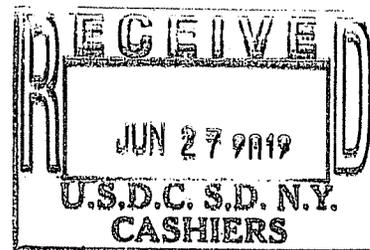


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UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF NEW YORK

----- X  
 UNITED STATES OF AMERICA, :  
 :  
 Plaintiff, :  
 :  
 v. :  
 :  
 LINCOLN CENTER FOR THE PERFORMING :  
 ARTS, INC., :  
 :  
 Defendant. :  
 ----- X

JUDGE McMAHON

ECF CASE

COMPLAINT

12 Civ. CIV 5030

The United States of America, by its attorney, Preet Bharara, United States Attorney for the Southern District of New York, alleges as follows:

1. This is a civil action to redress discrimination on the basis of disability at Lincoln Center’s world-renowned concert venue Avery Fisher Hall (“Avery Fisher”) in violation of Title III of the Americans with Disabilities Act of 1990 (the “ADA”), 42 U.S.C. §§ 12181 *et seq.*, and its implementing regulation, 28 C.F.R. Part 36 (the “Regulation”).

2. Avery Fisher was built in 1962 as one of the three principal venues at New York’s cultural icon, Lincoln Center for the Performing Arts. Avery Fisher operates primarily as a home for orchestral and classical music groups such as the New York Philharmonic and the Mostly Mozart Festival, as well as international orchestras such as

the London Symphony Orchestra. Avery Fisher is a venue for the acclaimed public television program Live from Lincoln Center. Avery Fisher also is used for special events, fundraising benefits and community events such as high school and college graduations.

3. This action arises from the United States Department of Justice's receipt of a complaint of discrimination (the "Civilian Complaint") on the basis of disability at Avery Fisher in violation of the ADA and the Regulation.

4. In the Civilian Complaint, the complainant alleged that he and his wife, who uses a wheelchair for mobility, did not have access to an accessible seat at the designated wheelchair location corresponding to the tickets purchased by complainant, and that the toilet room that Avery Fisher had designated as "accessible" was not.

5. Following the Department of Justice's receipt of the Complaint, the United States Attorney's Office for the Southern District of New York conducted an investigation of Avery Fisher's compliance with the ADA.

6. The United States Attorney's Office's investigation of Avery Fisher found numerous architectural barriers to access at Avery Fisher in violation of the ADA, as set forth below.

#### **THE PARTIES**

7. Plaintiff is the United States of America.

8. Defendant is Lincoln Center for the Performing Arts, Inc. ("Lincoln Center"), a New York not-for-profit corporation with a principal place of business at Lincoln Center for the Performing Arts, New York, New York.

9. Avery Fisher also is located at Lincoln Center for the Performing Arts, New York, New York. Avery Fisher is a place of public accommodation within the meaning of the ADA, 42 U.S.C. § 12181(7)(C), because it is a “theater . . . or other place of exhibition or entertainment.” Avery Fisher includes, among other things, a lobby, ticket window, stage, seating for up to 2,738 individuals on an orchestra level and three tiers, concession and listening device stands, access to underground parking, outdoor balcony, lounges, restaurants and toilet rooms.

10. Lincoln Center owns and operates Avery Fisher, and therefore also is a public accommodation responsible for remedying the alleged barriers to access pursuant to the ADA.

#### **JURISDICTION AND VENUE**

11. 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.

12. Venue lies in this District pursuant to 28 U.S.C. § 1391(b), as all of Lincoln Center’s acts of discrimination alleged in this complaint occurred in this District.

#### **ENFORCEMENT BY THE ATTORNEY GENERAL**

13. The architectural barriers to access at Avery Fisher have been in place since before the effective date of the ADA, January 26, 1992, and thus there is reasonable cause to believe that Lincoln Center has engaged and continues to engage in a pattern or practice of discrimination under the ADA at Avery Fisher. 42 U.S.C. § 12188(b)(1)(B)(i). There also is reasonable cause to believe that the architectural barriers to access at Avery Fisher raise an issue of “general public importance.” *Id.* § 12188(b)(i)(B)(ii).

## CLAIMS FOR RELIEF

### CLAIM I

#### READILY ACHIEVABLE BARRIER REMOVAL

14. For over twenty years following the effective date of the ADA and continuing to the present, numerous architectural barriers to access have prevented or restricted, and continue to prevent or restrict, access to Avery Fisher by individuals with disabilities, and specifically, by individuals who use wheelchairs, in that Avery Fisher's services, features, elements and spaces are not, and have not been, made readily accessible to, or usable by, individuals with disabilities, as specified by the Regulations. 28 C.F.R. §§ 36.304, 36.308(a); Standards for Accessible Design, 28 C.F.R. Part 36, App. D (the "1991 Standards").

15. These architectural barriers to access include, but are not limited to, the following:
- a. Avery Fisher does not have the required number of wheelchair seating locations that are readily accessible to, and usable by, individuals with disabilities, including individuals who use wheelchairs, and accompanied by 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; 1991 Standards §§ 4.1.3(19)(a), 4.33.
  - b. Avery Fisher does not have wheelchair seating locations that are readily accessible to, and usable by, individuals with disabilities, including individuals who use wheelchairs, that are located so that they are dispersed throughout the seating areas. 42 U.S.C.

§ 12182(b)(2)(A)(iv); 28 C.F.R. §§ 36.304, 36.308; 1991 Standards §§ 4.1.3(19)(a), 4.33.3.

(1) Avery Fisher has only four wheelchair seating locations in the Orchestra Level, all of which are in the forty-first of forty-one rows, and under the overhang of the First Tier. These wheelchair seating locations are in violation of the ADA in that the slope of the front half of the floor in these spaces exceeds the maximum allowed under the Standards. 1991 Standards §§ 4.1.3(19)(a), 4.5, 4.33.2, 4.33.3, 4.33.4 & Figure 46.

(2) Avery Fisher's other wheelchair seating locations are in the First, Second and Third Tiers, *i.e.*, floors where the toilet rooms are inaccessible to individuals with disabilities, as alleged below.

c. Avery Fisher does not have any seats without armrests or with folding or removable armrests that are 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; 1991 Standards § 4.1.3(19)(a).

d. A number of doors throughout Avery Fisher are narrower than permitted and/or contain hardware or knobs that are either too high or too difficult to turn without tight grasping, tight pinching or

twisting of the wrist. 1991 Standards §§ 4.1.6(1)(b), (d); 4.1.3(7), (8); 4.13.4; 4.13.5; 4.13.9.

e. The women's and men's toilet rooms on the First, Second and Third Tiers lack any accessible features, including entry doors, toilets, urinals, stalls, lavatories and dispensers. 1991 Standards §§ 4.1.6(1)(b), (d); 4.1.3(7); 4.13, 4.1.3(11), 4.22, 4.17, 4.16, 4.18, 4.19, 4.27. In addition, these inaccessible toilet rooms are not properly marked with signage identifying the nearest accessible toilet room. 1991 Standards §§ 4.1.6(3)(e)(iii), 4.1.2(7)(d), 4.30.1, 4.30.2, 4.30.3, 4.30.5, 4.30.7.

f. The women's and men's toilet rooms on the Grand Promenade and Plaza Levels have numerous inaccessible features, including, but not limited to:

(1) improper height of toilets, urinals and flush controls, 1991 Standards §§ 4.1.6(1)(b), 4.1.3(11), 4.22.4, 4.22.5, 4.17.2, 4.16.3, 4.18.2, 4.18.4;

(2) improper positioning of toilets, 1991 Standards §§ 4.1.6(1)(b), 4.1.3(11), 4.22.4, 4.17.3, Fig. 30(a);

(3) lack of proper knee and/or toe space under lavatory counters, 1991 Standards §§ 4.1.6(1)(b), 4.1.3(11), 4.22.6, 4.19.2, Fig. 31;

- (4) signage in an improperly sized and/or unraised font, without Braille and at an improper height, 1991 Standards §§ 4.1.6(1)(b), 4.1.3(16)(a), 4.30.4, 4.30.6; and
  - (5) improper intrusions into the circulation path due to protruding objects, 1991 Standards §§ 4.1.6.(1)(b), 4.1.3(2), 4.4.1.
- g. Food service areas, including in the Ronnie and Larry Ackerman Family Patron Lounge, the Vera and Donald Blinken Patron Lounge, and the restaurant, do not provide the required clear floor space at seating locations and/or have countertops that consistently exceed the maximum allowable height. 1991 Standards §§ 4.1.6(1)(b), 5.1, 5.2, 4.1.3(18), 4.32.
- h. The elevators serving Avery Fisher have not been made readily accessible to, and usable by, individuals with disabilities, including individuals who have visual impairments. 42 U.S.C. § 12182(b)(2)(A)(iv); 1991 Standards §§ 4.1.3(5), 4.10.
- i. There are an insufficient number of accessible van parking spaces. 1991 Standards §§ 4.1.6(1)(b), 4.1.2(5)(a), (b), 4.6. Signage identifying accessible parking spaces is improperly located below the minimum height. 1991 Standards §§ 4.1.6(1)(b), 4.1.2(5)(a), (b), 4.6.4.
- k. There are objects in the Plaza Level restaurant area, on the Grand Promenade, and in the enclosed corridors on the First, Second and

Third Tiers that impermissibly protrude into the circulation path.

1991 Standards §§ 4.1.6(1)(b), 4.1.3(2), 4.4.1.

- l. The drinking fountain on the Plaza Level has no low drinking fountain with a spout mounted within 36" of the floor. 1991 Standards §§ 4.6.1(1)(b), 4.1.3(10)(a), 4.15.2.
- m. The public pay telephones on the Plaza Level near the north Plaza Entrance and near the Columbus Avenue exit lack volume controls. 1991 Standards §§ 4.1.6(1)(b), 4.1.3(17)(b), 4.31.5(2), 4.30.7. In addition, the highest control on the pay telephone near the North Plaza Entrance is too high. 1991 Standards §§ 4.1.6(1)(b), 4.1.3(17)(a), 4.31.3.

16. Upon information and belief, it is and has been readily achievable for Lincoln Center to remove the architectural barriers to access identified in paragraph 15. By failing to remove barriers to access to the extent it is readily achievable to do so, Lincoln Center has violated Title III of the ADA, 42 U.S.C. § 12182(b)(2)(A)(iii), (iv) and 28 C.F.R. § 36.304.

## **CLAIM II**

### **READILY ACHIEVABLE ALTERNATIVES TO BARRIER REMOVAL**

17. In the alternative, if it was not readily achievable to remove a particular barrier to access set forth in paragraph 15, Lincoln Center was required to provide readily achievable alternatives to barrier removal as required by 42 U.S.C. § 12182(b)(2)(A)(v) and 28 C.F.R. § 36.305.

18. Upon information and belief, there are and were readily achievable alternatives to barrier removal that Lincoln Center could have undertaken and must undertake in order to make the goods, services, facilities, privileges, advantages, or accommodations offered at Avery Fisher accessible to individuals with disabilities. 42 U.S.C. § 12182(b)(2)(A)(v); 28 C.F.R. §§ 36.305, 36.308.

19. Upon information and belief, it is and was readily achievable for Lincoln Center to undertake alternatives to barrier removal. By failing to undertake alternatives to barrier removal to the extent that it is and was readily achievable to do so, Lincoln Center has violated Title III of the ADA, 42 U.S.C. § 12182(b)(2)(A)(v) and 28 C.F.R. § 36.305.

#### **PRAYER FOR RELIEF**

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

- A. Declares that Lincoln Center violated Title III of the ADA, 42 U.S.C. § 12182, at Avery Fisher (1) by failing to provide wheelchair, companion and aisle transfer seating pursuant to 28 C.F.R. § 36.308; (2) by failing to remove architectural barriers to access pursuant to 28 C.F.R. § 36.304; (3) by failing to provide alternatives to barrier removal pursuant to 28 C.F.R. § 36.305; and (4) by failing to provide people with disabilities seats that have lines of sight comparable to those offered to members of the general public pursuant to 28 C.F.R. § 36.308;
- B. Orders Lincoln Center to maintain a reasonable number of accessible wheelchair locations, aisle transfer seating locations and companion

seating locations at Avery Fisher that are dispersed throughout the seating area pursuant to 42 U.S.C. §§ 12182(b)(2)(A)(iv), 12188(b)(2)(A) and 28 C.F.R. § 36.308;

- C. Orders Lincoln Center to remove all architectural barriers at Avery Fisher pursuant to 42 U.S.C. §§ 12182(b)(2)(A)(iv), 12188(b)(2)(A); 28 C.F.R. § 36.304 and 28 C.F.R. Part 36, App. A, including, but not limited to, removing the architectural barriers to access set forth in paragraph 15;
- D. Orders Lincoln Center to provide readily achievable alternatives to barrier removal at Avery Fisher in all instances, if any, where it is not readily achievable to remove architectural barriers pursuant to 42 U.S.C. §§ 12182(b)(2)(a)(v), 12188(b)(2)(A) and 28 C.F.R. § 36.305;
- E. Awards monetary damages to persons who have been injured by Lincoln Center pursuant to 42 U.S.C. § 12188(b)(2)(B) and 28 C.F.R. § 36.504(a)(2);
- F. Assesses a civil penalty against the Lincoln Center in an amount authorized by 42 U.S.C. § 12188(b)(2)(C) and 28 C.F.R. § 36.504(a)(3), to vindicate the public interest; and

G. Orders such other appropriate relief as the interest of justice may require.

Dated: New York, New York  
June 27, 2012

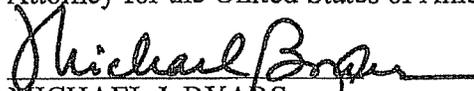
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