



U.S. Department of Justice

United States Attorney
Eastern District of Pennsylvania

VOLUNTARY COMPLIANCE AGREEMENT

between

THE UNITED STATES OF AMERICA

and

S.B.I. RESTAURANT PARTNERS, L.P.

WHEREAS, the Americans with Disabilities Act of 1990, as amended (“ADA”), 42 U.S.C. §§ 12181-12189, provides, among other things, that “[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation,” 42 U.S.C. § 12182(a);

WHEREAS, the term “public accommodation” under the ADA includes “a restaurant, bar, or other establishment serving food or drink,” 42 U.S.C. § 12181(7)(B);

WHEREAS, the ADA authorizes the United States Department of Justice to “undertake periodic reviews of compliance of covered entities,” 42 U.S.C. § 12188(b)(1)(A)(i);

WHEREAS, the United States Attorney’s Office for the Eastern District of Pennsylvania (the “United States”), pursuant to its authority under 42 U.S.C. § 12188(b)(1)(A)(i), commenced a limited review of certain restaurants in Philadelphia, Pennsylvania to determine, with respect to the specific areas reviewed, whether those restaurants were operating in compliance with Title III of the ADA (the “Compliance Review”);

WHEREAS, S.B.I. Restaurant Partners, L.P. (“SBI”) owns and operates a restaurant, currently operating under the name Butcher & Singer, which is located at 1500 Walnut Street, Philadelphia, Pennsylvania 19103 (the “Restaurant”);

WHEREAS, SBI is a subsidiary of Starr Restaurant Organization, L.P.;

WHEREAS, as part of the Compliance Review, the United States requested information from Starr Restaurant Organization, L.P. regarding the Restaurant;

WHEREAS, Starr Restaurant Organization, L.P. manages the operations of each of its affiliated restaurants, including the Restaurant, through its wholly owned subsidiary, SUR Organization, LLC (“SUR”);

WHEREAS, the United States conducted a limited site inspection of certain features and

facilities within the Restaurant and met with representatives of the Starr Organization;

WHEREAS, the United States and SBI share the goal of resolving the Compliance Review with respect to the Restaurant and ensuring that the Restaurant operates in compliance with Title III of the ADA;

WHEREAS, contemporaneously with the execution of this Voluntary Compliance Agreement (this "Agreement"), Starr Restaurant Organization, L.P. and SUR separately executed a Voluntary Compliance Agreement concerning ADA compliance in all restaurants affiliated with Starr Restaurant Organization, L.P.;

WHEREAS, in light of the actions taken by SBI to date to comply with the ADA and the actions that SBI has agreed to take within the next year as set forth in this Voluntary Compliance Agreement (the "Agreement"), the United States has decided to take no further enforcement action at this time with respect to the Restaurant as a result of this Compliance Review; and

NOW, THEREFORE, IT IS HEREBY AGREED, BY AND BETWEEN THE UNITED STATES OF AMERICA AND S.B.I. RESTAURANT PARTNERS, L.P., AS FOLLOWS:

I. APPLICATION AND PARTIES BOUND

1. The Restaurant is a place of public accommodation within the meaning of 42 U.S.C. § 12181(7) because, 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.

2. SBI is a public accommodation within the meaning of Title III of the ADA because it owns and operates the Restaurant, which is a place of public accommodation. *See* 42 U.S.C. § 12182(a); 28 C.F.R. § 36.104.

3. This Agreement shall be binding on SBI and each of its agents and employees. In the event SBI seeks to transfer or assign all or part of its interest in the Restaurant, and the successor or assignee intends to carry on the same or similar use of the facility, as a condition of sale SBI shall obtain the written agreement of the successor or assignee to any obligations remaining under this Agreement for the remaining term of this Agreement.

4. This Agreement shall apply to all public use areas within the Restaurant. This includes, but is not limited to: public entrances, waiting areas, bar areas, dining areas, restrooms, and corridors. This Agreement shall not apply to non-public use areas, such as food preparation and storage locations, employee locker rooms, and other service-related areas.

II. DEFINITIONS

5. For purposes of this Agreement, the term "Standards" means the 1991 ADA Standards for Accessible Design, 28 C.F.R. Part 36, Appendix D, and the 2010 ADA Standards for Accessible Design, 28 C.F.R. § 36.104, which consist of the 2004 ADA Accessibility Guidelines (set forth in appendices B and D to 36 C.F.R. part 1191). The 2010 Standards shall apply to the remedial actions to be taken under this Agreement, unless otherwise expressly stated in this Agreement. 28 C.F.R. § 36.406(a)(5)(ii).

6. For purposes of this Agreement, the term “accessible” means in compliance with the Standards.

7. For purposes of this Agreement, the term “alterations” means a change to the Restaurant that affects or could affect the usability of the building or facility or any part thereof and includes, but is not limited to, “remodeling, renovation, rehabilitation, reconstruction, historic restoration, changes or rearrangement in structural parts or elements, and changes or rearrangement in the plan configuration of walls and full-height partitions. Normal maintenance, reroofing, painting or wallpapering, asbestos removal, or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility.” *See* 28 C.F.R. § 36.402.

III. BUTCHER & SINGER

BUTCHER & SINGER DINING AND BAR AREAS

8. SBI shall remove the following barriers to accessibility at the bar counter, which the United States observed during its January 12, 2016 site inspection of the Restaurant: The bar counter at which food and/or drink is served for consumption by customers seated on stools or standing at the counter exceeds 34 inches in height and does not have a portion of the main counter which is at least five feet long and no higher than 34 inches above the finished floor (“AFF”) with knee space under that is at least 27 inches high by 30 inches wide by 19 inches deep. There were no accessible tables within the same area at which bar service is available. None of the nearby tables provided the required table top height for knee space. *See* the 1991 Standards §§ 5.2, 4.32.3, and 4.32.4.

9. SBI can satisfy the requirements of paragraph 8 of this Agreement by completing all of the following steps within one hundred twenty (120) days of the effective date of this Agreement: Install a table in the bar area with the table top height and knee space required by the 2010 Standards. *See* 2010 Standards §§ 226.1, 902, 305 and Figures 305.5(a), 306.2 and 306.3.

BUTCHER & SINGER RESTROOMS

10. SBI shall remove the following barriers to accessibility in both the men’s and the women’s toilet rooms, which the United States observed during its January 12, 2016 site inspection of the Restaurant:

- a. The bottom edges of the reflecting surfaces of both of the mirrors in these rooms were mounted higher than 40 inches AFF. *See* the 1991 Standards §§ 4.1.6 (3)(e), 4.23.6, 4.19.6 and Figure 31.
- b. A lavatory with clear floor space and knee and toe clearance was not provided in either of the two toilet rooms. Each had a wooden panel installed that blocked the user’s knees from touching the pipes under the lavatory. The depth of the knee clearance was not a minimum of 8 inches at 27 inches AFF as required. *See* the 1991 Standards §§ 4.1.6(3)(e), 4.22.6, 4.19 and Figure 31.
- c. Portable trash cans obstructed the clear floor space required at the lavatory in each

toilet room required to provide compliant clear floor space for a front approach along with knee and toe clearance. *See* the 1991 Standards §§ 4.19.3 and Figure 32.

11. SBI can satisfy the requirements of paragraph 10 of this Agreement by completing all of the following steps in the men's and women's toilet rooms within one hundred twenty (120) days of the effective date of this Agreement:

- a. Install full length mirrors with the bottom edge of their reflecting surfaces 34 inches AFF maximum in each toilet room. *See* 2010 Standards §§ 213.3.5 and 603.3.
- b. Provide one sink in the men's toilet room and one sink in the women's toilet room with clear floor space positioned for a forward approach, toe clearance and the minimum 8 inches of knee clearance at 27 inches AFF with the pipes insulated. *See* 2010 Standards §§ 213.3.4, 606, 306 and Figure 306.3(a).
- c. Move the trash cans to provide clear floor space in front of the lavatory for a front approach along with knee and toe clearance. Amend SBI's ADA policy to include that trash cans should not be placed under the lavatory, in the space on the wide side of the toilet in single user toilet rooms, or in the wheelchair accessible toilet stall in multi-user toilet rooms, and train restaurant staff to maintain the clear floor space.

12. SBI shall remove the following barrier to accessibility in the men's toilet room, which the United States observed during its January 12, 2016 site inspection of the Restaurant: The automatic door opener did not open the door to 90 degrees open to provide the minimum 32 inches of clear width required. *See* the 1991 Standards §§ 4.1.6(3)(e), 4.22.2, 4.13.5 and Figure 24(b).

13. SBI can satisfy the requirements of paragraph 12 of this Agreement by completing all of the following steps within one hundred twenty (120) days of the effective date of this Agreement: Correct the automatic door opener so that it opens the door 90 degrees and provides a clear opening width of 32 inches. *See* the 2010 Standards §§ 206.5.2, 404.2.3 and Figure 404.2.3(a).

14. SBI shall remove the following barrier to accessibility in the women's toilet room, which the United States observed during its January 12, 2016 site inspection of the Restaurant: The height of the only coat hook exceeded 54 inches AFF. *See* the 1991 Standards §§ 4.1.6(3)(e), 4.22.7, 4.27.3, 4.2.6 and Figure 6.

15. SBI may comply with paragraph 14 of this Agreement by completing the following steps within one hundred twenty (120) days of the effective date of this Agreement: Mount a coat hook 48 inches maximum and 15 inches minimum AFF, lower existing coat hooks, or remove coat hooks completely.

IV. MONITORING AND COMPLIANCE

16. Within 120 days of the effective date of this Agreement, SBI shall provide the United States with written confirmation of all steps that SBI has taken pursuant to sections III of this Agreement.

17. SBI shall cooperate in good faith with any and all reasonable requests by the United States for access to the Restaurant and for information and documents concerning the Restaurant's

compliance with this Agreement and the ADA.

18. The United States shall have the right to verify compliance with this Agreement and the ADA, both as set forth in this Agreement and through any means available to the general public, including visits to the public areas of the Restaurant and communications with the Restaurant staff. The United States shall have the right to inspect the facility at any time, and counsel for the United States need not identify themselves in the course of visits to the public areas.

V. ENFORCEMENT

19. If the United States believes that this Agreement or any of its requirements has been violated, it will notify SBI in writing and attempt to resolve the issue or issues in good faith. If the United States and SBI are unable to reach a satisfactory resolution of the issue or issues, the United States may commence a civil action in the United States District Court for the Eastern District of Pennsylvania to enforce the terms of this Agreement and/or the ADA.

VI. GENERAL PROVISIONS

20. In consideration for SBI's timely performance of all of its obligations under this Agreement the United States agrees to discontinue the Compliance Review of the Restaurant, except as provided in the Enforcement portion of this Agreement. The United States reserves the right to investigate any complaint it receives concerning the Restaurant, to investigate and commence a civil action with respect to any violation of the ADA, and to initiate future compliance reviews concerning the Restaurant with respect to any aspect of the Restaurant or its operation not expressly identified by the government in writing during the course of the Compliance Review. In the event the United States receives and investigates an ADA complaint concerning the Restaurant, or commences any future compliance review concerning the Restaurant, nothing in this Agreement shall limit the scope of any investigation or compliance review of the Restaurant or preclude the United States from seeking relief beyond that required under this Agreement.

21. A copy of this Agreement shall be made available to any person upon request and may, at the government's sole discretion, be posted on www.ada.gov or any other government website.

22. The Effective Date of this Agreement is the date of the last signature on the Agreement. The term of this Agreement is one year from the Effective Date.

23. This Agreement memorializes the commitments made by SBI to increase accessibility of the SBI Restaurants and the terms under which the United States has agreed to conclude this particular Compliance Review of the Restaurant without further review or enforcement action. This Agreement is not intended to certify or signify, however, that the Restaurant is now (or, with the actions taken pursuant to this Agreement, will be) in full compliance with the ADA, or constitute a finding by the United States of such compliance, and it may not be used in any proceeding to signify such compliance. This Agreement does not affect the Restaurant's continuing responsibility and obligation to comply with all aspects of the ADA. This Agreement is not intended to reflect any legal interpretation of any provisions of the ADA by the United States, and it may not be used in any proceeding to demonstrate such legal interpretations.

24. This Agreement does not constitute an admission by the SBI of non-compliance with any provision of the ADA.

25. The individuals signing this Agreement represent that they are authorized to bind the parties to this Agreement.

26. Failure by the United States to enforce the entire Agreement, with regard to any deadline or any other provision of the Agreement, shall not be construed as a waiver of its right to enforce any deadline or provision of the Agreement.

27. This Agreement constitutes the entire agreement between the parties relating to the remedial measures SBI has agreed to take in the Restaurant in response to the Compliance Review, and no other statement, promise, or agreement, either written or oral, made by either party, regarding the scope of such remedial measures that is not contained in this Agreement, shall be enforceable.

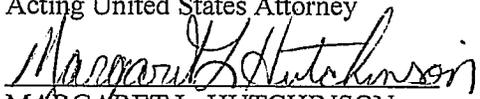
THE UNITED STATES OF AMERICA

BY:


LOUIS D. LAPPEN
Acting United States Attorney

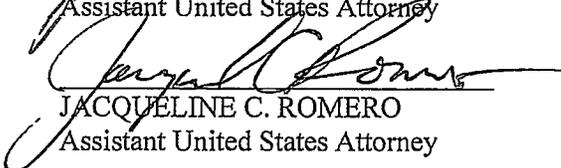
DATED:

8/21/17


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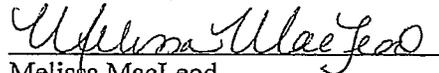
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BY:


Melissa MacLeod
Vice President & General Counsel
SBI Restaurant Organization, L.P.

DATED:

8.16.17