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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

Plaintiff, :

- against - :

LIVIU BRUNO SAIMOVICI, M.D. :
d/b/a ADVANCED EYE CARE ASSOCIATES,
and AECA MEDICAL, PLLC, :

Defendants. :

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COMPLAINT

05 Civ.

Plaintiff United States of America (the "United States"), by its attorneys Alberto Gonzales, the Attorney General of the United States, and David N. Kelley, the United States Attorney for the Southern District of New York, alleges as follows:

1. This is a civil action brought to redress discrimination on the basis of disability in violation of Title III of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12181 et seq., and its implementing regulation, 28 C.F.R. Part 36 (the "Regulation").

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 42 U.S.C. § 12188(b)(1)(B) and 28 U.S.C. §§ 1331 and 1345.

3. Venue lies in this judicial district pursuant to 28 U.S.C. § 1391(b) because defendants reside in this district and the events or omissions giving rise to the Government's claims of discrimination occurred in this district.

THE PARTIES

4. Plaintiff is the United States of America.

5. Upon information and belief, defendant Liuvi Bruno Saimovici, M.D. ("Dr. Saimovici") is a medical doctor licensed to practice in the field of ophthalmology. Dr. Saimovici owns and operates an ophthalmology practice located at 750 Park Avenue, New York, New York, which does business under the name Advanced Eye Care Associates.

6. Upon information and belief, defendant AECA Medical, LLP ("AECA") is a professional limited liability company organized and existing under the laws of the State of New York. AECA is located at 750 Park Avenue, New York, New York.

7. Upon information and belief, AECA operates "a professional office of health care provider, hospital, or other service establishment" 42 U.S.C. §§ 12181(7)(F), 12182(a).

8. Upon information and belief, Dr. Saimovici owns AECA and operates a "professional office of a health care provider." 42 U.S.C. §§ 12181(7)(F), 12182(a).

FACTS

9. At all relevant times, Dr. Saimovici specialized in vision correction through, among other methods, refractive laser surgery.

10. In 1999, Dr. Saimovici advertised in the New York Daily News an offer of a "free consultation" to any individual considering "laser vision correction."

11. In response to the advertisement placed by Dr. Saimovici in the Daily News, Michael J. Russo, who is deaf, scheduled an appointment with Dr. Saimovici for March 25, 1999, and advised the doctor's office of his need for a sign language interpreter.

12. Dr. Saimovici refused to pay for the services of a sign language interpreter for Russo's March 25, 1999 appointment, offered no other auxiliary aid or service to ensure effective communication with Russo for that appointment, and cancelled the March 25, 1999 appointment.

13. On March 16, 1999, Russo contacted Dr. Saimovici's office, requested that the March 25, 1999 appointment proceed as scheduled, and offered to pay for a sign language interpreter for the March 25, 1999 appointment.

14. At the direction of Dr. Saimovici, Russo was advised that, solely because of his hearing impairment, Russo was not a good candidate for laser eye surgery and that Dr. Saimovici would not proceed with the March 25, 1999 appointment.

FIRST CLAIM FOR RELIEF
(Imposition of Eligibility Criteria)

15. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 14 as if fully set forth in this paragraph.

16. Defendants discriminated on the basis of disability, in violation Title III of the ADA, by imposing eligibility criteria for the services of Dr. Saimovici and Advanced Eye Care Associates that screen out or tend to screen out individuals who are deaf or have hearing impairments from fully and equally enjoying the goods, services, facilities, privileges, advantages, or accommodations of defendants. See 42 U.S.C.§ 12182(b)(2)(A)(i); 28 C.F.R. § 36.301(a).

17. There is reasonable cause to believe that a person or group of persons have been discriminated against by this

violation of Title III of the ADA and its implementing Regulation and that such discrimination raises an issue of general public importance. See 42 U.S.C. § 12188(b)(1)(B); 28 C.F.R. § 36.503.

18. Persons who are deaf or have hearing impairments, including Michael J. Russo, are aggrieved persons within the meaning of 42 U.S.C. § 12182(b)(2)(B) and have suffered, or may have suffered, damages in the form of economic loss and emotional distress as a result of defendants' discriminatory conduct.

SECOND CLAIM FOR RELIEF
(Failure to Provide Auxiliary Aids and Services)

19. Plaintiff repeats and realleges paragraphs 1 through 14 as if fully set forth in this paragraph.

20. Defendants violated Title III of the ADA by failing to take such steps as may be necessary to ensure that no individual with a disability is denied the services of defendants, or otherwise treated differently than other individuals, because of the absence of auxiliary aids and services. See 42 U.S.C. § 12182(b)(2)(A)(iii); 28 C.F.R. § 36.303.

21. There is reasonable cause to believe that a person or group of persons have been discriminated against by this violation of Title III of the ADA and its implementing Regulation and that such discrimination raises an issue of general public importance. See 42 U.S.C. § 12188(b)(1)(B); 28 C.F.R. § 36.503.

22. Persons who are deaf or have hearing impairments, including Michael J. Russo, are aggrieved persons within the meaning of 42 U.S.C. § 12182(b)(2)(B) and have suffered, or may have suffered, damages in the form of economic loss and emotional distress as a result of defendants' discriminatory conduct.

PRAYER FOR RELIEF

WHEREFORE, the United States of America prays that this Court enter judgment:

A. Declaring that defendants have violated Title III of the ADA and its implementing Regulation by: (1) imposing eligibility criteria for the services of defendants that screen out or tend to screen out individuals with disabilities from fully and equally enjoying the goods, services, facilities, privileges, advantages, or accommodations of defendants; (2) failing to take such steps as may be necessary to ensure that no individual with a disability is denied the services of defendants, or otherwise treated differently than other individuals, because of the absence of auxiliary aids and services, in violation of 42 U.S.C. § 12182(b)(2)(A)(iii) and 28 C.F.R. § 36.303; and (3) discriminating against individuals with disabilities in the full and equal enjoyment of the goods, services, facilities, privileges,

advantages, and accommodations of defendants, in violation of 42 U.S.C. § 12182(a) and 28 C.F.R. § 36.201.

B. Ordering defendants to refrain from imposing eligibility criteria for the services of Dr. Saimovici and Advanced Eye Care Associates that screen out or tend to screen out individuals with hearing impairments from fully and equally enjoying the goods, services, facilities, privileges, advantages, or accommodations of defendants. See 42 U.S.C.§ 12182(b)(2)(A)(i); 28 C.F.R. § 36.301(a).

C. Ordering defendants to take such steps as may be necessary to ensure that no individual with a disability is denied the services of defendants, or otherwise treated differently than other individuals, because of the absence of auxiliary aids and services. See 42 U.S.C. § 12182(b)(2)(A)(iii); 28 C.F.R. § 36.303.

D. Awarding monetary damages to persons who have been injured by defendants, including Michael J. Russo, pursuant to 42 U.S.C. § 12188(b)(2)(B);

E. Assessing a civil penalty against defendants in an amount authorized by 42 U.S.C. § 12188(b)(2)(C); 28 C.F.R. § 36.504(a)(3),2323 to vindicate the public interest; and

F. Granting such other relief as the interests of justice may require.

Dated: New York, New York
Sept. 1, 2005

ALBERTO GONZALES
Attorney General

By:
BRADLEY J. SCHLOZMAN
Acting Assistant Attorney General
Civil Rights Division

DAVID N. KELLEY
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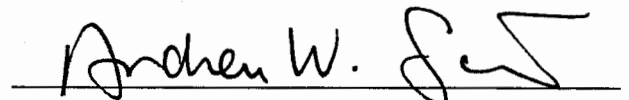
By: 
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