IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil Action No.

1:14-cv-00478-CB-N

EMPLOYEES' RETIREMENT SYSTEMS OF ALABAMA, TEACHERS' RETIREMENT SYSTEMS OF ALABAMA, and PCH HOTELS & RESORTS, INC.

Defendants.

CONSENT DECREE

BACKGROUND

1. Plaintiff United States of America ("United States") commenced this action against Defendants Employees' Retirement Systems of Alabama, Teachers' Retirement Systems of Alabama (collectively "RSA"), and PCH Hotels and Resorts, Inc.to enforce the Americans with Disabilities Act of 1990 ("ADA"), pursuant to 42 U.S.C. § 12188(b)(1)(B), with respect to the Battle House ("the Hotel") located at 26 North Royal Street, Mobile, Alabama 36602, and the RSA Battle House Tower ("the Tower") located at 11 North Water Street, Mobile, Alabama 36602.

2. The complaint alleges that Defendants own and operate the Hotel and that they have violated Title III of the ADA, 42 U.S.C. §§ 12181-89, and the Department of Justice's implementing regulation, 28 C.F.R. Part 36, by, among other ways, failing to make the Hotel and its amenities, including its restaurants, spa, and pool, readily accessible to and usable by individuals with disabilities. The complaint also alleges that, in making alterations to the Hotel during its renovation, Defendants failed to ensure that the altered portions of the building are readily accessible to the maximum extent feasible, *see* 28 C.F.R. § 36.402; and failed to ensure that the paths of travel to altered areas are readily accessible to the maximum extent feasible, *see 28* C.F.R. § 36.403.

3. This matter was initiated by a complaint filed with United States by a person who uses a wheelchair. The complainant alleged that the Hotel discriminated against her on the basis of her disability because the Hotel, its restaurants, and amenities were not readily accessible to and usable by her and other individuals with disabilities.

4. The United States investigated the complaint pursuant to its authority under 42 U.S.C. § 12188(b)(1)(A)(i). Defendants cooperated fully with the investigation, and demonstrated throughout the process a strong commitment to ensuring that the Battle House be accessible to all persons with disabilities.

5. Although Defendants deny liability for any violation of Title III of the

ADA with respect to the Hotel, they have consented to the entry of this Consent Decree without trial or adjudication of any issues of fact or law and without this Consent Decree constituting an admission by Defendants with respect to any such issue of fact or law.

6. The United States and Defendants agree that settlement of these matters without further litigation is in the public interest and that the entry of this Consent Decree is the most appropriate means of resolving these matters.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED as follows:

I. JURISDICTION AND VENUE

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

8. Venue lies in the Southern District of Alabama pursuant to 28 U.S.C. § 1391(b) because the Hotel is located within this District and the acts of discrimination alleged in the complaint in this case occurred in this District.

II. APPLICATION AND PARTIES BOUND

9. This Consent Decree shall be binding on Defendants, their agents, and their employees. This Consent Decree shall also be binding on all of Defendants' successors and assigns. Defendants must promptly notify, in writing, all successors and assigns of the existence of this Consent Decree and its contents.

10. The Hotel is a place of public accommodation within the meaning of 42 U.S.C. § 12181(7) because, among other things, it is an "inn, hotel, motel, or other place of lodging." 42 U.S.C. § 12181(7)(A); *see* 28 C.F.R. § 36.104.

11. Defendants are governed by Title III of the ADA because, as owners and operators of the Hotel, they operate the Hotel, a place of public accommodation. *See* 42 U.S.C. § 12182(a); 28 C.F.R. § 36.104.

TERMS OF AGREEMENT

III. FACILITIES COVERED BY THIS CONSENT DECREE

12. This Consent Decree shall apply to all public use and common use areas within the Hotel and related facilities, including, but not limited to, the public entrances to the Hotel, the guest registration desk, the lobby, the public telephones, the public and employee restrooms, the elevators, the units, sleeping rooms and suites, the parking garages, restaurants, bars, spa, fitness center, and pool.

IV. GENERAL INJUNCTIVE RELIEF

13. Defendants shall not discriminate against individuals on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of the Hotel.

14. Defendants shall provide individuals with disabilities an equal opportunity to benefit from the goods, services, facilities, privileges, advantages, and accommodations of the Hotel.

V. ACTIONS TO REMEDY NONCOMPLIANCE WITH ACCESSIBILITY REQUIREMENTS

15. Defendants shall make all architectural modifications in compliance with the ADA and its implementing regulation and the 2010 ADA Standards for Accessible Design ("Standards"). *See* 28 C.F.R. § 36.104 (defining the "2010 Standards" as the requirements set forth in appendices B and D to 36 C.F.R. part 1191 and the requirements contained in subpart D of 28 C.F.R. part 36).

16. **Modifications to be completed within six months:** As agreed between the parties, within six months of the date of entry of this Consent Decree, Defendants shall make the following physical, operational, and other modifications necessary to bring the Hotel, and its goods, services, facilities, privileges, advantages, and accommodations into compliance with the ADA Title III regulation and 2010 Standards, unless otherwise agreed to by the Parties in writing:

A. Entrances:

(1) *Royal Street Accessible Entrance and Guest Pull-up Space* – Defendants will reconstruct the curb and sidewalk to meet 2010 Standards §§ 206.2.1, 209, 402.2, 405, 406, and 503.3. Defendants have already developed architectural plans to use in reconstructing the curb and sidewalk.

(2) *St. Francis Street Exterior Route to Existing Parking Deck, Pool, Fitness Center, and Spa* – Defendants will provide an accessible route

from the parking deck to the pool, fitness center, and spa. Defendants plan to meet this requirement by installing a demarcated crosswalk across St. Francis Street, leading from the entrance to the St. Francis Street parking garage, spa, and pool to the St. Francis Street accessible entrance to the Hotel. Installation of the crosswalk is conditioned upon approval by the City of Mobile, which Defendants will seek.

B. Interior Ramps:

(1) *Royal Street Entrance Interior Ramp* - Defendants will rebuild this ramp so that it meets 2010 Standards §§ 206.2.4 and 405.

(2) *Dauphin Street Lobby Interior Ramp* - Defendants will rebuild this ramp so that it meets 2010 Standards §§ 206.2.4 and 405.

(3) *Third Floor North Corridor (Route to Fitness Center, Pool, and Spa)* - This corridor will be modified so that its running slope does not exceed 1:20 (5%) or 1:12. Portions of the corridor with a running slope between 1:20 and 1:12 shall comply with all requirements for ramps, including level landings and handrails. 2010 Standards §§ 206.2.4, 403.3, and 405.

C. Interior Route from St. Francis Street Accessible Entrance to Main Hotel Lobby:

(1) Defendants will provide an accessible opening through the wall north of the glass wall which separates the pre-function room of the Crystal Ballroom from the Tower lobby, thus providing an accessible route to the

Hotel Lobby that coincides closely with the route used by the general public. 2010 Standards §§ 206.2.4 and 206.3.

D. Signage:

(1) Defendants will install directional signage to indicate accessible entrances, and the routes from inaccessible entrances to designated accessible entrances. Interior signage will indicate the accessible route from accessible entrances to various locations throughout the Hotel. Such signage shall use the International Symbol of Accessibility. Existing tactile signage will be relocated to between 48 inches measured to the baseline of the lowest tactile character and 60 inches measured to the baseline of the highest tactile character above the finish floor surface. 2010 Standards §§ 206.4, 216.2, 216.6, 404.1, 703.2, 703.4, 703.5, and 703.7.2.1.

E. Door Pressure:

(1) Defendants will perform door force checks on all public access doors and will adjust or modify as necessary to ensure that they do not require more than five (5) pounds of force to open, except as to fire doors and exterior doors. 2010 Standards §§ 206.5.2 and 404.2.9(1).

(2) Defendants will formulate and provide to the United States a maintenance policy to provide for periodic door force checks on all public access doors.

F. Swimming Pool Entrance and Deck:

(1) Defendants will install a self-operated pool lift complying with 2010 ADA Standards §§ 242.2 and 1009.2 at the main swimming pool.

(2) Defendants will modify the transfer wall of the outdoor hot tub spa so as to permit access pursuant to 2010 Standards §§ 242.4 and 1009.4.

(3) An accessible telephone will be added, or the existing phone will be relocated so as to become accessible. 2010 Standards §§ 217.1, 305, 403.5.1, and 704.2.1.

(4) The swimming pool deck ramp, which has an intermediate ramp landing area that is 37 ½ inches long, rather than the required 60 inches, will be supplemented by a platform lift at the North East corner of the pool deck, along with appropriate directional signage. 2010 Standards § 4.10.

(5) Defendants will modify or replace the current lift installed at the stairs leading from the lobby to the pool so that it can be operated by the user without assistance. 2010 Standards §§ 206.2.2, 206.2.3, 206.7, and 4.10.1.

G. Women's Spa and Fitness Center Locker Room:

(1) Defendants will convert the Swiss shower of the current Royal Suite spa massage treatment room to a roll-in shower, pursuant to 2010 Standards §§ 213.1, 213.2, 213.3.6, and 608.

(2) Thereafter, the Royal Suite will be designated as the accessible spa treatment room and will be made available to customers requiring its accessible features at the same cost as is charged for the standard treatment rooms.

(3) Defendants will install a transfer wall to permit access to the Women's Whirlpool located in the Quiet Room, pursuant to 2010 Standards §§ 242.4 and 1009.4.

(4) Defendants will modify the accessible shower compartment in the Women's Spa Dressing Room to achieve a compliant shower including compliant controls, faucets, shower head, and grab bars. 2010 Standards §§ 213.1, 213.2, 213.3.6, 608, and 609.

(5) Defendants will provide a wall-mounted or fixed bench at least 42 inches long and 20-24 inches deep in the Women's Fitness Center Locker room, the Women's Spa accessible dressing room and the Spa private accessible dressing rooms. Clear space sufficient to allow a person using a wheelchair to make a parallel transfer onto the bench will be provided. 2010 Standards §§ 222.1, 305, 803.4, and 903.

(6) Defendants will ensure that the non-fixed furnishings in the Quiet Room are arranged to provide clear floor space for a wheelchair and an accessible route through the room, and will provide an implementing policy and

procedures directive. 2010 Standards §§ 206.2.4, 305, and 403.

H. Men's Spa and Fitness Center Locker Room:

(1) Defendants will install a vertical, self-operating lift in the Men's Spa whirlpool in order to permit access for persons with disabilities. 2010 Standards §§ 242.4 and 1009.2.

(2) Defendants will convert the accessible shower compartment in the Men's Spa Dressing Room and Men's Fitness Center Locker room to a compliant shower including compliant controls, faucets, shower head, and grab bars. 2010 Standards §§ 213.1, 213.2, 213.3.6, 608, and 609.

(3) Defendants will provide a wall-mounted or fixed bench at least 42 inches long and 20-24 inches deep in the Men's Fitness Center Locker room, and the Men's Spa accessible dressing room. Clear space sufficient to allow a person using a wheelchair to make a parallel transfer onto the bench will be provided. 2010 Standards §§ 222.1, 305, 803.4, and 903.

I. Public Toilet Rooms:

(1) In all public and common use toilet rooms throughout the Hotel and the Tower, Defendants will provide at least one lavatory with a counter-top that is 34 inches above the finish floor surface. 2010 Standards §§ 213.3.4 and 606.3.

(2) In all public and common use toilet rooms, Defendants will provide at least one full length mirror or one lavatory or countertop mirror mounted no higher than 40 inches the finish floor surface to the bottom edge of the reflecting surface. 2010 Standards §§ 213.3.5 and 603.3.

(3) Defendants will ensure that there is an accessible basket of paper towels or paper towel dispensers that comply with 2010 Standards §§ 205.1 and 309.4 in all public and common use toilet rooms

17. **Modifications to be completed within one year:** As agreed between the parties, within one year of the date of entry of this Consent Decree, Defendants shall make the following physical, operational, and other modifications:

J. Valet Parking Policy and New Parking Garage:

(1) Defendants are currently in the process of constructing a new parking garage located on South Royal Street to the immediate south of the Hotel. This garage will serve the Hotel and the Tower. Defendants agree to construct accessible parking spaces, entrances, and routes of travel as required by 2010 Standards §§ 208.1, 208.2, 208.2.4, 208.3.1, and 502.1-503.5, and to erect appropriate signage designating the same.

(2) Defendants agree to institute a Valet Parking Policy which will allow vehicles modified for usage (such as hand controls) by individuals with disabilities the option to park those vehicles themselves.

K. Dauphin Street Accessible Entrance and Passenger Loading Zone

(1) Defendants will reconstruct the driveway, sidewalks, and entrance ramp of the Dauphin Street Entrance to the Tower to meet 2010 Standards §§ 206.2.1, 206.2.4, 209, 403.3, 403.4, and 405.7.1.

L. Accessible Guest Rooms

(1) Defendants will have 12 designated accessible rooms/ suites that comply with the 2010 Standards dispersed among the various classes of accommodations as follows: a) seven standard rooms (two in the historic section of the Hotel and five in the Tower section of the Hotel); b) one Executive Queen Suite; c) two Executive King Suites; d) the Governor's Suite made accessible via the accessible connecting room provided to guests with disabilities at no extra charge upon reservation of the Governor's Suite; and e) a hospitality suite. The two Executive King Suites will be made available to individuals with disabilities requesting a regular accessible King Suite at the same prices as a King Suite.

(2) All designated accessible rooms and/or suites and their bathroom will be brought into compliance with 2010 Standards. *See, inter alia,* 2010 Standards §§ 224.2-5, 309.4, 604.3, 605.3, 607.4.2, 607.5, 609.4, 610.2, 806.2.4, and 806.3.2.

(3) To increase accessibility for individuals who are deaf, hard of hearing, or have speech impairments, the Hotel will provide a total of 17

rooms/suites with communication features, including visual alarms, notification devices, and a TDD machine for each room. 2010 Standards §§ 224.2, 806.3.2, and Table 224.4. At least seven (7) guest rooms with mobility features will provide communication features.

VI. POLICIES, PRACTICES, AND PROCEDURES

18. Defendants shall implement and enforce a written policy with regard to ADA compliance at the Hotel. The Hotel's policy shall specify that accessible rooms may be rented to persons who do not have the corresponding disabilities only if all non-accessible rooms in the same class in the Hotel are occupied or reserved. 28 C.F.R. § 36.302(e)(1)(iii). In addition, the Hotel's policy shall specify that persons with disabilities may reserve accessible rooms in the same manner that guests may reserve other rooms. 28 C.F.R. § 36.302(e)(1)(i).

19. The Hotel shall enforce these policies with respect to all reservation practices under its control.

20. Defendants shall ensure that, if a person with a disability requests a room at the Hotel in an advertised or otherwise available price range in which there are no accessible rooms available, that person must be given an accessible guest room in the next higher price range in which an accessible guest room is available. The more expensive guest room must be rented at the price of the room

originally requested by the person with a disability.

21. Defendants shall ensure that the Hotel implements and enforces a written policy requiring that it will relocate persons without disabilities who occupy accessible rooms to other rooms in the event that other rooms of the same class become available and a person with a corresponding disability requests an accessible room, and no other accessible rooms are available. This policy shall not apply to the Governor's Suite.

22. In addition to the specific requirements set forth in the Consent Decree, Defendants agree to ensure that all accessible features within the Hotel are maintained in operable working condition, within the meaning of 28 C.F.R. § 36.211.

23. Defendants shall implement and enforce a written policy, providing that the Hotel will welcome persons with disabilities accompanied by service animals, as required by 42 U.S.C. § 12182(b)(2)(A)(iii), and 28 C.F.R. §§ 36.201 and 36.302 (2011).

VII. **TRAINING**

24. Defendants shall ensure that all relevant and appropriate staff members at the Hotel are trained in all ADA issues relevant to the Hotel, including, but not limited to: (1) the location and type of accessible guest rooms; (2) accessible features within each accessible room; (3) the location

and use of accessible equipment, such as TDD machines, visual alarms, and notification devices; (4) all Hotel reservations polices and other policies regarding visitors with disabilities or accessible features; (5) the Hotel's service animal policy; and (6) all other requirements of this Consent Decree.

25. Defendants agree to take measures to ensure that employees of the Hotel comply with the obligations in the Consent Decree and shall use all of their powers to do so, including, but not limited to, using personnel actions, reprimands, or terminations of employment, in order to address instances where an employee violates, or causes a failure to comply with, this Consent Decree.

VIII. **MONITORING**

26. Within six (6) months from the date of entry of this Consent Decree, or upon the completion of the alterations required by this Consent Decree, whichever is earlier, Defendants shall allow the United States to perform a complete inspection of the Hotel. Defendants shall allow the United States to perform a second complete inspection of the Hotel at the end of twelve (12 months) of the date of entry of this Consent Decree. If, during, during the period of three years from the date of entry of this Decree, the Hotel takes any further significant action to enhance accessibility for individuals with disabilities at the Hotel or prepares any plans for action concerning ADA

compliance, other than the remedial actions required by this Agreement, the Defendants shall provide to the United States a narrative report of same. The Defendants shall also provide to the United States, as an exhibit to such report or otherwise, copies of any complaint, whether formal or informal, received during the term of this Agreement alleging that the Hotel was not being operated in compliance with the ADA or otherwise discriminated against any person on account of disability.

27. Defendants shall cooperate in good faith with any and all reasonable requests by the United States for access to the Hotel and for information and documents concerning their compliance with this Consent Decree and the ADA.

28. The United States shall have the right to verify compliance with this Agreement and the ADA, both as set forth in this Consent Decree and through any means available to the general public, including visits to the public areas of the Hotel. The United States shall have the right to inspect the Hotel at reasonable times upon ten (10) days advance verbal and written notice to Defendants at the following addresses:

CEO
PCH Hotels and Resorts, Inc.
11 North Water Street, Suite 8290
Mobile, Alabama 36602

RSA Legal Department
201 S. Union Street
Montgomery, Alabama 36104

29. If the United States believes that this Consent Decree or any of its requirements has been violated, it will notify Defendants in writing and attempt to resolve the issue or issues in good faith. If the United States and Defendants are unable to reach a satisfactory resolution of the issue or issues, the United States will apply to this Court for enforcement of the terms of this Consent Decree.

IX. MODIFICATION

30. There shall be no modification of this Consent Decree without the written consent of the United States and Defendants, and the approval of the Court; provided, however, that the parties may agree in writing to extend the time frames specified in this Consent Decree.

X. ENTIRE AGREEMENT

31. This Consent Decree represents the entire agreement between the United States and Defendants. No prior agreements, oral representations, or statements shall be considered part of this Consent Decree.

XI. RETENTION OF JURISDICTION

32. This Court shall retain jurisdiction of this action for a period of three (3) years from the date of entry of this Consent Decree to enforce or modify the provisions of this Consent Decree, to resolve any dispute that arises

under this Consent Decree, and to entertain any application and issue any orders (including, without limitation, orders directing the modification of policies, practices, and procedures, and orders requiring the removal of barriers to access) as may be necessary or appropriate for the effectuation of its terms. The parties shall discuss and attempt to negotiate in good faith a resolution of any dispute relating to the interpretation or enforcement of this Consent Decree before bringing the matter to the Court's attention for resolution.

XII. COSTS AND ATTORNEYS' FEES

33. All parties shall bear their own costs and attorneys' fees in this action.

SO ORDERED this 14th day of October, 2014.

s/Charles R. Butler, Jr.
SENIOR UNITED STATES DISTRICT JUDGE

THE PARTIES HEREBY CONSENT to the entry of the foregoing CONSENT DECREE.

FOR THE UNITED STATES OF AMERICA

KENYEN R. BROWN
United States Attorney
Southern District of Alabama

Dated: Oct 14, 2014

STEVEN BUTLER
First Assistant United States Attorney
Chief, Civil Division
United States Attorney's Office
Southern District of Alabama

Dated: Oct 14, 2014

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EMPLOYEES' RETIREMENT SYSTEM OF ALABAMA

Dated: 9/30/14

By: _____
Its CEO
201 S. Union Street
Montgomery, Alabama 36104

TEACHERS' RETIREMENT SYSTEM OF ALABAMA

Dated: 9/30/14

By: _____
Its CEO
201 S. Union Street
Montgomery, Alabama 36104

PCH HOTELS & RESORTS, INC.

Dated: 9-24-2014

By: _____
Its Chairman
PCH Hotels and Resorts, Inc.
11 North Water Street, Suite 8290
Mobile, Alabama 36602

Dated: September 30, 2014

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