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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

ERIKA O. SYMMONDS, an individual,)	Case No.:
)	
Plaintiff,)	
)	
vs.)	
)	
APPLE SEVEN HOSPITALITY)	
OWNERSHIP, INC. D/B/A HOMEWOOD)	
SUITES BY HILTON MAHWAH, and)	COMPLAINT FOR DECLARATORY
HILTON WORLDWIDE HOLDINGS,)	AND INJUNCTIVE RELIEF
INC., a Delaware corporation,)	
)	
Defendants.		

Plaintiff, ERIKA O. SYMMONDS, (“Plaintiff”), by and through her attorneys, for her complaint against APPLE SEVEN HOSPITALITY OWNERSHIP, INC. D/B/A HOMEWOOD SUITES BY HILTON MAHWAH D/B/A HOMEWOOD SUITES BY HILTON MAHWAH, and HILTON WORLDWIDE HOLDINGS, INC., a Delaware corporation, (“Defendants”) states as follows:

INTRODUCTION

1. For more than 25 years, the Americans with Disabilities Act (“ADA”) has required that individuals with disabilities be provided full and equal access to the goods, services, and facilities provided by hotel owners and operators.

2. This mandate requires places of lodging to ensure that individuals with disabilities and their families can make reservations for accessible guest rooms during the same hours and in the same manner as individuals who do not need accessible rooms and that such rooms will be available on the date promised with the necessary characteristics as described.

3. Defendants own and/or operate the HOMEWOOD SUITES BY HILTON MAHWAH located at 375 Corporate Drive, Mahwah, NJ 07430 (the “Hotel”), and, as part of those operations, provide hotel customers online reservations services via its website (hereinafter the “Website” which shall refer to www.homewoodsuites3.hilton.com and any other website operated by, controlled by, or acting at the direction of Defendants directly, or through contractual, licensing, or other arrangements, for the purposes described herein). Defendants’ Website reservations systems fail to provide sufficient and accurate information about the accessible characteristics of the Hotel and its rooms to persons with disabilities and indeed the Website informs customers that they may not rely on the photographs of rooms provided there. Defendants’ Website reservations systems and their related policies, procedures and guidelines also fail to guarantee that the specific accessible guest room reserved through its reservations service is held for the reserving customer.

4. As such, Defendants have failed to make their reservations services fully and equally accessible to individuals with disabilities and their family members, companions, or other caregivers thereby denying those individuals the same benefits and privileges afforded to guests without disabilities.

5. The access barriers on Defendant’s Website reservation systems are violations of Title

III of the ADA, 42 U.S.C. §12182 et. seq. and 28 CFR § 36.302(e)(1) et. seq. (“ADA Accessibility Standards”).

6. Despite the ADA requirement that hotel owners and operators provide full and equal access to individuals with disabilities and their families, the hospitality industry has been slow to respond, or has failed to respond, to the needs of disabled travelers. *See e.g.* Consent Decree in *United States of America v. Hilton Worldwide Inc., No. 10 1924* (entered November 29, 2010) (Resolving Complaint by the United States alleging in part that Hilton systemically, and across its various brands, “fails to provide individuals with disabilities the same opportunity to reserve accessible guest rooms using its on-line ... reservations systems” and “failed to provide accurate, reliable information about its accessible sleeping rooms and amenities throughout its reservations system” and that “individuals with disabilities are unable to reserve, on-line, accessible sleeping accommodations with either a tub or a roll-in shower”); Settlement Agreement *United States of America and Motel 6 Operating L.P., DJ# 202-73-5* (entered August 12, 2004 and extended January 19, 2006) (Resolving allegations the Motel 6 online reservation system was inadequate and securing in part the agreement of Motel 6 that it would, for its internet reservation systems, “provide service to individuals who request accessible rooms that is equivalent to that provided to individuals who seek to reserve standard rooms.”).

7. Despite the 2010 Consent Decree, and the fact that Hilton was a party thereto, Defendants, including Hilton, continue to fail travelers with disabilities and their families.

8. In response to many complaints received by the Department of Justice, Civil Rights Division (“DOJ”), typically by individuals who reserved an accessible hotel room only to discover upon arrival that the room they reserved is not accessible, the DOJ took action, issuing its Notice of Proposed Rulemaking, 73 FR 34508 (June 17, 2008) (“NPRM”).

9. After a notice and comment period, with input from a host of relevant parties including from individuals with disabilities, hotels, resort developers, travel agencies, and organizations commenting on their behalf, the DOJ published Section 36.302(e) with detailed requirements for hotel reservations services. In short, the DOJ required that hotels must make reasonable modifications to reservations policies, practices, or procedures when necessary to ensure that individuals with disabilities can make reservations for accessible guest rooms during *the same hours and in the same manner* as individuals who do not need accessible rooms and that they must identify and describe *accessible features in the hotels and guest rooms* offered through its reservations service *in enough detail* to reasonably permit individuals with disabilities to *assess independently whether a given hotel or guest room meets his or her accessibility needs*. 28 CFR § 36.302(e)(1)(i)-(ii)(*emphasis added*).

10. The Final Rule on Nondiscrimination on the Basis of Disability by Public Accommodations, including the hotel reservations requirements above, was published on September 15, 2010 in the Federal Register. While the Final Rule in most part took immediate effect, the hotel reservations component did not. The DOJ observed: “As with hotels, the Department believes that within the 18-month transition period these reservations services should be able to modify their systems to ensure that potential guests with disabilities who need accessible rooms can make reservations during the same hours and in the same manner as those who do not need accessible rooms.” Accordingly, to accommodate the needs of industry, the hotel reservations requirements of 28 CFR § 36.302(e)(1) did not become effective until after an 18-month transition period, or until March 15, 2012. 28 CFR § 36.302(e)(3).

11. The ADA’s hotel reservations requirements were seven years old on March 15, 2019. Yet, the problem the DOJ sought to address through its reservations regulations is as bad as ever. So

bad, that in 2017 the private start-up company AbiliTrek launched. AbiliTrek describes its mission as follows:

“AbiliTrek, like many other companies, began as an innovative idea; AbiliTrek is geared toward bettering the travel experience for people with disabilities. **Currently, the travel industry lacks the information needed for travelers with disabilities. This makes traveling a daunting and exhausting task for many in the disability community.** AbiliTrek was created as a fundamental resource for any traveler with a disability. **AbiliTrek’s goal is to counteract the current state of the travel industry** and make traveling with a disability a fulfilling experience” AbiliTrek Updates posted December 31, 2017. <https://abilitrek.com/wrapping-up-2017-our-end-of-year-review-package/>. (Emphasis added).

12. Defendants, unfortunately, are part of the problem addressed by the hotel reservations provisions of the ADA and private firms like AbiliTrek.

13. As a result of Defendants’ violations of law, and to correct them, Plaintiff seeks declaratory relief and injunctive relief establishing that Defendants has engaged in violations of ADA Accessibility Standards and that require Defendants to provide individuals with disabilities and their families the ability to make reservations for accessible guest rooms in the same manner as individuals who do not need accessible rooms, including the identification and description of the accessible characteristics of Defendants’ guest rooms offered to ensure that individuals with disabilities receive the information they need to benefit from Defendants’ services. Additionally, Plaintiffs seek that rooms marked as disability accessible rooms comply with the basic requirements of such rooms – including, for example, grab bars near the toilets and enough space for individuals to enter with walkers or wheelchairs – that were missing here in a room marked by Defendants as “mobility accessible.” Finally, the injunctive relief sought must require that Defendants guarantee that the specific accessible guest room reserved through its reservations service is held for the reserving customer.

**PLAINTIFF’S EFFORTS TO RESOLVE THIS
MATTER INFORMALLY BEFORE FILING SUIT**

14. Prior to filing this lawsuit, Plaintiff and her family reached out to Defendants to resolve their concerns about the failure of the Hotel and the Defendants to comply with ADA Accessibility Standards for the benefit of persons with disabilities and their travel companions. This led to a series of email exchanges with the General Manager of Defendant APPLE SEVEN HOSPITALITY OWNERSHIP, INC. D/B/A HOMEWOOD SUITES BY HILTON MAHWAH, with no resolution. Plaintiff then requested a contact at Defendant HILTON WORLDWIDE HOLDINGS, INC., to determine if they could escalate the issue and resolve it. Unfortunately, Plaintiff and her family could not identify anyone designated to address her concerns at Hilton and was told by the Hotel General Manager, regarding the ADA-related information it received from Hilton, “Unfortunately the information for ADA was from many years ago and it was always sent out as a massive email without contact names.” The Hotel General Manager also then copied someone from Hilton corporate on the email exchange with Plaintiff. Plaintiff and her family then through their own personal contacts, sought and held a telephone call, along with their counsel, with the General Counsel’s office with Hilton Worldwide Holdings, Inc. regarding how to improve the issues presented herein and yet that also did not lead to any sort of collaborative resolution of the issues raised in this case. After finding no outlet to resolve these concerns for her family or for all the others seeking hotel rooms for themselves, or for family members or loved ones with disabilities, Plaintiff filed this lawsuit.

JURISDICTION AND VENUE

15. This Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 42 U.S.C. § 12181, as Plaintiff’s claims arise under Title III of the ADA, 42 U.S.C. §

12181, *et seq.*, and 28 U.S.C. § 1332.

16. This Court has personal jurisdiction over Defendants because they are deemed residents of the State of New Jersey or conduct and continue to conduct a substantial and significant amount of business in the State of New Jersey.

17. Venue is proper in the District of New Jersey pursuant to 28 U.S.C. §1391(b)(1) because at least one Defendant resides in this District and this Court has personal jurisdiction over Defendants.

PARTIES

18. Plaintiff, at all times relevant and as alleged herein, is a resident of the District of Columbia. Plaintiff, at all times relevant for the purposes of this Complaint was the primary caregiver for, and aide to, her grandmother and fellow traveler Elaine Osborne, an individual with a disability. At the time of the filing of this Complaint, Ms. Osborne is 94 years old and lives with the Plaintiff and her family. Due to physical impairments, Ms. Osborne is substantially limited in performing one or more major life activities, including but not limited to: walking, standing, ambulating, bending, reaching, sitting and/or sleeping and suffers from a “qualified disability” under the ADA. Ms. Osborne uses a walker to move short distances and a wheelchair to move beyond that, and requires an accessible room and hotel property to fully and equally utilize the goods, services, and facilities provided by Defendants.

19. Plaintiff assisted and accompanied Ms. Osborne in connection with all visits to the Hotel and seeks relief based on her association with Ms. Osborne, her grandmother for whom she is caregiver and aide. Plaintiff has been discriminated against and suffered injury within the meaning of the ADA that is separate, direct, and independent from that suffered by Ms. Osborne. Plaintiff’s injuries include: In December of 2017, 1) the requirement that she assist Ms. Osborne to

cope with the limitations imposed upon her when the accessible room reserved for their party was not available on the date reserved. This required Plaintiff to assist Ms. Osbourne physically and emotionally to bridge the gap imposed by the lack of an accessible room; and, in December of 2018, 2) the requirement that she again bridge the gap imposed when the, in name, “accessible” room reserved and provided, proved to be inaccessible, in particular, lacking accessible toilet and bathing facilities mandated for rooms designated “mobility” accessible within public lodging facilities. Again, this required Plaintiff to assist Ms. Osbourne physically and emotionally to bridge the gap imposed by the lack of an accessible room.

20. Ms. Osbourne suffered injuries within the meaning of the ADA but is not a Plaintiff in this action due to her advanced age of 92 in 2017 and 93 in 2018 during the incidents in question here, and the burden that would be placed upon her by undertaking such an action on her own behalf. Plaintiff and her family are also harmed given their association with Ms. Osborne, an individual with a disability.

21. Plaintiff is being deterred due to Defendants’ violations of the ADA from patronizing the Website and the Hotel because she would do so in the company of Ms. Osbourne as her caretaker and the failure of the Defendants to comply with ADA Accessibility Standards makes this impossible to do without unnecessary risk.

22. Plaintiff will return to the Website and the Hotel for the dual purpose of availing herself of the goods and services offered to the public and to ensure that Defendants cease evading their responsibilities under federal law.

23. Plaintiff is informed and believes, and upon such information and belief alleges, that Defendants jointly operate the Hotel with respect to its reservations systems, policies and procedures, including those offered through the Website.

FACTUAL ALLEGATIONS

24. As part of their operation of the Hotel, Defendants provide the public access to reservations services, including but not limited to the ability to make reservations online at the Website and all related obligations.

25. During the Christmas Holidays in both 2017 and in 2018, Plaintiff and her family, including her grandmother, desired to stay at the Hotel in a mobility accessible room close to the homes of their relatives who hosted a Christmas Day gathering in the New Jersey area.

26. In each year, and within the applicable limitations period, on or about December, 2017 and December 2018, Plaintiff visited the Website, to attempt to view the accessible features in the Hotel and guest rooms of the Hotel and in each case she ultimately reserved a room.

27. In 2017, Plaintiff reserved a room that was identified as mobility accessible on the website and received a confirmation email memorializing this fact. When Plaintiff and her family arrived at the Hotel, they were informed that the mobility accessible room they had reserved was no longer available. As a result, Plaintiff had to assist Ms. Osbourne physically and emotionally to bridge the gap imposed by the lack of an accessible room.

28. In 2018, Plaintiff also reserved a room that was identified as mobility accessible on the website. Given the experiences the family endured the year before, Plaintiff called the Hotel earlier the day of their arrival to insist that they not give away the ADA mobility accessibility designated room. She explained that they would be arriving late in the evening after the Christmas Day holiday gathering. However, upon arriving at the Hotel, Plaintiff learned that the purported mobility accessible room she had reserved did not have an accessible bathroom --- the bathroom was too small to allow adequate access with a wheelchair or walker and the bathroom even lacked

grab bars near the toilet. This rendered the room largely unusable by Ms. Osbourne. This required Plaintiff to assist Ms. Osbourne physically and emotionally to bridge the gap imposed by the lack of an accessible room. This included, for example, Plaintiff having to undress the bed, provide thorough washing up for her grandmother and launder her grandmothers' wet bedtime clothes. This required her to locate the laundry facilities and obtain detergent from the Hotel the morning after Christmas while the rest of the family was eating breakfast. Plaintiff's spouse was so distraught by this turn of events that she went and spoke to the front desk immediately after breakfast about how the room could possibly have been designated an ADA mobility accessible room if it did not even have grab bars near the toilet. The person at the desk had no response other than that the tub was large enough for a stool that they could obtain from engineering --- that was the Hotel's answer to what made the room an "ADA mobility accessible room."

29. On Christmas evening of 2018 Plaintiff's daughter (age 9) shared a room with the great-grandmother, and the child had to leave her room and come and call Plaintiff in the other suite bedroom, so that Plaintiff could help her grandmother to use the toilet at least once in the middle of the night.

30. Plaintiff's spouse then posted on Twitter words to the effect that Hilton should do better and the entity responded asking for more details. Plaintiff and her family provided such details to both Hilton Homewood Suites and the contact from Hilton corporate and yet none of the issues identified herein have been resolved for their family, or more generally.

31. On information and belief, Plaintiff also alleges Defendants currently have no policy to ensure that:

- a. Accessible guest rooms are held for use by individuals with disabilities and their companions until all other guest rooms of that type have been rented and the

accessible room requested is the only remaining room of that type;

- b. Accessible guest rooms or specific types of guest rooms may be reserved on request and ensuring that the guest rooms requested are blocked and removed from all reservations systems;
- c. The specific accessible guest room reserved through its reservations service is held for the reserving customer, regardless of whether a specific room is held in response to reservations made by others; and
- d. The Subject Property provides the statutorily required minimum number of accessible rooms and accessible room types and that the accessible rooms available, if any, are distributed among the types of rooms available at the Subject Property so as to provide equal access to the Subject Property by persons with disabilities
- e. The accessible rooms identified as part of a room type recognized by ADA guidelines meet the requirements for that room type, e.g., rooms identified as “mobility” accessible shall meet all requirements of ADA Access Guidelines including section 806.2 et. Seq.

32. The Website lacks information required by Plaintiff to fully and equally access the reservations services of the Website as a result of her association with her disabled grandmother and fellow traveler, Elaine Osbourne’s disability.

33. Plaintiff has been, and in the absence of an injunction will continue to be, injured by Defendants’ policy and practice of failing to allow individuals with disabilities and their caregivers, family members and other companions the ability to make reservations for accessible guest rooms in the same manner as individuals who do not need accessible rooms. This would require Defendants including the identification and description of the accessible features in the Defendants’ Hotel and

the guest rooms sufficient to ensure that individuals with disabilities receive the information they need to benefit from the services offered by Defendants.

34. Given the obvious and blatant violations as alleged hereinabove, Plaintiff alleges, on information and belief, that there are other violations of 28 CFR § 36.302(e) and the ADA that discriminate against Plaintiff. Plaintiff will amend the complaint, to provide proper notice regarding the scope of this lawsuit, after discovery. However, Defendants are hereby on notice that Plaintiff seeks to have all barriers related to the discrimination resulting from her association with a person with disabilities remedied.

COUNT I

[VIOLATIONS OF THE AMERICANS WITH DISABILITIES ACT]

35. Plaintiff re-alleges and incorporates by reference all paragraphs alleged above and each and every other paragraph in this Complaint necessary or helpful to state this cause of action as though fully set forth herein.

36. Plaintiff is an individual associated with a person with a disability under the ADA. 42 U.S.C. § 12102(1)(A).

37. Title III of the ADA prohibits discrimination against individuals with disabilities in the full and equal enjoyment of the goods, services, facilities, 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).

38. Title III of the ADA also prohibits associational discrimination 42 U.S.C. § 12182(b)(1)(E). This statutory provision is implemented by 28 C.F.R. § 36.205, which contains the same language. *See* 28 C.F.R. § 36.205.

39. Defendants operates online reservations systems through the Website within the

meaning of the ADA. 42 U.S.C. § 12181(3) and (4).

40. For reservations systems, Defendants must meet the requirements of the ADA as set forth in 28 CFR § 36.302(e)(1) et seq.:

(e)(1) Reservations made by places of lodging. A public accommodation that owns, leases (or leases to), or operates a place of lodging shall, with respect to reservations made by any means, including by telephone, in-person, or through a third party—

(i) Modify its policies, practices, or procedures to ensure that individuals with disabilities can make reservations for accessible guest rooms during the same hours and in the same manner as individuals who do not need accessible rooms;

(ii) Identify and describe accessible features in the hotels and guest rooms offered through its reservations service in enough detail to reasonably permit individuals with disabilities to assess independently whether a given hotel or guest room meets his or her accessibility needs;

(iii) Ensure that accessible guest rooms are held for use by individuals with disabilities until all other guest rooms of that type have been rented and the accessible room requested is the only remaining room of that type;

(iv) Reserve, upon request, accessible guest rooms or specific types of guest rooms and ensure that the guest rooms requested are blocked and removed from all reservations systems; and

(v) Guarantee that the specific accessible guest room reserved through its reservations service is held for the reserving customer, regardless of whether a specific room is held in response to reservations made by others.

41. Moreover, by failing to provide accessible reservations services, Defendants have engaged, directly, or through contractual, licensing, or other arrangements, in illegal disability discrimination, as defined by Title III, including without limitation:

a) denying individuals with mobility disabilities and their families, caregivers and other companions opportunities to participate in and benefit from the goods, services and facilities available at Defendants' Hotel;

b) affording individuals with mobility disabilities and their families, caregivers and other

companions unequal access to goods, services or facilities;

c) utilizing methods of administration that (i) have the effect of discriminating on the basis of disability; or (ii) perpetuating the discrimination of others who are subject to common administrative control;

d) Failing to make reasonable modifications in policies, practices, or procedures where necessary to afford services, privileges, advantages, or accommodations to individuals with mobility disabilities and their companions.

42. Defendants' ongoing and continuing violations of Title III have caused, and in the absence to an injunction will continue to cause, harm to Plaintiff.

COUNT II

[DECLARATORY RELIEF ON BEHALF OF PLAINTIFF]

43. Plaintiff re-alleges and incorporates by reference all paragraphs alleged above and each and every other paragraph in this Complaint necessary or helpful to state this cause of action as though fully set forth herein.

44. An actual controversy has arisen and now exists between the parties in that Plaintiff contends, and is informed and believes that Defendants deny, that by failing to provide a reservations service through the Website that allows disabled persons, including those with mobility impairments, and their family members, caregivers and other companions, to independently identify accessible features of Defendants' Hotel and rooms and to independently reserve accessible rooms in the Hotel and by failing to provide an accessible room after such room is reserved Defendants fail to comply with applicable laws, including but not limited to Title III of the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq.

45. An actual controversy has arisen and now exists between the parties in that Plaintiff

contends, and is informed and believes that Defendants deny, that by failing to comply in all respects with 28 CFR § 36.302(e)(1) et seq. Defendants fail to comply with applicable laws, including but not limited to Title III of the Americans with Disabilities Act, 42 U.S.C. §§ 12101, et seq.

46. A judicial declaration is necessary and appropriate at this time in order that each of the parties may know their respective rights and duties and act accordingly and so Plaintiff requests relief as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants, as follows:

1. A preliminary and permanent injunction enjoining Defendants from further violations of the Americans with Disabilities Act, 42 U.S.C. § 12188(a)(2), 28 CFR § 36.302(e)(1) et seq., requiring Defendants to take the steps necessary to ensure that Defendants maintain and implement policies and procedures:

a. Allow persons with mobility impairments and their families, caregivers and other companions to independently identify accessible features of Defendants' Hotel via their Websites and any other methods available to others;

b. Allow persons with mobility impairments and their families, caregivers and other companions to independently reserve accessible rooms in the Hotel via their Websites and any other methods available to others;

c. Guarantee that the Websites includes accurate descriptions of the features of each accessible room type;

d. Hold reserved accessible rooms for use by persons with disabilities and their families, caregivers and other companions, including mobility impairments;

- e. Block and remove reserved accessible rooms from all reservations systems;
 - f. Guarantee that the specific accessible guest room reserved is held for that reserving customer, regardless of whether a specific room is held in response to reservations made by others; and
 - g. Guarantee Defendants' hotels include at least the minimum statutorily required number of accessible rooms and accessible room types and that those rooms are distributed throughout the Subject Property in compliance with applicable laws;
 - h. Guarantee that the rooms designated by Defendants as accessible follow the mandated requirements for such rooms including such basic features as grab bars near the toilet and enough space to enter with a walker or a wheelchair;
 - i. Cease to discriminate against Plaintiff due to her association with any disabled person and not retaliate against Plaintiff or her family;
 - j. Compensation for the emotional distress caused to Plaintiff and her family during both the Christmas night holiday stays of 2017 and 2018 based on Defendants' conduct.
- 2. A declaration that Defendants discriminated against Plaintiff as set forth herein;
 - 3. For such other and further relief as this Court deems just and proper, including an award of attorneys' fees and costs as allowed by law.

DATED this 4th day of September, 2019

/s/ Javier L. Merino

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