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DOC#1

JUDGE PRESKA

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

99 CIV. 1042

UNITED STATES OF AMERICA,	:	COMPLAINT
Plaintiff,	:	
v.	:	99 Civ.
RCPI TRUST and RADIO CITY PRODUCTIONS LLC,	:	
Defendants.	:	

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Plaintiff United States of America ("United States"), by its attorneys Janet Reno, the Attorney General of the United States, and Mary Jo White, 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. §§ 36.101 et seq.

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 District pursuant to 28 U.S.C.

§ 1391(b), as all of defendants' acts of discrimination alleged herein occurred in this District.

THE PARTIES

4. Plaintiff is the United States of America.

5. Upon information and belief, defendant RCPI Trust, a Delaware business trust with its principal place of business located in New York, New York, owns Radio City, a place of public accommodation, within the meaning of 42 U.S.C. § 12182(a) and 28 C.F.R. § 36.201(a). Radio City Music Hall ("Radio City"), located at 1260 Avenue of the Americas, New York, New York, is a place of public accommodation within the meaning of 42 U.S.C. § 12181(7)(C), because its operations affect commerce and it operates as "a motion picture house, theater, concert hall, . . . or other place of exhibition or entertainment."

6. Upon information and belief, defendant Radio City Productions LLC, a New York corporation with its principal place of business located in New York, New York, operates Radio City within the meaning of 42 U.S.C. § 12182(a) and 28 C.F.R. § 36.201(a).

FACTUAL BACKGROUND

7. Radio City, which was opened in 1932, is a multi-faceted entertainment center that hosts many live performances, including Christmas and Easter pageants, concerts and awards shows. Radio City also hosts motion picture openings and television and sports events. Its seating capacity ranges from

approximately 5,874 to 5,992, depending on the nature of the event.

8. Radio City also provides tours of its building that cover the balcony to the basement, including the Great Stage, the art deco lounges, a maze of hallways, a spotlight booth and the projection room.

FIRST CLAIM FOR RELIEF

(Architectural Barriers to Access)

9. Radio City contains numerous architectural barriers, which were in existence before, and have remained unaltered since, January 26, 1992, that prevent or restrict access by individuals with disabilities to certain features, elements and spaces of Radio City. 28 C.F.R. §§ 36.304, 36.308(a); see Standards for Accessible Design, 28 C.F.R. Part 36, App. A (the "Standards").

10. Architectural barriers to access at Radio City existing prior to, and remaining unaltered since, January 26, 1992, include, but are not limited to, the following:

A. Radio City does not have a sufficient number of wheelchair seating locations and does not have sufficient companion seating next to the wheelchair seating locations. 42 U.S.C. § 12182(b)(2)(A)(iv); 28 C.F.R. §§ 36.304, 36.308; 28 C.F.R. Part 36, App. A, §§ 4.1.3(19)(a), 4.33.

B. Radio City does not have any seating that has no arm rests or that is equipped with folding or removable armrests and is suitable for transfer from a wheelchair

("aisle transfer seating"). 42 U.S.C. § 12182(b)(2)(A)(iv); 28 C.F.R. §§ 36.304, 36.308; 28 C.F.R. Part 36, App. A, §§ 4.1.3(19)(a).

C. Certain routes connecting elements and spaces within Radio City are not readily accessible to, and usable by, individuals with disabilities, including individuals who use wheelchairs, because of, among other things, an absence of a level landing at the end of sloping walkways, slippery sloped walkways, non-compliant slopes and cross slopes, lack of clear maneuvering spaces at doors, and inaccessible elevators. 42 U.S.C. § 12182(b)(2)(A)(iv); 28 C.F.R. § 36.304; 28 C.F.R. Part 36, App. A, §§ 4.3, 4.5, 4.8, 4.10, 4.13.

D. The doors in certain areas of Radio City, as a result of, among other things, non-compliant hardware, maximum force for pushing and pulling required, threshold height, and door width, are not readily accessible to, and usable by, individuals with disabilities, including individuals who use wheelchairs. 42 U.S.C. § 12182(b)(2)(A)(iv); 28 C.F.R. § 36.304; 28 C.F.R. Part 36, App. A, §§ 4.1.3(7), 4.3.9, 4.13.

E. Radio City's elevators are not readily accessible to, and usable by, individuals with disabilities, including individuals who use wheelchairs or who have visual impairments. 42 U.S.C. § 12182(b)(2)(A)(iv); 28 C.F.R. § 36.304; 28 C.F.R. Part 36, App. A, §§ 4.1.3(5), 4.10.

F. Radio City's public restrooms are not readily accessible to, and usable by, individuals with disabilities, including individuals who use wheelchairs. 42 U.S.C. § 12182(b)(2)(A)(iv); 28 C.F.R. § 36.304; 28 C.F.R. Part 36, App. A, §§ 4.1.3(11), 4.22.

G. Radio City's fire alarms do not have visual signals that are readily accessible to, and usable by, individuals with disabilities, including individuals who have hearing impairments. 42 U.S.C. § 12182(b)(2)(A)(iv); 28 C.F.R. § 36.304; 28 C.F.R. Part 36, App. A, §§ 4.1.3(14), 4.28.

H. Radio City's public pay telephones are not readily accessible to, and usable by, individuals with disabilities, including individuals who use wheelchairs and individuals who have hearing impairments. 42 U.S.C. § 12182(b)(2)(A)(iv); 28 C.F.R. § 36.304; 28 C.F.R. Part 36, App. A, §§ 4.1.3(17), 4.31.

I. Radio City's drinking fountains are not readily accessible to, and usable by, individuals with disabilities, including individuals who use wheelchairs. 42 U.S.C. § 12182(b)(2)(A)(iv); 28 C.F.R. § 36.304; 28 C.F.R. Part 36, App. A, §§ 4.1.3(10), 4.15.

J. Radio City's ticket windows and concession areas are not readily accessible to, and usable by, individuals with disabilities, including individuals who use wheelchairs, because, among other things, they are not

equipped with accessible counters. 42 U.S.C. § 12182(b)(2)(A)(iv); 28 C.F.R. § 36.304; 28 C.F.R. Part 36, App. A, § 7.2.

K. Radio City's signage is not readily accessible to, and usable by, individuals with disabilities. 42 U.S.C. § 12182(b)(2)(A)(iv); 28 C.F.R. § 36.304; 28 C.F.R. Part 36, App. A, §§ 4.1.3(16), 4.30.

L. Radio City's facility has protruding objects. 42 U.S.C. § 12182(b)(2)(A)(iv); 28 C.F.R. § 36.304; 28 C.F.R. Part 36, App. A, §§ 4.1.3(2), 4.4.1.

M. Radio City's dressing rooms, including, but not limited to, shower/toilet rooms, doors, controls, electrical outlets, closets, clothes rods, rugs, counters and furniture, are not readily accessible to, and usable by, individuals with disabilities, including individuals who use wheelchairs. 42 U.S.C. § 12182(b)(2)(A)(iv); 28 C.F.R. § 36.304; 28 C.F.R. Part 36, App. A, §§ 4.1.3(21), 4.35.

N. Radio City's tour route is not readily accessible to, and usable by, individuals with disabilities, including individuals who use wheelchairs. 42 U.S.C. § 12182(b)(2)(A)(iv); 28 C.F.R. § 36.304; 28 C.F.R. Part 36, App. A, §§ 4.3, 4.5, 4.8.

11. Since the commencement of the United States' investigation, defendants have removed some but not all of the architectural barriers to access identified in paragraph 10.

12. Upon information and belief, it would be readily achievable for defendants to remove some or all of the remaining barriers to access that exist as set forth in paragraphs 10. By failing to remove barriers to access to the extent that it is readily achievable to do so, defendants have violated Title III of the ADA, 42 U.S.C. § 12182(b)(2)(A)(iv); 28 C.F.R. § 36.304(a).

SECOND CLAIM FOR RELIEF

(Alternatives to Barrier Removal)

13. Plaintiff repeats and realleges paragraphs 1 through 11 as if fully set forth herein.

14. If it is not readily achievable to remove some or all of the architectural barriers to access set forth in paragraph 10, defendants should undertake readily achievable alternatives to barrier removal to make the goods and services offered at Radio City accessible to individuals with disabilities. Upon information and belief, there are readily achievable alternatives to barrier removal that the defendants could have undertaken in order to make the goods and services offered at Radio City accessible to individuals with disabilities. Specifically and without limitation, if it was not readily achievable to provide wheelchair, companion and aisle transfer seating locations in places representative of all of the different prices offered to individuals without disabilities, the defendants failed to modify their pricing policies for such accessible seating to ensure that it was provided at all the same prices as those charged

individuals without disabilities. 42 U.S.C. § 12182(b)(2)(A)(v); 28 C.F.R. §§ 36.305, 36.308.

THIRD CLAIM FOR RELIEF

(Defendants' Violative Policies, Practices and Procedures/Participation in Unequal Benefit/Discriminatory Administrative Methods)

15. Prior to and for a period during the United States' ADA investigation of Radio City, defendants failed to make reasonable modifications to their ticketing and pricing policies, practices and procedures to make the goods, services and facilities of Radio City available to individuals with disabilities, as specified by Title III of the ADA and the regulation. See 42 U.S.C. § 12182(b)(2)(A)(ii); 28 C.F.R. § 36.302(a).

16. Prior to and for a period during the Government's ADA investigation of Radio City, defendants violated Title III of the ADA by affording individuals with disabilities who wish to purchase tickets to accessible seating locations an opportunity to purchase tickets that was unequal to that afforded to others, and by utilizing an administrative method that had the effect of discriminating on the basis of disability. 42 U.S.C. §§ 12182(b)(1)(A)(ii), 12182(b)(1)(D)(i); 28 C.F.R. §§ 36.202(b), 36.204.

17. Upon information and belief, defendants have represented that they have corrected the discriminatory policies, practices and procedures, identified in paragraphs 15 and 16.

FOURTH CLAIM FOR RELIEF

(Auxiliary Aids and Services)

18. Prior to and for a period during the United States' ADA investigation of Radio City, defendants failed to take steps to ensure that no person with a disability was excluded from, or denied services at, Radio City, or otherwise discriminated against because of the absence of auxiliary aids and services. Specifically, defendants failed to provide an assistive listening system and to advertise the existence of such system for use by individuals with disabilities when to do so would not have fundamentally altered the nature of the goods and services they provided or amounted to an undue burden. As a result, defendants violated Title III and the regulation. 42 U.S.C. § 12182(b)(2)(A)(iii); 28 C.F.R. § 36.303; 28 C.F.R. Part 36, App. A, § 4.1.3(19)(b).

19. Upon information and belief, defendants have represented that they have corrected this discriminatory practice.

FIFTH CLAIM FOR RELIEF

(Section 302 of the ADA)

20. By failing to remove architectural barriers to access where it is readily achievable to do so; failing to use readily achievable alternatives to barrier removal where barrier removal is not readily achievable; failing to take steps to provide auxiliary aids and services; failing to reasonably modify

policies, practices and procedures so as not to discriminate against individuals with disabilities; utilizing an administrative method that had the effect of discriminating on the basis of disability; and other acts and omissions resulting in discrimination against people with disabilities, as specified in Title III of the ADA and the regulation, defendants have discriminated against individuals with disabilities in the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of Radio City in violation of Title III of the ADA, 42 U.S.C. § 12182(a).

21. Upon information and belief, there is reasonable cause to believe that a person or group of persons have been discriminated against by defendants' failure to comply with Title III of the ADA and its implementing regulation and such discrimination raises an issue of general public importance. 42 U.S.C. § 12188(b)(1)(B); 28 C.F.R. § 36.503.

PRAYER FOR RELIEF

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

22. Declaring that defendants have violated Title III of the ADA and its implementing regulation by failing to remove architectural barriers to access in Radio City where such barrier removal is readily achievable; or, where such barrier removal is not readily achievable, failing to make their goods and services available through readily achievable alternatives to barrier

removal; failing to make reasonable modifications to their policies, practices or procedures; utilizing an administrative method that had the effect of discriminating on the basis of disability; and failing to provide auxiliary aids or services;

23. Ordering that defendants remove architectural barriers to access in Radio City, including, but not limited to, removing those specified in paragraph 10 above to the extent that it is readily achievable to do so pursuant to 42 U.S.C. § 12182(b)(2)(A)(iv); 28 C.F.R. § 36.304; 28 C.F.R. Part 36, App. A;

24. Ordering defendants to undertake readily achievable alternatives to barrier removal in Radio City in those instances, if any, where it is not readily achievable to remove architectural barriers pursuant to 42 U.S.C. § 12182(b)(2)(A)(v); 28 C.F.R. § 36.305;

25. Ordering defendants to provide auxiliary aids or services, including, but not limited to, assistive listening systems, and to advertise the existence of such systems so that they are available to individuals with disabilities who have hearing impairments pursuant to 42 U.S.C. § 12188(b)(2)(A)(iii); 28 C.F.R. § 36.303;

26. Ordering defendants to maintain policies, practices and procedures, including ticketing and pricing policies, practices and procedures, necessary to afford people with disabilities access to the goods, services, facilities, privileges, advantages

or accommodations provided at Radio City pursuant to 42 U.S.C. § 12182(b)(1)(A)(ii), 12182(b)(2)(A)(ii); 28 C.F.R. § 36.302;

27. Awarding monetary damages to persons who have been injured by defendants pursuant to 42 U.S.C. § 12188(b)(2)(B);

28. 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), in order to vindicate the public interest; and

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

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