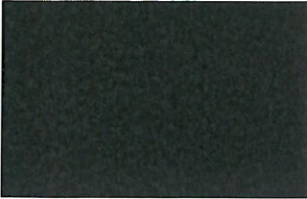


Sent Via Federal Express



Re: [REDACTED]

**FOR SETTLEMENT PURPOSES ONLY**

[REDACTED]  
We represent [REDACTED] ("Claimant") who accesses or attempts to access internet-based banking services, and whose rights to access those services are protected under the Americans with Disabilities Act (the "ADA").<sup>1</sup>

<sup>1</sup> Many federal courts have determined that a plaintiff who acts as a tester satisfies the standing requirements mandated by Article III of the United States Constitution. *See, e.g., Heinzl v. Cracker Barrel Old Country Stores, Inc.*, No. 14-1455, Dkt. No. 113, at 40-41 (W.D. Pa. Jan. 27, 2016) ("[T]he weight of authority is to permit standing to a plaintiff who acts as a tester."). Courts have explained that "anyone who has suffered an invasion of the legal interest protected by Title III may have standing, regardless of his or her motivation in encountering that invasion." *Id.* (citing *Colorado Cross Disability Coalition v. Abercrombie & Fitch Co.*, 765 F.3d 1205, 1211 (10th Cir. 2014)). It is "incumbent upon [d]efendant to ensure that its facilities comply with the ADA, regardless of the possible motive (or motives) of individuals who visit them." *Id.* at 41.

Indeed, this rule serves the ADA's national mandate to eliminate discrimination against individuals with disabilities. 42 U.S.C. § 12101(b)(1). *Heinzl*, cited *supra*, at 41 ("[G]iven the remedial purposes of Title III and the role assigned by Congress to private enforcement of its provisions, the benefit of the doubt as to standing should be accorded even to the 'tester' plaintiff.") (quoting *Marradi v. Galway House, Inc.*, No. 13-10813, 2014 WL 1454266, at \*4 (D. Mass. Apr. 15, 2014)).

The United States Department of Justice ("DOJ") and various federal courts have concluded that businesses which offer goods and services to the public through websites are public accommodations that must comply with the general accessibility mandate of the ADA.<sup>2</sup>

## I. ACCESSIBILITY FAILURES AND CONSEQUENCES

The international website standards organization — the World Wide Web Consortium ("W3C") — has published Version 2.0 of the Web Content Accessibility Guidelines ("WCAG 2.0" or the "Guidelines"). The Guidelines are widely recognized as setting the baseline requirements for website accessibility and have been used by the DOJ as a benchmark in assessing website accessibility.

Claimant reported to us that your website, [REDACTED], has access barriers. Claimant's report has been confirmed by our consulting experts, as follows:

### W3C WCAG 2.0 Compliance Failures

URL: [REDACTED]

#### Web Content Accessibility Guidelines (WCAG) 2.0

Checkpoint	Level	Checkpoint Title	# failed pages	% failed pages
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

<sup>2</sup> See, e.g., *New v. Lucky Brand Dungarees Stores, Inc.*, Statement of Interest of the United States, Case No. 14-CV-20574 (S.D. Fla.) ("The Department has long considered websites to be covered by Title III despite the fact that there are no specific technical requirements for websites currently in the regulations or ADA standards."); Statement of Interest of the United States, *Nat'l Assoc. of the Deaf v. Netflix Inc.*, 869 F. Supp. 2d 196 (D. Mass 2012), available at [http://www.ada.gov/briefs/netflix\\_SOL.pdf](http://www.ada.gov/briefs/netflix_SOL.pdf) (discussing history of public DOJ pronouncements on the topic).


This letter proposes a plan to work constructively with you, on behalf of our clients and others similarly situated, to achieve equal accessibility for all blind individuals who visit the site. **To this end, we urge you contact us within twenty-one (21) days of receipt of this letter.**

## II. COUNSEL

Carlson Lynch Sweet Kilpela & Carpenter, LLP ("Carlson Lynch") is a full-service civil law firm, with extensive national experience litigating disability cases. KamberLaw is the leading national law firm in the prosecution of internet privacy violations, and federal courts have acknowledged the firm's "recognized experience in complex litigation involving technology and privacy issues." Recently, Carlson Lynch and KamberLaw have sought permanent injunctive relief for pervasive accessibility and privacy failures in the following federal actions involving digital access including, for example:

*Parrish v. Sears Holdings Corp.*, Case No. 15-cv-05622 (W.D. Wash.) (setting forth ADA and privacy claims);

*Guimaraes v. National Collegiate Athletic Association*, Case No. 15-cv-13378 (D. Ma.);

*Jahoda v. Foot Locker, Inc.*, Case No. 15-cv-01000-AJS (W.D. Pa.);

*Sipe v. Toys "R" Us, Inc.*, Case No. 15-cv-01037-AJS (W.D. Pa.) (setting forth ADA and privacy claims);

*Jahoda v. Brooks Brothers, Inc.*, Case No. 15-cv-01050-AJS (W.D. Pa.);

*Sipe v. Huntington National Bank*, Case No. 15-cv-01083-AJS (W.D. Pa.) (motion to dismiss and/or stay denied in its entirety);

*Sipe et al v. ADIDAS America, Inc.*, Case No. 2:15-cv-01631-AJS (W.D. Pa.);

*Sipe et al v. American Casino & Entertainment Properties, LLC*, Case No. 2:16-cv-00124-AJS (W.D. Pa.);

*Jahoda v. Hard Rock Cafe International, Inc.*, Case No. 15-cv-01123-AJS (W.D. Pa.);

*Jahoda v. The Pep Boys - Manny, Moe & Jack*, Case No. 15-cv-01124-AJS (W.D. Pa.);

*Gross, et al. v. V.F. Corporation*, Case No. 15-cv-01172-AJS (W.D. Pa.);

*Gross, et al. v. Ascena Retail Group*, Case No. 15-cv-01214-AJS (W.D. Pa.);

*Sipe v. Red Roof Inns, Inc.*, Case No. 15-cv-01217-AJS (W.D. Pa.);

*Jahoda v. Bassett Furniture Industries, Inc.*, Case No. 15-cv-01255-AJS (W.D. Pa.);

*Jahoda v. National Basketball Association*, Case No. 15-cv-01462-AJS (W.D. Pa.);

*Sipe v. Estee Lauder Companies, Inc.*, Case No. 15-cv-01571-AJS (W.D. Pa.);

*Access Now, Inc., et al. v. Ace Hardware Corp.*, Case No. 15-cv-01626-AJS (W.D. Pa.); and

*Sipe v. Fry's Electronics, Inc.*, Case No. 15-cv-01630-AJS (W.D. Pa.).

### III. LEGAL BASIS FOR ACCESSIBLE WEBSITES

As noted, the DOJ has emphasized the need for accessible electronic and information technology — including websites — for disabled individuals. The DOJ issued an Advanced Notice of Proposed Rulemaking regarding revising the regulations implementing Title III of the ADA in order to establish specific scoping requirements for making goods, services, facilities, privileges, accommodation, or advantages offered by public accommodations via the internet accessible to individuals with disabilities. In the fall of 2015, the DOJ announced that it does not expect to publish the Title III website accessibility Notice of Proposed Rulemaking until fiscal year 2018.

In the interim, the DOJ has confirmed that the ADA requires that websites must be accessible now, under the ADA's general accessibility mandate.

Federal courts have endorsed the DOJ's interpretation of the ADA in the context of website accessibility. *See, e.g., National Federation of the Blind v. Target Corporation*, 452 F.Supp.2d 946 (N.D. Cal. 2006) (denying motion to dismiss); 582 F.Supp.2d 1185 (granting motion for class certification); *National Federation of the Blind v. Scribd, Inc.*, 2015 WL 1263336 (D. Vt. Mar. 19, 2015) (denying motion to dismiss); *National Association of the Deaf v. Netflix*, 869 F.Supp.2d 196 (D. Mass. 2012) (denying motion for judgment on the pleadings). Thus, there is little doubt that the Title III accessibility requirements apply to websites. *Cf. Nguyen v. Barnes & Noble Inc.*, 763 F.3d 1171, 1175-76 (9th Cir. 2014).

### IV. PROPOSAL FOR RESOLUTION AND REMEDIAL MEASURES

We propose that the parties engage in negotiations on an expedited basis, with the goal of achieving an enforceable agreement providing for injunctive relief and reasonable attorney's fees and costs. We would be willing to pursue these negotiations either directly or with the assistance of a mutually acceptable mediator.

The remedial measures would include, at a minimum, the following:

- Designate one or more individuals to manage web accessibility testing, repairing, implementation, maintenance and reporting for a WCAG 2.0 compliant website within a reasonable time period;
- Create, adopt and maintain a web accessibility policy consistent with prevailing standards;
- Initiate a needs assessment and subsequent training for web and content development personnel on WCAG 2.0 accessibility programming, functionality and design;
- Contractually require that services procured and performed by third-party developers and other relevant service providers conform to prevailing WCAG 2.0 compliant accessibility standards and your web accessibility policy;
- Conduct independent third-party monthly automated and disabled end-user testing of website; and
- Implement other related policy, technology and programming, monitoring, and training measures as they are identified and needed.

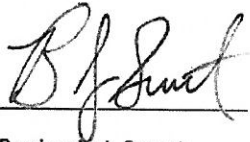
Enclosed please find a draft Settlement Agreement for your review and consideration.

To set up a call with Mr. Carlson or Mr. Sweet to discuss this matter further, please contact Daniel Hart, at [dhart@carlsonlynch.com](mailto:dhart@carlsonlynch.com).

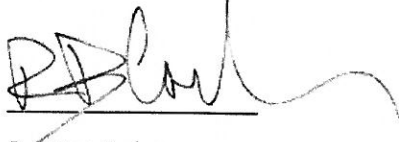
This letter is a confidential settlement communication and cannot be used in any action before any court. The statements of either party in these settlement negotiations cannot be considered admissions nor are they binding upon parties if no settlement is reached.

We hope that you will share our view concerning the value of a collaborative approach in expeditiously resolving these accessibility issues.

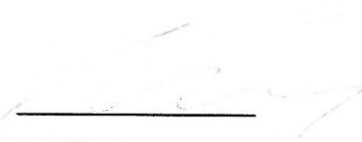
We look forward to your quick response.



Benjamin J. Sweet  
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R. Bruce Carlson



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