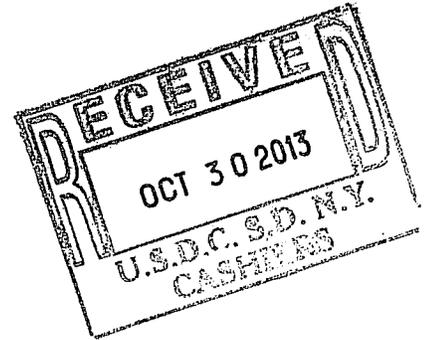


PREET BHARARA  
United States Attorney for the  
Southern District of New York  
By: AMY A. BARCELO  
CHRISTOPHER CONNOLLY  
CRISTINE IRVIN PHILLIPS  
Assistant United States Attorneys  
86 Chambers Street, 3<sup>rd</sup> Floor  
New York, New York 10007  
Tel.: (212) 637-6559 / 2761 / 2696  
Fax: (212) 637-2730  
E-mail: amy.barcelo@usdoj.gov  
christopher.connolly@usdoj.gov  
cristine.phillips@usdoj.gov



**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

----- x  
UNITED STATES OF AMERICA

Plaintiff,

v.

GREYSTONE OWNER LLC, CARMINE'S  
BROADWAY FEAST INC., PARAMOUNT  
LEASEHOLD L.P., LITTLE FISH CORP.,  
and THE ALICART RESTAURANT  
GROUP,

Defendants.  
----- x

**COMPLAINT**

13 Civ. \_\_\_\_ ( )

Plaintiff the United States of America (the "United States"), 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 in violation of Title III of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12181 *et seq.* ("ADA"), and its implementing regulation, 28 C.F.R. Part 36.

2. The defendants Carmine's Broadway Feast Inc., Little Fish Corp., and The Alicart Restaurant Group own and/or operate the two New York City locations of Carmine's, a

national restaurant chain: 2450 Broadway, New York, New York 10024 (“Carmine’s Upper West Side”) and 200 West 44th Street, New York, New York 10036 (“Carmine’s Theater District”) (together, the “Restaurants”). Defendant Greystone Owner LLC owns the building in which Carmine’s Upper West Side is located, and Defendant Paramount Leasehold L.P. owns the building in which Carmine’s Theater District is located.

3. On September 19, 2011, the United States Attorney’s Office for the Southern District of New York announced an ADA compliance review of certain restaurants in this District pursuant to 42 U.S.C. § 12188(b)(1)(A)(i). As part of this compliance review, the United States Attorney’s Office obtained survey forms concerning ADA compliance from both of the Restaurants, and a Department of Justice (“DOJ”) architect specializing in ADA compliance conducted on-site inspections of the Restaurants.

4. As set forth more fully below, the United States Attorney’s Office’s investigation of the Restaurants revealed numerous violations of the ADA.

#### **JURISDICTION AND VENUE**

5. 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.

6. Venue lies in this District pursuant to 28 U.S.C. § 1391(b). The acts of discrimination alleged in this complaint occurred in this District, and the Restaurants that are the subject of this action are situated in this District.

#### **PARTIES**

7. Plaintiff is the United States of America.

8. Defendant Carmine’s Broadway Feast, Inc. (“Carmine’s Broadway Feast”) is a New York corporation located at 2450 Broadway, New York, New York 10024. Upon

information and belief, Carmine's Broadway Feast operates Carmine's Upper West Side, a restaurant located at 2450 Broadway, New York, New York 10024. Carmine's Upper West Side is a "place of public accommodation" within the meaning of Title III of the ADA because its operations affect commerce and, among other things, it is "a restaurant, bar or other establishment serving food or drink." 42 U.S.C. § 12181(7)(B); *see* 28 C.F.R. § 36.104.

Carmine's Broadway Feast is therefore a "public accommodation" within the meaning of Title III of the ADA. *See* 42 U.S.C. §§ 12181(7)(B), 12182(a); 28 C.F.R. § 36.104.

9. Defendant Little Fish Corp. ("Little Fish") is a New York corporation located at 200 West 44th Street, New York, New York 10036. Upon information and belief, Little Fish operates Carmine's Theater District, a restaurant located at 200 West 44th Street, New York, New York 10036. Carmine's Theater District is a "place of public accommodation" within the meaning of Title III of the ADA because its operations affect commerce and, among other things, it is "a restaurant, bar or other establishment serving food or drink." 42 U.S.C. § 12181(7)(B); *see* 28 C.F.R. § 36.104. Little Fish is therefore a "public accommodation" within the meaning of Title III of the ADA. *See* 42 U.S.C. §§ 12181(7)(B), 12182(a); 28 C.F.R. § 36.104.

10. Defendant Alicart Restaurant Group ("Alicart") is a New York corporation located at 1501 Broadway, Suite 515, New York, New York 10036. Upon information and belief, Alicart owns the Restaurants. Alicart is therefore a "public accommodation" within the meaning of Title III of the ADA, because the Restaurants are places of public accommodation. *See* 42 U.S.C. §§ 12181(7)(A), 12182(a); 28 C.F.R. § 36.104.

11. Defendant Greystone Owner LLC ("Greystone") is a limited liability company located at 214 West 91<sup>st</sup> Street, New York, New York 10024. Upon information and belief,

Greystone owns the building in which Carmine's Upper West Side is located and is therefore a necessary party pursuant to Federal Rule of Civil Procedure 19 for purposes of equitable relief.

12. Defendant Paramount Leasehold L.P. ("Paramount") is a limited partnership that owns the building in which Carmine's Theater District is located and is therefore a necessary party pursuant to Federal Rule of Civil Procedure 19 for purposes of equitable relief (together with Greystone, the "Owner Defendants").

## FACTUAL ALLEGATIONS

### **Carmine's Upper West Side**

13. Numerous architectural barriers at Carmine's Upper West Side prevent or restrict access by individuals with disabilities. 42 U.S.C. § 12182(b)(2)(A); 28 C.F.R. § 36.304. It is readily achievable for Carmine's Upper West Side to remove these barriers to accessibility of its services, features, elements, and spaces for individuals with disabilities, as specified by the regulations promulgated under the ADA. *See* 1991 ADA Standards for Accessible Design, 28 C.F.R. Part 36, App. D (the "1991 Standards").

14. Barriers to access that exist within Carmine's Upper West Side include, but are not limited to, the following:

- a. At the main entrance, the vestibule door pull side maneuvering clearance is less than 60 inches perpendicular to the door for a forward approach. *See* 1991 Standards §§ 4.1.3(8), 4.1.3(7)(a), 4.13.6 & Fig. 25(a).
- b. The force required to open the vestibule door at the main entrance exceeds 5 pounds. *See* 1991 Standards §§ 4.1.3(8), 4.1.3(7)(a) and 4.13.11(2)(b).
- c. The route from the main entrance to the upper level of the restaurant is via a stairway. An alternate entrance to the upper level of the restaurant is provided via

- the Greystone Building on 91st Street.<sup>1</sup> Directional signage to the alternate entrance is provided in the bar, but no directional signage is provided at or near the main entrance door to the restaurant. *See* 1991 Standards §§ 4.1.2(7)(c), 4.1.6(1)(h), 4.30.1, 4.30.2, 4.30.3, 4.30.5.
- d. Neither of the doorways along the alternate route (from the street to the Greystone Building and from the Greystone Building into the restaurant) is identified with the International Symbol of Accessibility. *See* 1991 Standards §§ 4.1.2(7)(c), 4.30.7.
  - e. Accessible door hardware is not provided on the exterior side of the Greystone Building entrance door and the restaurant's alternate entrance doors. *See* 1991 Standards §§ 4.1.3(8), 4.1.3(7)(a), 4.13.9.
  - f. The door threshold at the restaurant's alternate entrance door is  $\frac{3}{4}$  inch high and is beveled at more than 1:2. *See* 1991 Standards §§ 4.1.3(8), 4.1.3(7)(a), 4.1.6(3)(d)(ii).
  - g. The take-out counter exceeds 36 inches above the finish floor. *See* 1991 Standards § 7.2(1).
  - h. The take-out counter is mounted between 27 inches and 80 inches above the finish floor to the leading edge and projects more than 4 inches into the circulation path. *See* 1991 Standards §§ 4.1.3(2), 4.4.1.
  - i. The bar counter and drink rail exceed 34 inches above the finish floor, and a 60-inch minimum portion of the main bar counter is not provided. A low, folding counter is provided in the bar area, but it is less than 30 inches wide and does not provide

---

<sup>1</sup> Use of the alternate entrance requires assistance to open the Greystone Building and Carmine's alternate entrance doors.

seating space for more than one individual. *See* 28 C.F.R. § 36.302(a); 1991 Standards §§ 5.2, 4.32, 4.2.4 & Fig. 45.

- j. The clear floor space at a typical dining table is less than 30 inches wide between the table pedestal bases. *See* 28 C.F.R. § 36.302(a); 1991 Standards § 4.32.2.
- k. The banquette knee clearance at a typical dining table is less than 30 inches wide and less than 19 inches deep, and the table pedestal base intrudes into the required clear floor space. *See* 28 C.F.R. § 36.302(a); 1991 Standards §§ 5.1, 4.1.3(18), 4.32.2, 4.32.3, 4.2.4.
- l. A sign identifying the toilet rooms<sup>2</sup> in raised characters and Braille is not provided on the wall adjacent to the latch side of the door. *See* 1991 Standards §§ 4.1.3(16)(a), 4.30.1, 4.30.4, 4.30.5, 4.30.6.
- m. The route to the women's toilet room is less than 36 inches between the wall and the stored chairs. *See* 28 C.F.R. § 36.302(a); 1991 Standards §§ 4.1.3(1), 4.1.3(11), 4.3.3.
- n. The clear opening width of the toilet room doors is less than 32 inches. *See* 1991 Standards §§ 4.1.3(7)(b), 4.13.5 & Fig. 24(a).
- o. The push side maneuvering clearance perpendicular to the women's toilet room door is less than 48 inches for a latch side approach. *See* 1991 Standards §§ 4.1.3(7)(b), 4.13.6 & Fig. 25(a).

---

<sup>2</sup> The men's and women's toilet rooms at Carmine's Upper West Side are similar in configuration and dimension, and the listed items apply to both toilet rooms unless noted otherwise.

- p. The pull side maneuvering clearance is less than 18 inches on the latch side of the women's toilet room door for a forward approach. *See* 1991 Standards §§ 4.1.3(7)(b), 4.13.6 & Fig. 25(a).
- q. The change in level at the toilet room door threshold exceeds  $\frac{3}{4}$  inch and is not beveled. *See* 1991 Standards §§ 4.1.3(7)(b), 4.13.8, 4.5.2.
- r. The force required to open the toilet room doors exceeds 5 pounds. *See* 1991 Standards §§ 4.1.3(7)(b), 4.13.11(2)(b).
- s. A 60-inch diameter or t-shaped turning space is not provided in the men's toilet room. *See* 1991 Standards §§ 4.1.3(11), 4.22.3, 4.2.3 and Fig. 3.
- t. A 60-inch wide accessible toilet stall is not provided. *See* 1991 Standards §§ 4.1.3(11), 4.22.4, 4.16, 4.17.
- u. A urinal with a lowered rim is not provided in the men's toilet room. *See* 1991 Standards §§ 4.1.3(11), 4.22.5, 4.18.
- v. An accessible lavatory is not provided. *See* 1991 Standards §§ 4.1.3(11), 4.22.6, 4.19.

15. It would be readily achievable for defendants Carmine's Broadway Feast and Alicart to remove some or all of the barriers to access at Carmine's Upper West Side.

16. Carmine's Broadway Feast and Alicart have failed to remove some or all of the barriers to access at Carmine's Upper West Side.

17. By failing to remove the barriers to access where it is readily achievable to do so, Carmine's Broadway Feast and Alicart have discriminated against individuals with disabilities in violation of sections 302(a) and 302(b)(2)(A)(iv) of the ADA, 42 U.S.C. § 12182(a), (b)(2)(A)(iv), and in violation of 28 C.F.R. § 36.304.

18. Carmine's Broadway Feast's and Alicart's failure to remove the barriers to access constitutes a pattern or practice of discrimination within the meaning of 42 U.S.C. § 12188(b)(1)(B)(i) and 28 C.F.R. § 503(a).

19. Carmine's Broadway Feast's and Alicart's failure to remove the barriers to access constitutes unlawful discrimination that raises an issue of general public importance within the meaning of 42 U.S.C. § 12188(b)(1)(B)(ii) and 28 C.F.R. § 36.503(b).

20. Moreover, upon information and belief, Carmine's Broadway Feast and Alicart have altered areas of Carmine's Upper West Side since January 26, 1992. Such alterations must be readily accessible to persons with disabilities to the maximum extent feasible. *See* 42 U.S.C. § 12183(a)(2). Notwithstanding the alterations undertaken by Carmine's Broadway Feast and Alicart, the altered areas and paths of travel to those altered areas do not comply with the requirement that these services, features, elements, and spaces be readily accessible to and usable by individuals with disabilities.

#### **Carmine's Theater District**

21. Numerous architectural barriers at Carmine's Theater District prevent or restrict access to Carmine's Theater District by individuals with disabilities. 42 U.S.C. § 12182(b)(2)(A); 28 C.F.R. § 36.304. It is readily achievable for Carmine's Theater District to remove these barriers to accessibility of its services, features, elements and spaces for individuals with disabilities, as specified by the 1991 Standards.

22. Barriers to access that exist within Carmine's Theater District include, but are not limited to, the following:

- a. The bottom of the handrails on the ramp used to enter the building's alternate entrance does not extend at least 12 inches beyond the bottom of the ramp segment. *See* 1991 Standards §§ 4.8.1, 4.8.5, 4.8.5(2).
- b. The counter at the coat check exceeds 36 inches above the finish floor. *See* 1991 Standards § 7.2(1).
- c. The restrooms<sup>3</sup> lack a sign in raised characters on the wall adjacent to the latch side of the door. *See* 1991 Standards §§ 4.1.3(16)(a), 4.30.1, 4.30.4, 4.30.5, 4.30.6.
- d. The restrooms lack an accessible lavatory with clear floor space and knee and toe clearance. *See* 1991 Standards §§ 4.1.3(11), 4.22.6, 4.19.
- e. The mirrors above the lavatories are mounted with the bottom edges of the reflecting surfaces more than 40 inches above the finish floor. *See* 1991 Standards §§ 4.1.3(11), 4.22.6, 4.19.6 & Fig. 31.

23. It would be readily achievable for Little Fish and Alicart to remove some or all of the barriers to access at Carmine's Theater District.

24. Little Fish and Alicart have failed to remove some or all of the barriers to access at Carmine's Theater District.

25. By failing to remove the barriers to access and by failing to bring Carmine's Theater District into compliance with the Standards where it is readily achievable to do so, Little Fish and Alicart have discriminated against individuals with disabilities in violation of sections 302(a) and 302(b)(2)(A)(iv) of the ADA, 42 U.S.C. § 12182(a), (b)(2)(A)(iv), and in violation of 28 C.F.R. § 36.304.

---

<sup>3</sup> The men's and women's restrooms at Carmine's Theater District are similar in configuration and dimension, and the listed items apply to both restrooms.

26. Little Fish's and Alicart's failure to remove the barriers to access constitutes a pattern or practice of discrimination within the meaning of 42 U.S.C. § 12188(b)(1)(B)(i) and 28 C.F.R. § 503(a).

27. Little Fish's and Alicart's failure to remove the barriers to access constitutes unlawful discrimination that raises an issue of general public importance within the meaning of 42 U.S.C. § 12188(b)(1)(B)(ii) and 28 C.F.R. § 36.503(b).

28. Moreover, upon information and belief, Little Fish and Alicart have altered areas of Carmine's Theater District since January 26, 1992. Such alterations must be readily accessible to persons with disabilities to the maximum extent feasible. *See* 42 U.S.C. § 12183(a)(2). Notwithstanding the alterations undertaken by Little Fish and Alicart, the altered areas and paths of travel to those altered areas do not comply with the requirement that these services, features, elements, and spaces be readily accessible to and usable by individuals with disabilities.

#### **PRAYER FOR RELIEF**

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

- A. Declaring that Defendants have violated Title III of the ADA and its implementing Regulations;
- B. Ordering Defendants to remove all violations of Title III of the ADA at Carmine's Upper West Side and Carmine's Theater District, including, but not limited to, the violations set forth above;
- C. 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), to vindicate the public interest; and
- D. Granting such other relief as the interests of justice may require.

Dated: Washington, D.C.  
September ~~24~~, 2013

ERIC H. HOLDER, JR.  
Attorney General

By:   
JOCELYN SAMUELS  
Acting Assistant Attorney General  
Civil Rights Division

Dated: New York, New York  
~~September 30~~, 2013  
October

PREET BHARARA  
United States Attorney for the  
Southern District of New York

By:   
AMY A. BARCELO  
CHRISTOPHER CONNOLLY  
CRISTINE IRVIN PHILLIPS  
Assistant United States Attorneys  
86 Chambers Street, 3<sup>rd</sup> Floor  
New York, New York 10007  
Tel.: (212) 637- 6559 / 2761 / 2696  
Fax: (212) 637-2730  
E-mail: amy.barcelo@usdoj.gov  
christopher.connolly@usdoj.gov  
cristine.phillips@usdoj.gov