292(9) and New York City Human Rights Law, Admin. Code of the City of New York, §8-102(9).

46. The plaintiff parked his vehicle in one of the two parking spaces designated by markings for use by disabled people at the Subject Facility's parking lot. He had a Disability Parking Permit, issued by the New York State Department of Motor Vehicles, which authorized him to park at parking spaces designated for use by people with disabilities.
47. The plaintiff attempted to exit the car, but was not able to do so initially. There was no space for him to place his walker either to the left of his car, as another car was parked there, nor to the right of his car, as that area was blocked by a container used to store the Subject Facility's refuse. There was no required access aisle in the parking lot, specifically envisioned by the 2010 Standards to aid the plaintiff, and others similarly situated, in like circumstances.
48. The plaintiff had to wait in his car for over ten minutes for the vehicle, which was parked to the left of his, to leave the parking space in order for him to exit his car on the left side, remove the walker from it and place it on the ground.
49. When the plaintiff placed his walker on the ground and tried to hold on to it, he was not able to do that without difficulty, as it rolled, because the ground surface was impermissibly steep, much steeper than allowed by the 2010 Standards. In addition, there

were numerous cracks, some of which were deeper than two inches, and other visible damage on it, preventing movement of the walker and inconveniencing the plaintiff.

50. The plaintiff was not able to walk to the store's entrance on the path between the front of the parked cars and the store's wall, because the path, at some locations not wider than 15 inches, was too narrow for his walker.

51. The plaintiff attempted to walk, using his walker, behind the parked cars, but was not able to reach the store's entrance, because the path behind the parked cars was too steep, uneven, damaged and unsafe to walk on, and to make matters worse, the cars entered and exited the parking spaces between the parking spaces designated as spaces for people with disabilities and the store's entrance, blocking and endangering the plaintiff.

52. As if to deliberately frustrate and hinder the plaintiff, and others similarly situated, these parking spaces were placed at the most distant locations from the store's entrance in the front row of the defendants' parking lot.

53. The store's parking lot was either designed by people, who did not have the plaintiff and his needs, and needs of others similarly situated, in mind, to accommodate him and facilitate his access to the store, or worse, and much more likely, designed with the plaintiff in mind, but not to aid him in his visit to the store, but instead to frustrate his efforts as much as possible through architectural barriers, in order to make him understand and feel the futility of his exertion and that his patronage of the store is neither needed, desired, welcomed, or wanted by the defendants.

54. Frustrated, disappointed and humiliated the plaintiff returned to his car and left the Subject Facility's parking lot, without entering the store, vowing not to return to it until the numerous violations of the ADA are fixed.

55. The plaintiff lives less than two miles away from the Subject Facility. It is conveniently located and he intends to visit it, purchase the products it sells, which are needed by him, and enjoy its services, as soon as the architectural barriers are removed.
56. The plaintiff was denied access to the property, because of unlawful architectural barriers, and therefore suffered an injury in fact.
57. Since at least March 25, 2018, the defendants have engaged in unlawful practices in violation of the ADA, the New York Civil Laws, the New York State Human Rights Laws and the New York City Human Rights Laws.
58. The plaintiff is unable to visit the Subject Facility, continues to be discriminated against due to the architectural barriers, which remain at the Subject Facility, all in violation of the ADA, the New York Civil Rights Laws, and the New York State and the New York City Human Rights Laws. The barriers to access the Subject Facility have effectively denied the plaintiff ability to visit the property and have caused emotional distress, embarrassment and frustration to the plaintiff.
59. Because the Subject Facility is a public accommodation, the defendants are responsible for complying with the ADA. 28 CFR §36.304
60. The numerous architectural barriers to access the Subject Facility have endangered the plaintiff's safety.
61. The defendants' Subject Facility violates 42 U.S.C. §12181, §12182, §12183, §12204 of the ADA, 28 CFR §36.302 and §36.304.
62. The Department of Justice ("DOJ") published revised regulations for Title III of the ADA in the Federal Register on September 15, 2010. "These regulations adopted revised, enforceable accessibility standards called the 2010 ADA Standards for Accessible

Design, ‘2010 Standards’”. 2010 Standards, Overview. These standards “set minimum requirements – both scoping and technical – for newly designed and constructed, or altered ... public accommodations, and commercial facilities to be readily accessible to and usable by individuals with disabilities.” Id. The DOJ provided that document in one publication and it includes the 2010 Standards for public accommodations and commercial facilities, which consist of the Title III regulations at 28 CFR Part 36, subpart D, and the 2004 ADAAG at 36 CFR Part 1191, appendices B and D.

63. The defendants’ Subject Facility is discriminating against the plaintiff, and others similarly situated, by denying him access to, as well as full and equal enjoyment of, the goods, services, facilities, privileges, advantages and/or accommodations of the building, by means of the architectural barriers, the existence of which is in violation of the ADA, including, but not limited to, those listed below.
64. “For every six or fraction of six parking *spaces* required by 208.2 to comply with 502, at least one shall be a van parking *space* complying with 502.” 2010 Standards §208.2.4. The defendants failed to designate a parking space for a van and no such parking space exists in their parking lot.
65. “Parking *spaces* complying with 502 that serve a particular *building* or *facility* shall be located on the shortest *accessible* route from parking to an *entrance* complying with 206.4.” 2010 Standards §208.3.1. The defendants failed to locate parking spaces on the shortest accessible route to the entrance of the store. They could have placed them next to it. Instead, they designated as parking spaces at the furthest location from the entrance in the front row.



66. The defendants designated as parking spaces for people with disabilities spaces that are even narrower than the minimum required width. “Car parking *spaces* shall be 96 inches (2440 mm) wide minimum and van parking *spaces* shall be 132 inches (3350 mm) wide minimum, shall be marked to define the width, and shall have an adjacent access aisle complying with 502.3.” 2010 Standards §502.2. Not only was not a single parking space for a van provided, as stated above, but no parking space at the lot satisfies even the minimum requirements for a car space. Of the two parking spaces at the defendants’ parking lot, one is as narrow as 90 inches and another is even narrower, at 85 inches.
67. “Access aisles serving parking *spaces* shall comply with 502.3. Access aisles shall adjoin an *accessible* route. Two parking *spaces* shall be permitted to share a common access aisle.” 2010 Standards §502.3. No access aisle is present at the defendants’ parking lot.
68. “Accessible routes must connect parking spaces to accessible entrances. In parking facilities where the accessible route must cross vehicular traffic lanes, marked crossings enhance pedestrian safety, particularly for people using wheelchairs and other mobility aids. Where possible, it is preferable that the accessible route not pass behind parked vehicles.” Advisory 2010 Standards §502.3. On the defendants’ parking lot the path between the parking spaces and the store was no wider than 15 inches, too narrow for the plaintiff’s 28 inch wide walker to pass through. Consequently, the plaintiff had to walk behind the parked vehicles. Although it was possible to design the parking lot to make it compliant with the ADA, the defendants chose to not do so. As a result, the plaintiff was not able to walk safely from the car to the store’s entrance. He had to walk behind parked vehicles.

69. “Access aisles serving car and van parking *spaces* shall be 60 inches (1525 mm) wide minimum.” 2010 Standards §502.3.1. The defendants failed to design an access aisle. No such aisle is present in the defendants’ Subject Facility’s parking lot.
70. “Access aisles shall extend the full length of the parking spaces they serve.” 2010 Standards §502.3.2. There is no access aisle in the defendants’ parking lot.
71. “Access aisles shall be marked so as to discourage parking in them.” 2010 Standards §502.3.3. The defendants failed to comply with the law and did not mark any area as an access aisle. Consequently, the plaintiff did not have space to exit the vehicle.
72. “Access aisles shall not overlap the vehicular way. Access aisles shall be permitted to be placed on either side of the parking space except for angled van parking spaces which shall have access aisles located on the passenger side of the parking spaces.” 2010 Standards §502.3.4. There is no parking aisle of *any kind* in the defendants’ parking lot.
73. “Parking spaces and access aisles serving them shall comply with 302. Access aisles shall be at the same level as the parking spaces they serve. Changes in level are not permitted. EXCEPTION: Slopes not steeper than 1:48 shall be permitted.” 2010 Standards §502.4. Thus, the maximum permissible slope must not be steeper than 2.08%. The slopes of the defendants’ parking spaces are unlawfully much steeper than that, between 1:15.6 – 1:4.3, which is the equivalent of 6.41% – 23.26%.
74. “Access aisles are required to be nearly level in all directions to provide a surface for wheelchair transfer to and from vehicles. The exception allows sufficient slope for drainage.” 2010 Standards §Advisory 502.4. In the defendants’ parking lot, not only were the access aisles not “nearly level”, they were impermissibly significantly steep, between 1:15.6 – 1:4.3, or 6.41% – 23.26%, and were in a state of damage and disrepair. As a

result, it was extraordinarily difficult to transfer from a vehicle to a walker and the other way around.

75. “Parking space identification signs shall include the International Symbol of Accessibility complying with 703.7.2.1. Signs identifying van parking spaces shall contain the designation ‘van accessible.’ Signs shall be 60 inches (1525 mm) minimum above the finish floor or ground surface measured to the bottom of the sign.” 2010 Standards §502.6. The defendants disregarded the regulation completely and failed to install the required van identification sign in their parking lot. It was absent together with a space for a van.
76. “Parking spaces and access aisles shall be designed so that cars and vans, when parked, cannot obstruct the required clear width of adjacent accessible routes.” 2010 Standards §502.7. Such an adjacent accessible route was never designed by the defendants. There was no safe way for the plaintiff to walk from the parked vehicle to the store entrance. He was neither able to walk in front of the store, in the space between the front of the cars and the store’s wall, because the area was too narrow for his walker, nor was there a safe route behind the parked cars, as they came and went, blocking his path and endangering his life.
77. “Wheel stops are an effective way to prevent vehicle overhangs from reducing the clear width of accessible routes.” 2010 Standards § Advisory 502.7. The defendants did not install wheel stops. As a result, it was impossible for the plaintiff to walk in front of the parked cars, at the safest location in front of the store, in between the parked cars and the store’s wall, because the impermissibly narrow walkway was impassable for the plaintiff’s walker.

78. "Passenger loading zones shall provide a vehicular pull-up space 96 inches (2440 mm) wide minimum and 20 feet (6100 mm) long minimum." 2010 Standards §503.2. The defendants failed to designate any area of the parking lot as a passenger loading zone. It did not exist.
79. "Passenger loading zones shall provide access aisles complying with 503 adjacent to the vehicle pull-up space. Access aisles shall adjoin an accessible route and shall not overlap the vehicular way." 2010 Standards §503.3. The defendants failed to provide an access aisle.
80. "Access aisles serving vehicle pull-up spaces shall be 60 inches (1525 mm) wide minimum." 2010 Standards §503.3.1. The defendants failed to designate any area of the parking lot as an access aisle.
81. "Access aisles shall extend the full length of the vehicle pull-up spaces they serve." 2010 Standards §503.3.2. No access aisles existed at the defendants' parking lot.
82. "Access aisles shall be marked so as to discourage parking in them." 2010 Standards §503.3.3. There were no access aisles.
83. "Vehicle pull-up spaces and access aisles serving them shall comply with 302. Access aisles shall be at the same level as the vehicle pull-up space they serve. Changes in level are not permitted." 2010 Standards §503.4. Once again, there was not a single access aisle in the defendants' parking lot.
84. "Except as provided in 403.5.2 and 403.5.3, the clear width of walking surfaces shall be 36 inches (915 mm) minimum. EXCEPTION: The clear width shall be permitted to be reduced to 32 inches (815 mm) minimum for a length of 24 inches (610 mm) maximum provided that reduced width segments are separated by segments that are 48 inches (1220

mm) long minimum and 36 inches (915 mm) wide minimum.” 2010 Standards §403.5.1.

The clear width in front of the parked cars in front of the store did not exceed 15 inches at the time the plaintiff attempted to walk to the store’s entrance from the vehicle, because the parked cars were too close to the wall, as the defendants failed to install wheel stops.

85. “Accessible routes must connect parking spaces to accessible entrances. In parking facilities where the accessible route must cross vehicular traffic lanes, marked crossings enhance pedestrian safety, particularly for people using wheelchairs and other mobility aids. *Where possible, it is preferable that the accessible route not pass behind parked vehicles.*” 2010 Standards § Advisory 502.3. Although the defendants were able to make an accessible route in front of the parked cars, between parking spaces designated for them and the store’s wall, they failed to do that. The route from the handicapped parking spaces to the store passed behind parked cars, which made it dangerous for the plaintiff to walk on. That route cannot be considered to be accessible under the ADA.

86. “Floor and ground surfaces shall be stable, firm, and slip resistant and shall comply with 302.” 2010 Standards §302.1. The defendants failed to make the ground surface stable, firm and slip resistant. It was damaged and steep. The surface had cracks over two inches deep and other visible damage. It was not slip resistant.

87. The individual plaintiff, and all others similarly situated, will continue to suffer discrimination and injury without the immediate relief provided by the ADA, as requested herein. In order to remedy this discriminatory situation, the plaintiff requires an inspection of the defendant’s Subject Facility in order to measure and photograph architectural barriers that are in violation of the ADA to determine all of the areas of non-compliance with the law.

88. The defendants have failed to remove architectural barriers to accessibility to the Subject Facility in violation of 42 U.S.C. §12182(b)(2)(A)(iv).
89. Upon information and belief, since 1992 the defendants' Subject Facility has undergone alterations to the areas, which affect, or could affect, access to or usability of, its place of public accommodation.
90. The Subject Facility has not been designed, constructed, and/or altered, or maintained in compliance with the accessibility standards of Title III of the ADA.
91. The defendants have violated their statutory obligation to ensure that their policies, practices and procedures address compliance with the 2010 Standards in that they did not make reasonable accommodations for the individual plaintiff, and all others similarly situated, and also violated their obligation to remove architectural barriers in order to let disabled individuals enjoy goods and services provided by the public accommodation under their control, thus discriminating against them.
92. To date the architectural barriers, the removal of which was readily achievable, and other violations of the ADA, still exist at the Subject Facility and have not been remedied, or altered, in such a way as to effectuate compliance with the provisions of the ADA.
93. Pursuant to the ADA, 42 U.S.C. §12101, §12182 and 28 CFR §36.304, the defendants were required to make the Subject Facility accessible to persons with disabilities, and should have removed architectural barriers by January 26, 1992. To date, the defendants have failed to comply with that mandate.
94. The defendants' failure to remove the barriers to access constitutes a pattern and practice of intentional disability discrimination and is subject to enforcement under 42 U.S.C. §12188 and 28 CFR §503.

95. It was not structurally impracticable for the defendants to make the Subject Facility accessible.
96. Removal of all architectural barriers existing at the Subject Facility was, and is, readily achievable by the defendants.
97. The defendants may, should and are required to make reasonable accommodations at the Subject Facility and their making them would be readily achievable.
98. Accommodations to the plaintiff, and other persons similarly situated, and removal of architectural barriers at the Subject Facility by the defendants, are readily achievable, would not impose an undue hardship on them and would not fundamentally alter the nature of their program, activity, or nature of the business.
99. The plaintiff has a realistic, credible, existing and continuing threat of discrimination from the defendants' non-compliance with the ADA in connection with the Subject Facility.
100. The defendants' failure to make its Subject Facility accessible denied the plaintiff and others, similarly situated, an equal opportunity to participate in, or to benefit from, services, or accommodations, on the basis of their disability.
101. The effect of the practices complained of has been to deprive the plaintiff, and all others similarly situated, the full and equal enjoyment of the Subject Facility and to otherwise adversely affect his status as a member of the public interested in accessing the place of public accommodation owned, leased, leased to, constructed, maintained and operated by the defendants.
102. The defendants' Subject Facility is not accessible to, or readily usable, by individuals with disabilities.

103. Pursuant to 42 U.S.C. §12188, this Court was vested with the authority to grant the plaintiff injunctive relief, including an order to alter the Subject Facility, to make it accessible to, and useable by, the plaintiff, and other individuals with disabilities similarly situated, to the extent required by the ADA, as well as closing the subject facilities until the requisite modifications are completed.

104. The defendants' flagrant disregard for the ADA, and the New York laws, which obligate them to make all readily achievable accommodations and modifications to remove architectural barriers to access and use of their Subject Facility is legally inexcusable. Allowing the defendants to deleteriously detrimentally prolong their practices would encourage them to continue to blatantly disregard the ADA, the New York Civil Laws, the New York State Human Rights Laws and the New York City Human Rights Laws, and discriminate against the plaintiff, and others similarly situated individuals.

105. The inexcusability of the defendants' actions is exacerbated by the fact that over 25 years have passed since the effective date of Title III of the ADA. During that time period they operated at a profit, should have accumulated sufficient funds to make alterations and had numerous opportunities to remove the architectural barriers and end discrimination, but intentionally chose not to do so. By intentionally not removing the architectural barriers, which barred the plaintiff's access, inconvenienced and embarrassed him, humiliated him and caused emotional distress to him, and others similarly situated, the defendants gave a crystal-clear message to disabled customers that their patronage is neither needed, desired, welcomed, or wanted.



**SECOND CAUSE OF ACTION**

**Violations of the New York State Human Rights Laws**

106. The plaintiff re-alleges, and incorporates, by this reference, all allegations set forth in this complaint as if fully set forth herein.

107. The New York State Human Rights Law, in relevant part, provides the following:

It shall be an unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation ... because of the ... disability ... of any person, directly or indirectly, to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof ... to the effect that any of the accommodations, advantages, facilities and privileges of any such place shall be refused, withheld from or denied to any person on account of ... disability ... .

NYS Executive Law §296(2)(a)

108. The defendants' Subject Facility is a place of public accommodation as defined in New York State Human Rights Law §292(9).

109. The defendants have further violated the New York State Human Rights Law by being in violation of the rights provided under the ADA.

110. The defendants are in violation of the New York State Human Rights Law by denying the plaintiff, and others similarly situated, full and safe access to all of the benefits, accommodations and services of the Subject Facility.

111. The defendants do not provide the plaintiff, and others similarly situated, with equal opportunity to use their public accommodation.

112. The defendants have failed to make all readily achievable accommodations and modifications to remove barriers to access in violation of Executive Law §296(2)(c)(iii).

113. As a direct and proximate result of the defendants' unlawful discrimination, which is in violation of the Executive Law, the plaintiff has suffered, and continues to suffer, emotional distress, including, but not limited to, humiliation, embarrassment, stress and anxiety.
114. The defendants have not provided the plaintiff, and others similarly situated, with evenhanded treatment in violation of New York State Human Rights Law §296.
115. The defendants' direct, or indirect, unevenhanded treatment of the plaintiff, and others similarly situated, was demonstrated when he was segregated from all other customers.
116. The defendants have, because of the plaintiff's disability, directly, or indirectly, refused, withheld from, or denied him any of the accommodations, advantages, facilities, or privileges of their public accommodation.
117. The defendants have demonstrated that the patronage, or custom, of the plaintiff, and others similarly situated, is unwelcome, unwanted, undesirable, unacceptable and objectionable.
118. Pursuant to the New York State Human Rights Laws, the defendants, and their agents, discriminated against the plaintiff.
119. As a direct and proximate result of the defendants' unlawful discrimination, which was, and is, in violation of the New York State Human Rights laws, the plaintiff has suffered, and continues to suffer, mental anguish and emotional distress, including, but not limited to, depression, humiliation, stress, embarrassment, insomnia, anxiety, loss of self-esteem and self-confidence, together with emotional pain and suffering.

120. The plaintiff requests compensatory damages in the amount of \$1,000 under the New York State Human Rights Law, NY CLS Exec §297(9).

### **THIRD CAUSE OF ACTION**

#### **Violations of the New York State Civil Rights Laws**

121. The plaintiff re-alleges, and incorporates by this reference, all the allegations set forth in this complaint, as if fully set forth herein.
122. The defendants have violated the plaintiff's civil rights on the basis of his disability.
123. Consequently, the plaintiff is entitled to recover the penalty prescribed by Civil Rights Law §40-c and §40-d, in the amount of \$500 for each violation from *each defendant*.
124. Pursuant to the New York Civil Rights law, §40-d, the defendants are guilty of a class A misdemeanor.
125. Notice of this action has been served upon the attorney general, as required by New York Civil Rights Law, §40-d.

### **FOURTH CAUSE OF ACTION**

#### **Violations of the New York City Human Rights Laws**

126. The plaintiff re-alleges, and incorporates by this reference, all the allegations set forth in this complaint, as if fully set forth herein.
127. The New York City Human Rights Law, in a relevant part, provides the below.

it shall be an unlawful discriminatory practice for any person who is the owner, franchisor, franchisee, lessor,

lessee, proprietor, manager, superintendent, agent or employee of any place or provider of public accommodation:

1. Because of any person's actual or perceived ... disability ..., directly or indirectly:

(a) to refuse, withhold from or deny to such person the full and equal enjoyment, on equal terms and conditions, of any of the accommodations, advantages, services, facilities or privileges of the place or provider of public accommodation;

NYC Admin. Code §8-107(4)

128. The defendants have not reasonably accommodated the plaintiff, and other disabled individuals, in violation of New York City's Administrative Code §8-102(4), (16), (17), (18), §8-107(4) and §8-107(15).

129. In violation of the New York City Administrative Code, the defendants have unlawfully discriminated against the plaintiff and all others similarly situated.

130. Reasonable accommodations and modifications are necessary to enable the plaintiff, and all others similarly situated, the ability to enjoy the non-restricted access and use of the defendants' Subject Facility.

131. In violation of the New York City Administrative Code the owner, operator, lessee, proprietor, manager, agent and employees of the defendants' Subject Facility have, because of the actual, or perceived, disability of the plaintiff directly, or indirectly, refused, withheld from, and denied him the accommodations, advantages, facilities, or privileges thereof.

132. In violation of the New York City Administrative Code, on the basis of the plaintiff's disability, the defendants have demonstrated that the patronage, or custom, of

the plaintiff, and all others similarly situated, is unwelcome, objectionable and not acceptable.

133. The defendants are in violation of the New York City Human Rights Law by denying the plaintiff full and safe access to all of the benefits, accommodations and services of the Subject Facility.

134. Pursuant to New York City Human Rights Law §8-502(c), notice of this action has been served upon the New York City Commission on Human Rights.

135. As a direct and proximate result of the defendants' disability discrimination, in violation of the New York City Human Rights Laws, the plaintiff has suffered, and continues to suffer, severe mental anguish and emotional distress, including, but not limited to, depression, humiliation, stress, embarrassment, anxiety, loss of self-esteem and self-confidence, emotional pain and suffering.

136. The plaintiff requests compensatory damages in the amount of \$1,000 under the New York City Human Rights Law, NYC Admin. Code §8-125.

#### **ATTORNEY'S FEES AND COSTS**

137. The plaintiff had to retain the undersigned counsel for the filing and prosecution of this action. The plaintiff is entitled to have his reasonable attorney's fees, including litigation expenses, and costs, including expert fees, paid by the defendants, pursuant to the ADA, 28 CFR §36.505 and New York Executive Law §297. Furthermore, pursuant to the New York City Human Rights Law, the Court may award the prevailing party reasonable attorney's fees. Under that law's definition "prevailing" includes a plaintiff,

whose commencement of litigation has acted as a catalyst to effect policy change on the part of the defendant. NYCHRL, in pertinent part, states the below.

In any civil action commenced pursuant to this section, the Court, in its discretion, may award the prevailing party reasonable attorney's fees, expert fees and other costs. For the purposes of this subdivision, the term "prevailing" includes a plaintiff whose commencement of litigation has acted as a catalyst to effect policy change on the part of the defendant, regardless of whether that change has been implemented voluntarily, as a result of a settlement or as a result of a judgment in such plaintiff's favor. The Court shall apply the hourly rate charged by attorneys of similar skill and experience litigating similar cases in New York County when it chooses to factor the hourly rate into the attorney's fee award.

NYC Admin. Code §8-502(g)

### **MONETARY DAMAGE**

138. The plaintiff requests compensatory damages in the amount of \$1,000 under the New York State Human Rights Law, NY CLS Exec §297(9) and the New York City Human Rights Law, NYC Admin. Code §8-125.

In calculating compensatory damages under the NYSHRL and the NYCHRL, a Court in the Southern District of New York just a few months ago found relevant the fact that '[t]he New York City Human Rights Commission has deemed awards of \$1,000 to be sufficient in cases where complainants did not establish any particular damage 'other than what a decent and reasonable individual would suffer when faced with such ignorant behavior.'

Shalto v. Bay of Bengal Kabob Corp., 2013 WL 867429, (quoting and adapting Kreisler, 2012 WL 3961304, at \*14)

139. The plaintiff requests statutory monetary damages in the sum of \$500 from *each defendant* to compensate him for their violation of New York Civil Rights Law §40-c and §40-d.

New York Civil Rights Law §40-c holds that *any person* [emphasis added] who shall violate any of the provisions of New York Civil Rights Law §40-d ‘shall for each and every violation thereof be liable to a penalty of not less than one hundred dollars nor more than five hundred dollars, to be recovered by the person aggrieved thereby in any Court of competent jurisdiction in the county in which the defendant shall reside. ... [T]his Court has the authority to order Defendant to pay Plaintiff the \$500 in statutory damages contemplated by the New York Civil Rights Law for the disability discrimination Plaintiff has suffered... .

Shalto v. Bay of Bengal Kabob Corp., 2013 WL 867429

140. The reason the plaintiff requests \$500 from each defendant, and not a lower amount envisioned by the statutes, is due to the high number and extent of the violations, which were alleged in detail in this complaint. Furthermore, the number of violations may be even greater, and they may be even more extensive, than those alleged here and it is likely that they will be revealed upon inspection of the Subject Facility by an expert, whom the plaintiff intends to hire.

### **INJUNCTIVE RELIEF**

141. Pursuant to 42 U.S.C. §12188 this Court is vested with the authority to grant the plaintiff injunctive relief, including an order to alter the Subject Facility to make it readily accessible to, and useable by, individuals with disabilities to the extent required by the ADA, the New York Civil Rights Law, the New York State Human Rights Law,

the New York City Human Rights Law and close the Subject Facility until the requisite modifications are completed.

142. The plaintiff requests the Court to issue a permanent injunction enjoining the defendants from disability discrimination.

143. The plaintiff requests the Court to issue a permanent injunction and order the defendants to alter their Subject Facility to make it readily accessible to and usable by individuals with disabilities. To achieve that, the plaintiff requests the Court to adapt relief ordered in Shariff v. Alsaydi, 2013 WL 4432218. The plaintiff requests the Court to order the defendants to prepare architectural plans remedying the violations of the 2010 Standards and to provide the plaintiff's counsel with those plans for review within 60 days of the Court's order. The plaintiff also requests that the injunction provide him with 30 days to file a motion seeking relief should the defendants' proposed architectural plans be inadequate to remedy the 2010 Standards violations specified in this complaint. The plaintiff further requests that the injunction requires the defendants to implement the architectural plans and remedy the violations within 60 days of either the plaintiff's agreement, or a ruling by the Court stating that the plans are adequate.

144. The plaintiff requests the Court to issue a permanent injunction requiring the defendants to make all necessary modifications to the defendants' policies, practices and procedures, so that the plaintiff, and other persons similarly situated, would not be subject to further unlawful discrimination.

145. Injunctive relief is also necessary to order the defendants to provide auxiliary aid, or service, and/or alternative methods, to allow the plaintiff, and others similarly situated, to use the place of public accommodation in accordance with Title III of the ADA, the



New York Civil Rights Laws, the New York State Human Rights Laws and the New York City Human Rights Laws.

**DECLARATORY RELIEF**

146. The plaintiff is entitled to a declaratory judgment concerning the violations of the ADA, the New York State and the New York City laws committed by the defendants specifying the rights of the plaintiff, and other persons similarly situated, as to the removal of the architectural barriers from the defendants' Subject Facilities by the defendants and as to their policies, practices, procedures, facilities, goods and services.

**PRAYER FOR RELIEF**

**WHEREFORE**, the plaintiff hereby respectfully requests judgment against the defendants and that this Court grants the following relief:

- A. Certifies this case as a class action;
- B. Grants a permanent injunction
  - i.) Enjoining the defendants, its officers, management personnel, employees, agents, successors and assigns from engaging in discrimination based on disability;
  - ii.) Requiring the defendants to alter their Subject Facility to make it readily accessible for, and usable to, individuals with disabilities;
  - iii.) Compelling the defendants to make all necessary modifications to their policies, practices and procedures, so that the plaintiff would not be subject to further discrimination;


- iv.) Ordering the defendants to provide auxiliary aids and services, as well as to modify their policies, or procedures, or provide an alternative method, so that the plaintiff would be able to obtain the full and equal enjoyment of the Subject Facility owned, operated, maintained, or leased, by the defendants, in accordance with Title III of the ADA, the New York Civil Rights Laws, the New York State Human Rights Laws and the New York City Human Rights Laws; and
  - v.) Ordering the defendants to make the Subject Facility readily accessible to and usable by individuals with disabilities.
- C. Enters declaratory judgment specifying the defendants' violations of the ADA, the New York Civil Laws, the New York State Human Rights Laws and the New York City Human Right Laws and declares the rights of the plaintiff, and other persons similarly situated, as to the defendants' policies, procedures, facilities, goods and services offered to the public;
  - D. Enters declaratory judgment specifying that the Subject Facility owned, operated, leased, controlled, maintained and/or administered by the defendants violates the ADA, the New York Civil Rights Law, the New York State Human Rights Law and the New York City Human Rights Law;
  - E. Enters an order requiring the defendants to alter their facilities and amenities to make them accessible to, and usable by, individuals with disabilities to the full extent required by Title III of the ADA, the New York Civil Rights Laws, the New York State Human Rights Laws and the New York City Human Rights Laws;
  - F. Holds the defendants liable for compensatory damages in the amount of \$1,000 under the New York State Human Rights Law and the New York City Human Rights Law.

- G. Holds *each of the defendants* liable for \$500 in statutory monetary damages for each violation and awards that sum to the plaintiff pursuant to New York State Civil Rights Laws §40-c and §40-d;
- H. Finds the defendants guilty of class A misdemeanor pursuant to New York State Civil Rights Law §40-d;
- I. Retains its jurisdiction over the defendants until their unlawful practices, acts and omissions no longer exist;
- J. Finds that the plaintiff is a prevailing party in this litigation and awards reasonable attorney's fees, expert fees, costs and expenses, together with such other and further relief at law, or in equity, to which the plaintiff, and other persons similarly situated, may be entitled; and
- K. Awards such other and further relief as it deems necessary, just and proper.

**JURY DEMANDED**

The plaintiff demands a trial by jury of all the issues of fact and damages.

Dated April 10, 2018



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