

**SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA
AND
WESTPARK ELECTRONICS LLC D/B/A ABE'S OF MAINE
UNDER THE AMERICANS WITH DISABILITIES ACT**

DJ # 202-48-268

BACKGROUND

1. The parties to this Settlement Agreement are the United States of America and Westpark Electronics LLC d/b/a Abe's of Maine ("AOM"). The Agreement resolves an investigation of AOM conducted by the U.S. Attorney's Office for the District of New Jersey under title III of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12181-12189, and its implementing regulation, 28 C.F.R. Part 36.
2. The United States initiated its investigation of AOM after receiving a complaint by an individual who is deaf. The complaint alleged that AOM violated title III of the ADA when AOM refused to accept relay calls when then complainant called to ask questions about products sold by AOM. The United States investigated these complaints under the authority granted by the ADA, 42 U.S.C. § 12188(b)(1)(A)(i), and 28 C.F.R. § 36.502.
3. The United States' investigation substantiated the Complainant's allegations.
4. The parties agree that it is in their best interests, and the United States believes that it is in the public interest, to resolve this dispute without engaging in protracted litigation. The parties have therefore voluntarily entered into this Agreement, agreeing as follows:

PARTIES

5. The Attorney General is responsible for administering and enforcing title III of the ADA, 42 U.S.C. §§ 12181-12189, and the regulation implementing title III, 28 C.F.R. Part 36.
6. AOM is a sales establishment with its principal place of business located at 1805 Lower Road, Linden, New Jersey. AOM sells products at its retail stores, on the internet, and through telephone orders. As an owner or operator of a sales establishment, AOM is a public accommodation covered by title III of the ADA. 42 U.S.C. § 12181(7)(E); 28 C.F.R. § 36.104.

TITLE III COVERAGE

7. Under title III of the ADA, no person who owns, leases (or leases to), or operates a place of public accommodation may discriminate against an individual on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation. 42 U.S.C. § 12182(a); 28 C.F.R. § 36.201.
8. Title III of the ADA and the title III implementing regulation prohibit discrimination on the basis of disability by public accommodations. 42 U.S.C. § 12182; 28 C.F.R. § 36.201. Specifically, title III requires public accommodations to provide auxiliary aids and services when necessary to ensure effective communication with individuals with disabilities. 42 U.S.C. § 12182(B)(2)(a)(iii); 28 C.F.R. § 36.303.
9. It is also discriminatory to deny an individual, on the basis of disability, full and equal participation in the goods, services, facilities, privileges, advantages, or accommodations of an entity, or to afford such individual unequal benefits to those afforded to other individuals. 42 U.S.C. § 12182(b)(1)(A); 28 C.F.R. § 36.202.
10. Complainant is a person with a disability within the meaning of the ADA. Complainant is deaf, which is a physical impairment that substantially limits one or more major life activities. 42 U.S.C. § 12102(1), (2).
11. Ensuring that sales establishments do not discriminate on the basis of disability is an issue of general public importance. The United States is authorized to investigate alleged violations of title III of the ADA and to bring a civil action in federal court in any case that involves a pattern or practice of discrimination or that raises issues of general public importance. 42 U.S.C. § 12188(b).
12. The term "relay services" shall mean any calls made through a telephone/TTY relay service provider, Internet Protocol (IP) relay service provider, video relay service provider, or other relay service provider that may come into existence as communications technology advances. Telephone/TTY relay services involve a relay operator who uses both a standard telephone and a TTY to type the voice messages to the TTY user and read the TTY messages to the standard telephone user. IP relay services involve a relay operator who uses both a standard telephone and a computer terminal to type the voice messages as text to the computer/smart phone/cellular phone user and read the text messages to the standard telephone user. Video relay services involve a relay operator who uses both a standard telephone and a computer video terminal to communicate voice messages in sign language to the computer video terminal user and to voice the sign language messages to the standard telephone user.

FINDINGS

13. As a result of its investigation, the United States has determined that:
 - a. On July 31, 2013, Complainant telephoned AOM using the relay service. Through the relay service, Complainant informed an AOM employee that she had a question about a product sold by AOM. In response, the AOM employee stated that AOM does not accept relay calls and terminated the call.
 - b. Shortly after an AOM employee informed Complainant that AOM would not accept a relay call, Complainant telephoned AOM again and asked to be connected to a manager.
 - c. Upon being connected to a manager, Complainant, through the use of a relay service, asked the AOM manager how AOM communicates with deaf customers. The AOM manager responded that AOM does not accept relay calls and terminated the call.
 - d. Complainant then emailed AOM, asking for contact information for AOM's owner or manager. Although AOM received the email, AOM did not respond.
14. The United States has determined that AOM discriminated against Complainant in violation of 42 U.S.C. § 12182. See also 28 C.P.R. §§ 36.201 and 36.303(d).
15. Specifically, AOM discriminated against Complainant by failing to respond to telephone calls through a telecommunications relay service in the same manner as it responds to other telephone calls. 42 U.S.C. § 12182(b)(2)(A); 28 C.P.R. § 36.303(d). Additionally, AOM discriminated against Complainant by denying Complainant the opportunity the full benefit of its goods and services. 42 U.S.C. § 12182(b)(1)(A); 28 C.P.R. § 36.303(d).
16. The parties agree to resolve this matter as set forth below.

ACTIONS TO BE TAKEN BY AOM

17. Pursuant to title III of the ADA and its implementing regulation, AOM shall not discriminate against any individual on the basis of disability, including individuals with hearing or speech disabilities, in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of AOM.
18. AOM will adopt, maintain, and enforce the non-discrimination statement attached hereto and incorporated by reference herein as Exhibit 1 to this Agreement.

19. Within 14 days of the effective date of this Agreement, AOM shall distribute the non-discrimination statement to all employees and contractors who have contact with the public. Within 45 days of the effective date of this Agreement, AOM shall furnish documentation to the United States confirming the implementation and distribution of the non-discrimination statement.
20. Within 45 days of the effective date of this Agreement, AOM will prominently display a copy of this non-discrimination statement in a conspicuous location at its retail stores. The non-discrimination statement shall be printed in a bold font no smaller than 20 points on a contrasting background. The heading on the posted non-discrimination statement shall be printed in capital letters in a bold font no smaller than 26 points. Physical copies of the non-discrimination statement will be maintained and refreshed, as needed, for the life of this Agreement. AOM shall also post and maintain a copy of the non-discrimination statement on its website in a location that is easy for the public to find (*i.e.*, directly linked to the primary web portals used by the public with an appropriate description of the non-discrimination statement at the link located on those portals) in a format accessible to persons with disabilities (*e.g.*, HTML). Within 90 days of the effective date of this Agreement, AOM shall provide the United States with proof of posting the non-discrimination statement in AOM retail stores, administrative offices and its website.
21. AOM shall distribute the non-discrimination statement to all newly hired employees and contractors who have duties involving contact with the public—either in person, through the telephone, via the computer, or by any other distribution channel within 7 days of the date on which each such employee or contractor is hired.
22. Beginning immediately as of the effective date of this Agreement, to provide equal access to its telephone services for individuals with disabilities, AOM shall require all of its employees and contractors who interact with the public to respond to relay calls in the same manner that it responds to other telephone calls.
23. Within 45 days of the effective date of this Agreement, and on subsequent anniversaries of the effective date of this Agreement, AOM shall provide training on the use of relay services to place and receive calls to all employees and contractors whose duties involve telephone communications with the public. Such training shall include information regarding the use of each different type of relay service (*e.g.*, TTY relay service, IP relay service), the procedures to be followed, and the telephone numbers to be used locally to contact each type of relay service to place a relay call.
24. All training manuals or written materials concerning AOM's policies and practices used in the trainings required in paragraph 23, including any revisions to such training manuals or written materials made during the term of this Agreement,

shall be consistent with the provisions of this Agreement and approved in advance by counsel for the United States.

25. AOM shall bear all costs associated with the development and delivery of this training program to its employees and contractors. Within 90 days of the effective date of this Agreement, AOM shall provide the United States with proof that such training has occurred and that all employees and contractors have received it.
26. AOM shall create and maintain an attendance log that documents the name of each individual who attends the trainings, his or her title, and the date he or she attended the training. Copies of such attendance sheets shall be provided to the United States within 14 days of any request for them.
27. Within 45 days of the effective date of this Agreement, AOM shall affix a sticker to each piece of telephone equipment (e.g., telephones, computer terminals and call handling stations, and telephone switchboards) used by employees or contractors to answer telephone calls from the public. The sticker, which shall be prominently displayed in a location that is easy for employees and individuals to see, shall say "Relay calls accepted" or a similar message approved by the United States, which communicates employees' and contractors' obligation to accept relay calls. Such stickers shall be maintained, refreshed as necessary, and installed on newly leased or acquired equipment used to answer telephone calls for the life of this Agreement.
28. Within 90 days of the effective date of this Agreement, AOM shall provide a report to the United States documenting its compliance with the Agreement.

CIVIL PENALTY

29. AOM shall issue a check or money order in the amount of \$1000, payable to the "United States Treasury" as a civil penalty, pursuant to 42 U.S.C. § 12188(b)(2)(C) and 28 C.F.R. § 36.504(a)(3). AOM shall deliver the check or money order to counsel for the United States within fourteen (14) business days of the effective date of this Agreement.

ENFORCEMENT

30. In consideration for the Agreement set forth above, the United States will not institute any civil action alleging discrimination under the ADA based on the allegations raised in DJ # 204-48-268, except as provided in paragraph 31 below.
31. Pursuant to 42 U.S.C. § 12188(b)(1)(A)(i), the United States may review AOM's compliance with this Agreement or title III of the ADA at any time. If the United States believes that this Agreement or any portion of it has been violated, it will raise its concerns with AOM and the parties will attempt to resolve the concerns

in good faith. If the parties are unable to reach a satisfactory resolution of the issue(s) raised within 30 days of the date that the United States provides notice to AOM, the United States may institute a civil action in the appropriate United States District Court to enforce this Agreement or title III of the ADA against AOM.

32. Failure by the United States to enforce any of the provisions of this Agreement shall not be construed as a waiver of its right to do so with regard to other provisions of this Agreement.
33. If any term of this Agreement is determined by any court to be unenforceable, the other terms of this Agreement shall nonetheless remain in full force and effect, provided, however, that if the severance of any such provision materially alters the rights or obligations of the parties, the United States and AOM shall engage in good faith negotiations in order to adopt mutually agreeable amendments to this Agreement as may be necessary to restore the parties as closely as possible to the initially agreed upon relative rights and obligations.
34. This Agreement shall be binding on AOM, including all principals, agents, executors, administrators, representatives, employees, successors in interest, beneficiaries, and assignees. In the event that AOM seeks to sell, transfer, or assign all or part of its interest during the term of this Agreement, as a condition of sale, transfer, or assignment, AOM shall obtain the written accession of the successor or assignee to any obligation remaining under this Agreement for the remaining term of this Agreement.
35. A signatory to this document in a representative capacity for AOM represents that he or she is authorized to bind AOM to this Agreement.
36. This Agreement constitutes the entire agreement between the United States and AOM on the matters raised herein, and no other prior or contemporaneous statement, promise, or agreement, either written or oral, made by any party or agents of any party, that is not contained in this written agreement, including any attachments, shall be enforceable. This Agreement can only be modified or amended by mutual written agreement of the parties.
37. This Agreement is not intended to remedy any other potential violations of the ADA or any other law that is not specifically addressed in this Agreement, including any other claims for discrimination on the basis of disability. Nothing in this Agreement changes AOM's obligation to otherwise comply with the requirements of the ADA.
38. AOM shall not discriminate or retaliate against any person because of his or her participation in this matter.

EFFECTIVE DATE / TERMINATION DATE

39. The effective date of this Agreement is the date of the last signature below.
40. The duration of this Agreement will be two years from the effective date.

AGREED AND CONSENTED TO:

FOR THE UNITED STATES OF AMERICA:

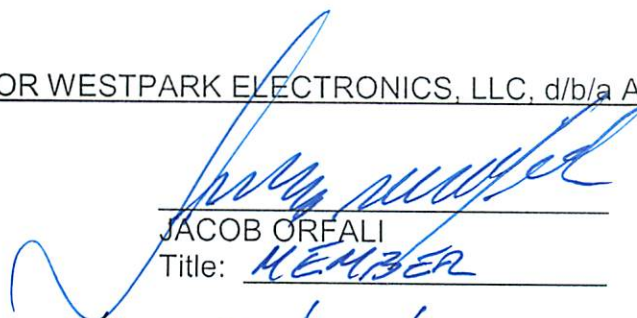
PAUL J. FISHMAN
United States Attorney

By:


MICHAEL E. CAMPION
Assistant United States Attorney

8/6/15
Date

FOR WESTPARK ELECTRONICS, LLC, d/b/a ABE'S OF MAINE:


JACOB ORFALI

Title: MEMBER

8/4/15
Date

EXHIBIT 1

NON-DISCRIMINATION STATEMENT PROHIBITION OF DISCRIMINATION ON THE BASIS OF DISABILITY

Consistent with the requirements of title III of the Americans with Disabilities Act (ADA), it is the policy of Westpark Electronics, LLC, d/b/a Abe's of Maine (AOM) not to discriminate against any individual with a disability in the full and equal enjoyment of goods, services, facilities, privileges, advantages, and accommodations. In implementing this policy, AOM will respond to telephone calls from a relay service in the same manner that it responds to other telephone calls.