NEW YORK CITY BAR

SEVENTY-FIFTH ANNUAL NATIONAL MOOT COURT COMPETITION

RECORD ON APPEAL

SUPREME COURT OF THE UNITED STATES
October Term 2024

Docket No. 2024-25

THE RED KEEP, Petitioner,

v.

TARGARYEN FAMILY, Respondents.

AMERICAN COLLEGE OF TRIAL LAWYERS

ACKNOWLEDGEMENTS

Special thanks to the Committee members who contributed to this year's competition problem:

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FACTS AS ALLEGED IN PLAINTIFFS' COMPLAINT

Westeros is located in the State of Arryn. Among its citizens is the Targaryen family, in which each child has a disability: Bran Targaryen is 17 years old and is bound to a wheelchair, but that does not stop him from participating in basketball and rugby. Jaimie Targaryen is 14 years old and was born missing his right hand, yet he learned to play the violin with the use of an adaptive device. Tyrion Targaryen is 19 years old and was diagnosed with dwarfism at birth; he is now 4 feet, 10 inches tall. He enjoys (among other things) skateboarding. Aemon Targaryen is 20 years old and lost his sight as a young child. Aemon has a passion for writing poetry using braille and/or adaptive computer software. The family also has a dog named Banjo Targaryen. Banjo is a registered emotional support animal and not a trained service animal. Because of his dwarfism, Tyrion suffers from social anxiety and prefers to take Banjo wherever he goes, especially when it comes to trips away from the comfort of home.

The Targaryen children are well known for their resilience and impact on the Westeros community. Their parents, Daenerys and Daario, are regularly asked to lead speaking engagements about their children's disabilities and to share inspiring stories about how they have adapted to and overcome their physical limitations.

Aemon's interest in computer science. In addition to poetry, Aemon has an affinity for computer science. Despite his disability, he enrolled at Arryn State University to pursue a Bachelor of Science in Software Engineering and Information Technology. As part of his required courses, Aemon registered for the Fall 2022 independent study. Because of his dedication to disability awareness, Aemon worked with his professor to propose a unique semester project as a software tester. Specifically, he would log on and

test websites to determine if they were compatible with screen reader technology and document his findings. Regularly, Aemon utilizes a screen reader software called "The Voice" to access the Internet on his personal desktop computer. With the push of a key on his keyboard, Aemon can trigger the software, which acts by vocalizing the visual information appearing on websites. When activated, the software reads the text displayed on the screen via technology that converts written text into speech.

The Red Keep website accessibility. Recommended by one of his fellow IT enthusiasts, Aemon visited The Red Keep's website as part of his research. The Red Keep is an all-inclusive resort that includes a hotel and massive amusement park. When he attempted to book a stay, Aemon could not properly navigate the site to do so. The Red Keep's website was not coded to support assistive technology for the visually impaired.[1] Due to the site's inability to label images or "buttons" for reservations, Aemon's screen reader software was unable to recognize and dictate components of the booking system. Among other selections, the website included a "Book Stay Now" button on the screen, but the software could not vocalize that option.[2] The website was incompatible with all screen reader software because its interface was not programmed to "read" programs that translate text to spoken word.[3]

In the summer of 2023, the Targaryens decided to take a family trip to The Red

[1] Refer to Arryn State Regulation Section 75.01. *See* Appendix A(2).

[2] The Red Keep's website does not include the functionality for screen readers to identify labels, such as entering credit card information pursuant to Arryn State Regulation. *See* Appendix A(2).

[3] At the bottom right-hand corner of its home page, The Red Keep website includes two contact numbers for viewers to call for disability-specific resources and support.

Keep.[4] Due to the high demand for resort bookings that summer, The Red Keep placed a notice on its website that it was unable to efficiently allow customers to place reservations over the phone. Because of his excitement about the trip, Aemon volunteered to make the family's reservation online. But he then recalled his prior experience attempting to access the website for his research project and decided against attempting the booking due to a lack of website accommodations for the blind. Eventually, Tyrion booked the vacation package directly through The Red Keep's website via his iPhone and he shared the reservation details with his parents and siblings.[5]

The Targaryens' arrival at the Red Keep. When the family arrived at the resort, they were met with another dilemma. The amusement park included seven rides featuring four of its most popular attractions: (1) The North; (2) The Mountain & Vale; (3) The Isles and Rivers; and (4) The Reach. To comply with Arryn State Law,[6] the park imposed rider eligibility criteria for each major ride, which presented different issues for each child.

For each ride, The Red Keep displays instructions in the area where the line begins to form and/or the ride boarding area. All ride instructions conclude with, "Ask an employee about these instructions!" These signs are not posted in braille or accompanied by audio communication. Generally, each ride is staffed with at least four employees to assist The Red Keep's guests in boarding and disembarking the ride. The employees also start and stop the ride and ensure guest safety. All employees are assigned to specific rides

[4] The Red Keep allows trained service animals, but not emotional support animals, in the amusement park area. Emotional support animals are permitted in the hotel. Banjo accompanied the family on vacation. He was confined to the hotel for most of the day.

[5] Guests may visit the amusement park without having to book a stay at the resort.

[6] A full description of relevant and applicable Arryn State Law, definitions, and applicable provisions are provided in Appendix A(1).

for their entire employment term and must obtain three levels of supervisory approval to switch a ride assignment. Consequently, employees rarely switch their ride assignment, and each can recite the ride instructions verbatim if requested by a guest. The four featured rides each have their own rider eligibility requirements to further ensure rider security.

Jaimie gets knocked off The North. As one of the customer favorites, The North consists of a rotating platform with seats that move up and down and, at five-minute intervals, will immediately swivel upside down. It requires that each rider have "two hands placed on the front panel of the passenger car at all times while the ride is in motion." The ride includes an overhead strap that covers the body from shoulder to torso for added safety.

Jaimie had been planning to ride The North for weeks prior to the trip. He was excited to experience the "upside down swivel." However, when Jaimie approached, an employee operating The North informed Jaimie that he was "unfit" to ride. The rider eligibility instructions for The North stated that individuals with "no forearm" or "no full arm" could not ride safely. Despite the warning, Jaimie's love for amusement park rides enticed him to bypass the employee and jump on an available seat towards the front of the ride. Ten minutes into Jaimie's ride, the intensity of the ride increased so much that Jaimie's grip on the ride with a single hand was insufficient. He was no longer secure in the passenger car and consequently suffered a significant injury to his right shoulder blade. Jaimie's response to the injury was: "The things I do for love!"

The Mountain & Vale is no fun for Tyrion. Open to teens and adults, The Mountain & Vale is an intimidating roller coaster that zig zags and propels riders forward at extreme speeds up to 100 miles per hour. The ride maintains these extreme speeds until two minutes before the 15-minute timer sounds at the completion of each ride session. The

ride has a minimum height requirement of 60 inches; thus, Tyrion was unable to engage in this thrilling experience.

Aemon misses out on The Isles and Rivers. While nowhere near as chaotic as the outdoor rides, The Isles and Rivers is a fan favorite based on its aesthetics. It offers a slow, yet entertaining experience where riders, mostly avid comic book enthusiasts, are strapped into a three-person cart and move through different rooms featuring pixel art games. Aemon opts to ride with Jaimie and Tyrion but he can only hear the sound effects as they pass through each picturesque frame. The interaction does not include spoken dialogue.

The Reach is *out-of-reach* for Bran. Known for its reputation as a popular waterslide, The Reach is located in the aquatic area of the park. Guests traverse down the waterslide in a floatation device that holds one or two individuals. The Reach has an accessible route to the catch pool at the bottom of the waterslide. Specifically, the catch pool has a sloped entry and exit way, with handrails. The catch pool is approximately four feet deep and staffed with certified lifeguards. However, there is no wheelchair access to the beginning of the waterslide. To access the beginning of the waterslide, a guest must climb ten flights of stairs while carrying a flotation device. Thus, Bran was unable to experience The Reach.

The rest of the rides. All of the Targaryen family members were able to access and ride the remaining three rides without limitation, as there are no conditions for guests to engage. All of the Targaryen children attempt these three rides. However, because they cannot enjoy all of the rides individually and as a family, the Targaryen children do not enjoy themselves at the amusement park.

Before leaving the resort, the Targaryen parents notified management about the injury that Jaimie sustained while riding The North. Pursuant to The Red Keep's customer service and safety policy, the Targaryens filed an incident report.[7] Enraged by their unpleasant experience at The Red Keep, the Targaryens commenced a lawsuit against The Red Keep in the United States District Court for the District of Kings Landing.

PROCEDURAL HISTORY OF THE PRESENT ACTION

On March 6, 2024, the Targaryens filed suit against The Red Keep alleging that The Red Keep violated Title III of the Americans with Disabilities Act (the "ADA") by: (1) not making its website fully accessible to disabled and visually impaired individuals; and (2) imposing rider eligibility criteria that, when applied, impermissibly excluded disabled persons protected under the ADA. The Red Keep accepted service of the Complaint, which was properly served, and reserved the rights to challenge jurisdiction and standing. On March 20, 2024, The Red Keep moved to dismiss the Targaryens' complaint in its entirety under Fed. R. Civ. Pro. 12(b)(1) for lack of Article III standing to sue and under Fed. R. Civ. Pro. 12(b)(6) for failure to state a claim upon relief which can be granted. To support its position on the standing issue, The Red Keep alleged that Aemon Targaryen accessed the website as a "tester" and did not attempt to access its website for travel arrangements. In support of the motion to dismiss the rider eligibility claim, The Red Keep submitted that, as a park owner, it reserved the right to determine what protective measures were required for guests' safety, and that it complied with all relevant Arryn state laws. On April 3, 2024, the Targaryens filed their opposition to The Red Keep's motion.

[7] *See* Appendix B for a copy of the incident report filed with The Red Keep staff.

On April 10, 2024, The Red Keep filed its reply in support of its motion to dismiss the Complaint.

On May 1, 2024, the United States District Court for the District of King's Landing found in favor of The Red Keep and **GRANTED ITS MOTION IN FULL**, holding that the Targaryens lacked Article III standing to sue The Red Keep for its alleged lack of website accessibility. The District Court also granted The Red Keep's motion as it related to the rider eligibility claim and held that Plaintiffs failed to state a claim because the imposition of rider eligibility criteria is "necessary" under the ADA.

On July 8, 2024, the Targaryens timely appealed the District Court's decisions to the Court of Appeals for the Fourteenth Circuit. On July 22, 2024, the Fourteenth Circuit **REVERSED** the District Court's ruling on standing for the website claim and the District Court's ruling on the merits of the rider eligibility claim, holding that:

1. The Targaryen family can establish Article III standing because they alleged injury sufficient to support their standing to bring a claim under the ADA against The Red Keep; and
2. The Targaryen family sufficiently stated a claim under the ADA with respect to their ride eligibility claim because compliance with state law does not absolve a public accommodation of its obligation to follow the ADA, and to the extent that the state law conflicts with the ADA's requirement to provide reasonable accommodations, the state law at issue does not qualify as "necessary" under the ADA.

On August 5, 2024, the The Red Keep timely appealed the United States Supreme Court for writ of certiorari to appeal the Court of Appeal's ruling on the standing issue and to hear an interlocutory appeal of the Court of Appeal's rulings on the rider eligibility issue. As to the interlocutory appeal, The Red Keep properly demonstrated that the issue was of significant national importance and/or resolves a conflict of law among different appellate courts. The United States Supreme Court determined that it had jurisdiction to hear The Red Keep's interlocutory appeal under 28 U.S.C. § 1254(1), which allows the Supreme Court to review a case from a U.S. Court of Appeals by certiorari "before or after rendition of judgment," which includes interlocutory decisions.[8]

The United States Supreme Court granted The Red Keep's petition to hear and decide the following questions:

1. Does the Targaryen family have Article III standing to bring a claim under the Americans with Disabilities Act (ADA) against The Red Keep for its website accessibility? [9]
2. Is the rider eligibility criteria posted by The Red Keep "necessary" under the meaning of the Americans with Disabilities Act (ADA)?[10]

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[8] Note to competitors: Although the standard appeal process does not automatically allow of interlocutory review at the Supreme Court level, and Rule 11 of the Supreme Court Rules clarifies that interlocutory appeals will only be granted in "rare instances" of exceptional importance, for the purposes of this Record, all competitors should presume that The Red Keep sufficiently demonstrated that immediate resolution of the issues was of extraordinary importance, and that the Supreme Court has jurisdiction to hear and decide the parties' arguments. Competitors are not to present arguments regarding the sufficiency of the request for interlocutory review.

[9] Note to competitors: On appeal, with respect to this question, competitors should brief and argue their position as to which circuit court's test should be applied to determine standing ***and*** whether the Targaryens actually have standing under *Lujan*, including whether the website is a place of public accommodation.

[10] Note to competitors: On interlocutory appeal, the court will only be deciding the **legal issue** on this question. Competitors should not argue whether The Red Keep should offer reasonable accommodations to its riders. With respect to this question, competitors should brief and argue their position as to whether the rider eligibility criteria posted by The Red Keep is "necessary" within the meaning of the ADA.

APPENDIX A (1)

Arryn State Law

§ 1.100. Definitions.
As used in this chapter:

(a) **"Amusement Machine"** means a device or structure open to the public (i) by which persons are moved in an unusual manner for diversion, and (ii) where the device is suspended in the air by the use of steel cables, chains, belts, or ropes, and usually supported by trestles or towers with one or more spans, also known as a passenger tramway, used to transport passengers uphill, downhill, or in a circular path.

(b) **"Rider"** means any person who is (i) waiting in the immediate vicinity to get on an amusement machine; (ii) getting on an amusement machine; (iii) using an amusement machine; (iv) getting off an amusement machine; or (v) leaving an amusement machine and still in its immediate vicinity. "Rider" does not include employees, agents, or servants of the owner or operator of the amusement machine while engaged in the duties of their employment.

(c) **"Parent or guardian"** means any parent, guardian, legal custodian or other person having immediate control or charge of a child.

(d) **"Operator"** means the entity listed as operator on the Certificate of Inspection issued for the amusement device.

§ 1.101 Rider Eligibility Criteria.

(a) **Purpose**. The imposition and/or application of eligibility criteria is essential to provide a safe rider experience. Places of public accommodation that operate amusement machines may institute universal rider eligibility criteria.

(b) **"Universal criteria"** means criteria that is enforced throughout all places of public accommodation.

(c) **Rider Eligibility**. All persons with natural grasping limbs are eligible to participate in all amusement machines. Riders with prosthetic and/or missing limbs may be prohibited from engaging in certain amusement machines. Riders who do not meet imposed height requirements may be prohibited from engaging in certain amusement machines. Riders with mobility limitations may be unable to engage with certain amusement machines.

§ 1.102. Injury Reports By Rider; Rider Responsibility

(a) **Reports.** A rider, or their parent or guardian on a rider's behalf, shall report in writing to the owner or operator *any injury* sustained on an amusement machine before leaving the premises, or, if the parent or guardian is not present, as soon as reasonably possible; the report must include:

(i) the name, address, and phone number of the injured person;

(ii) a full description of the incident, the injuries claimed, any treatment received, and the location, date, and time of the injury;

(iii) the cause of the injury, if known; and

(iv) the names, addresses, and phone numbers of any witnesses to the incident, if known by the rider or their parent or guardian. If the rider, or their parent or guardian on a rider's behalf, is unable to file a report because of the severity of their injuries, they shall file the report as soon as reasonably possible.

(b) **Civil Lawsuits.** The failure of a rider, or their parent or guardian on a rider's behalf, to report an injury under this subsection shall preclude such rider or their parent or guardian from commencing a civil action against the operator.

(c) **Rider's Responsibility.** A rider must:

(i) Obey the posted rules, warnings, and oral instructions for an amusement machine issued by the operator or an employee or agent of the operator; and

(ii) Not intentionally act in any manner that may cause or contribute to injuring the rider or others, including:

(1) Interfering with safe operation of the amusement machine, including but not limited to, disregard of employee instruction regarding ride restrictions;

(2) Failing to engage any safety devices that are provided;

(3) Disconnecting or disabling a safety device except at the express instruction of the operator's agent or employee;

(4) Altering or enhancing the intended speed, course, or direction of an amusement machine;

(5) Using an amusement machine's controls that are designed solely to be operated by the operator's agent or employee;

(6) Throwing, intentionally dropping, or intentionally expelling an object from or toward an amusement machine;

(7) Getting on or off an amusement machine unless at the designated time and area, if any; at the direction of the owner's or operator's agent or employee; or in an emergency;

(8) Not reasonably controlling the speed or direction of the rider or an amusement machine that requires the rider to exercise such control; and

(9) Overloading an amusement machine beyond its posted capacity.

APPENDIX A (2)

Arryn State Regulation

§ 75.01. Website Monitoring

(a) This provision requires that consumer websites accessible in Arryn, whether operated by the principal entity or through a third party, allow all disabled individuals the ability to engage in the primary purpose of the website. Websites that are incompatible with screen reader technology to support visually impaired individuals may be deemed noncompliant with the American Disabilities Act and subject to liability.

APPENDIX B

The Red Keep Incident Report

REPORTED BY: Samwell Tarly **DATE OF REPORT:** June 16, 2023

TITLE / ROLE: Guest Manager **INCIDENT NO.:** 0242566

INCIDENT INFORMATION

INCIDENT TYPE: Accident/Injury **DATE OF INCIDENT:** June 16, 2023

LOCATION: Southeast section of The Red Keep amusement park – The North

CITY: Braavos **STATE:** Arryn **ZIP CODE:** 99999

SPECIFIC AREA OF LOCATION *(if applicable):* The North – amusement park ride

INCIDENT DESCRIPTION

At 2:05pm, Osha Lewis began operating The North. Adjacent to the waiting area where guests line up to get on the ride, there is a sign with instructions indicating "two hands need to be placed on the front panel of the passenger car at all times while the ride is in motion." Lewis noticed that rider, Jaimie Targaryen, had a physical disability (missing right hand) and tried to talk him out of getting on the ride, saying "you cannot get on this ride, it's for your own safety." Targaryen got on the ride anyway. Within ten minutes, Lewis heard Targaryen cry out from his seat and immediately stopped the ride. After close observation, Lewis and a witness, Sansa Gerber, observed that Targaryen had injured his right shoulder blade.

NAME OF WITNESSES

1. Osha Lewis – Ride Operator for The Red Keep
2. Jaimie Targaryen
3. Sansa Gerber – observer

POLICE REPORT FILED? No **PRECINCT:** Not applicable

REPORTING OFFICER: Not applicable

FOLLOW-UP ACTION: Staff advised Jaimie Targaryen to seek medical attention for his injuries and have contacted the on-call medical team to assist with treating his injuries.

DISCLAIMER: The Red Keep is not responsible for lost or stolen items. Management always prioritizes the safety of its guests. Guests with certain medical conditions or disabilities may not be able to participate in some amusement park rides. Riders must follow all safety guidelines and instructions provided by the amusement park staff.

UNITED STATES DISTRICT COURT,
KING'S LANDING

TARGARYEN FAMILY, *Plaintiffs*, v. **THE RED KEEP,** *Defendant*.	Case No: 9:02-cv-2024 **ORDER GRANTING DEFENDANT'S MOTION TO DISMISS** [Dkt. Nos. 19, 20, 22]

On March 25, 2024, Defendant The Red Keep filed a motion to dismiss Plaintiff the Targaryen Family's (the "Targaryens") complaint for lack of Article III standing to sue under the Federal Rules of Civil Procedure 12(b)(1) and for failure to state a claim pursuant to the Federal Rules of Civil Procedure 12(b)(6). (Dkt. No. 19). On April 3, 2024, the Targaryens filed their opposition to The Red Keep's motion to dismiss. (Dkt. No. 20). On April 10, 2024, The Red Keep filed its reply in support of its motion to dismiss the Complaint in its entirety. (Dkt. No. 22). Pursuant to Federal Rule of Federal Procedure 78 and Local Rule 8.3(d)(3), the Court determined this matter was appropriate for resolution without oral argument and submitted this motion on the parties' papers.

For the reasons that follow, the Court **GRANTS DEFENDANTS' MOTION TO DISMISS IN ITS ENTIRETY.**

BACKGROUND

The facts of this case are set forth in the Record and are derived from Plaintiff's complaint, the materials included with the parties' briefings, and public records; none are disputed.

The Red Keep is an all-inclusive resort that includes a hotel and amusement park. Last summer, the Targaryens booked a stay at the resort. Prior to their arrival, Aemon Targaryen, a vision impaired apprentice software engineer, planned to reserve the family's stay via The Red Keep's website, but recalled that he was unable to do so due to the website's incompatibility with screen reader technology. Because of the lack of accommodations for the visually impaired, Tyrion Targaryen booked the vacation package directly through the website via his iPhone and shared the itinerary with his family.

When the Targaryens arrived at the resort, all family members accessed and engaged in the rides at the amusement park. Due to their disabilities, some family members were met with limitations, and one of them suffered an injury after riding one of the popular attractions. Due to their difficulties engaging with The Red Keep's website and their inability to fully enjoy the amusement park, the Targaryens commenced a lawsuit against The Red Keep in this Court.

PROCEDURAL HISTORY

On March 6, 2024, the Targaryens brought this litigation against The Red Keep alleging that The Red Keep violated Title III of the Americans with Disabilities Act ("ADA") by: (1) not making its website fully accessible to disabled and visually impaired individuals; and (2) imposing rider eligibility criteria that, when applied, excluded disabled persons protected under the ADA. The Red Keep accepted service of the Complaint and reserved the rights to challenge jurisdiction and standing. On March 20, 2024, The Red Keep moved to dismiss the Complaint in its entirety under Fed. R. Civ. Pro. 12(b)(1) on the grounds that the Targaryens lacked Article III standing to sue and under Fed. R. Civ. Pro. 12(b)(6) for failure to state a claim upon relief which can be granted. Specifically, The

Red Keep argued that the Targaryens did not have standing to pursue their ADA claim with regard to The Red Keep's website because Aemon Targaryen only accessed the website as a "tester" and did not attempt to use the website to arrange family travel. The Red Keep also argued that, as a park owner, it reserved the right to determine what protective measures were required for guests' safety, and that it complied with all relevant Arryn state laws. On April 3, 2024, the Targaryens filed their opposition to The Red Keep's motion. On April 10, 2024, The Red Keep filed its reply in support of its motion to dismiss the Complaint.

DISCUSSION

I. LEGAL STANDARDS

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, a Complaint must allege sufficient facts that, if true, state a plausible claim for relief. *See Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-56 (2007). "First, although a court must accept as true all of the allegations contained in a complaint, that tenet is inapplicable to legal conclusions, threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). "Second, a court determines "whether the 'well-pleaded factual allegations,' assumed to be true, 'plausibly give rise to an entitlement to relief.'" *Hayden v. Paterson*, 594 F.3d 150, 161 (2d Cir. 2010) (quoting *Iqbal*, 556 U.S. at 679). The analysis of a complaint on a motion to dismiss is a "context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Dominguez v. Banana Republic, LLC*, 613 F. Supp. 2d 759, 764 (S.D.N.Y. Apr. 23, 2020).

Further, "a district court must dismiss a claim under Rule 12(b)(1) if a plaintiff fails to allege facts sufficient to establish standing under Article III of the Constitution." *Banana Republic*, 613 F. Supp.3d at 763 (citing *Cortlandt Street Recovery Corp. v. Hellas Telecomm.*, 790 F.3d 411, 416-17 (2d Cir. 2015)). Plaintiff carries the burden of "alleging facts that affirmatively and plausibly suggest that it has standing to sue." *Id.* Each element of standing "must be supported in the same way as any other matter in which the plaintiff bears the burden of proof" – in the same manner and with the same degree of evidence required at every stage of the litigation. *Lujan v. Defs. Of Wildlife*, 504 U.S. 555, 561 (1992). The court will then accept as true all material allegations of the complaint in favor of the moving party," but the court may "rely on evidence outside the complaint." *Hellas*, 790 F.3d at 417 (cleaned up).

II. PLAINTIFFS LACK ARTICLE III STANDING TO SUE UNDER THE ADA.

Plaintiffs' first claim for relief concerns the issue of The Red Keep's website accessibility. Plaintiffs allege that Defendant failed to make its website fully accessible to disabled individuals as required by Title III. Defendant argues that this claim fails for lack of standing because the Plaintiffs cannot demonstrate that they needed to use the website for its intended purpose. This Court agrees.

Title III of the ADA prohibits discrimination "on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation," such as a hotel. 42 U.S.C. §§12182(a), 12181(7)(A). Title III defines discrimination to include "a failure to make reasonable modifications" when "necessary to afford . . . services . . . or accommodations to individuals with disabilities." 42 U.S.C. § 12182(b)(2)(A)(ii). Title III also creates a

private cause of action that permits "any person who is being subjected to discrimination on the basis of disability" to sue for violations. 42 U.S.C. § 12188(a)(1). Even the State of Arryn promulgated regulations for website monitoring by requiring that all consumer websites be compatible with screen reader technology to help the visually impaired navigate and make use of online resources and services. *See* Arryn State Reg. § 75.01. These protections are aimed at protecting individuals with disabilities seeking to make reservations at lodging establishments.

It is undisputed that Plaintiffs have disabilities. *See* 42 U.S.C. § 12102 (defining "disability"). But as with all actions brought before this Court, a plaintiff must having standing to bring a claim under Title III of the ADA. *See TransUnion LLC v. Ramirez*, 594 U.S. 413, 426 (2021) ("Congress's creation of a statutory prohibition or obligation and a cause of action does not relieve courts of their responsibility to independently decide whether a plaintiff has suffered a concrete harm under Article III[.]").

To establish Article III standing to sue under the ADA, a plaintiff must satisfy three elements: (1) an injury in fact; (2) a causal connection between the injury and the conduct complained of; and (3) that the injury will be redressed by a favorable judicial decision. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992). The 'injury in fact' must be "particularized," and it must be "concrete." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 340 (2016). Particularized injuries are those that "affect the plaintiff in a personal and individual way." *Id.* (internal quotation marks omitted). Concrete injuries are "physical, monetary, or cognizable intangible harm[s] traditionally recognized as providing a basis for a lawsuit in American courts." *TransUnion LLC*, 594 U.S. at 427.

At the pleading stage, "a plaintiff must set forth general factual allegations that 'plausibly and clearly allege a concrete injury,' . . . and that injury must be 'actual or imminent, not conjectural or hypothetical.' . . . '[M]ere conclusory statements[] do not suffice.'" *Tsao v. Captiva MVP Restaurant Partnes, LLC*, 986 F.3d 1332, 1337-38 (11th Cir. 2021). Additionally, standing must be assessed at the time suit is filed, not at the time of some past alleged harm. *See Lujan*, 504 U.S. at 564 ("Past exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief if unaccompanied by any continuing, present adverse effects.") (internal alteration and quotation omitted); *see also Wild Va. v. Council on Env't Quality*, 56 F.4th 281, 293 (4th Cir. 2022). Based on an assessment of the first two elements, this Court finds that Plaintiffs lack standing to bring a claim under Title III of the ADA.

a. Injury in fact

The issue at bar requires this Court to address whether Plaintiffs possess Article III standing to sue based on an injury. To determine whether Plaintiffs have sufficiently pled an "injury in fact", this Court looks to the guidance of other district courts grappling with facts similar to those in this case. We note that the circuit courts are split as to the correct test to apply in these circumstances. The Second, Fifth, and Tenth Circuits previously held that an "injury in fact" cannot be established where plaintiffs failed to allege or prove the need to use a hotel booking website for its intended use, *i.e.*, to make reservations at the defendants' hotels. *See Laufer v. Mann Hosp., L.L.C.*, 996 F.3d 269 (5th Cir. 2021); *Laufer v. Looper*, 22 F.4th 871 (10th Cir. 2022); *Harty v. W. Point Realty, Inc.*, 28 F.4th 435 (2d Cir. 2022). The Eleventh Circuit reasoned that stigmatic injury, that which creates an experience of "frustration and humiliation" is enough to demonstrate a concrete injury.

Laufer v. Arpan LLC, 29 F.4th 1268, 1270 (11th Cir. 2022). Finally, the First Circuit held that informational injury is sufficient to demonstrate an "injury in fact." *See Laufer v. Acheson Hotels, LLC*, 50 F.4th 259 (1st Cir. 2022). Of the divided opinions, we adopt the reasoning of the Second, Fifth, and Tenth Circuits based on Aemon Targaryen's status as a "tester."

Last year, the United States Supreme Court agreed to hear a case the issue of whether a plaintiff's status as a "tester" of a website conferred standing. In *Acheson Hotels, L.L.C., v. Laufer*, 601 U.S. 1 (2023), the Court reviewed whether an individual had Article III standing to sue hotels whose websites failed to state whether they have accessible rooms for the disabled as required by the ADA, even if the individual had no intention of staying at the hotels, much less booking a room. As the Supreme Court noted, Ms. Laufer, the plaintiff in that action, "singlehandedly generated" the circuit split discussed above. The Supreme Court took the case from the First Circuit to resolve the split. Although Laufer later voluntarily dismissed her pending suits, and the case was vacated as moot, the Supreme Court noted that the circuit split was still very much alive. Still, the court declined to resolve the split.

Since this is a matter of first impression in our court, we may develop new federal common law as we deem necessary. In doing so today, we have chosen to adopt the definition of a website "tester" as described and applied by Justice Thomas in his concurring opinion in *Acheson*, where he noted that Laufer was "far from the only Reservation Rule tester." *Acheson Hotels, L.L.C., v. Laufer*, 601 U.S. 1 (2023) (Thomas, J., concurring). A tester, it seems, visits hotel online reservation services to ascertain whether they comply with the ADA. That's it. Testers of hotel booking websites, therefore,

lack standing because they "lack . . . intent to visit the hotel or even book a hotel room elsewhere," and "do[] not even harbor 'some day' intentions" of traveling to the area, which "eviscerates any connection to [a] purported legal interest" in website accessibility. *Id*.

In essence, the question this Court needs to ask when determining whether the Targaryens have standing is this – as then-Judge Scalia queried – "What's it to you?" If the answer is "nothing," then there cannot be a violation of your own rights under the ADA, and you do not have standing to sue hotels under the ADA.

Here, there is no doubt that Aemon Targaryen is, in fact, a "tester." As part of his independent study, he worked as a software tester and researched the various websites that were incompatible with screen reader technology in his capacity as a software tester. At that time, he was not intending to book as stay at The Red Keep, or to book a hotel room elsewhere. He was also not intending to revisit the website in the future. *See Loadholt v. Shirtspace*, 2023 WL 2368972, at *2 (S.D.N.Y. Mar. 6, 2023) (finding Plaintiff satisfied his burden of demonstrating standing where plaintiff claimed, among other things, that he "intend[ed] to revisit the website in the future and allege[d] that Defendant ha[d] not remedied the accessibility issues on the website."). What's it to Aemon that he could not book a stay while testing the website? Absolutely nothing.

Further, at the time that the Complaint was filed, Aemon Targaryen had not *actually* accessed the website to book the family's reservation. He wanted to, but stopped short of that attempt when he remembered his earlier issue while working on his independent study. Indeed, Tyrion Targaryen ultimately booked the vacation package directly through The Red Keep's website via his iPhone and shared the reservation details with the family. Accordingly, we find that Plaintiffs cannot satisfy the first element in this analysis.

b. Causal connection

To prevail on standing, Plaintiffs must show that there is a causal connection between the injury and the alleged conduct, that is the injury must be "fairly ... trace[able] to the challenged action of the defendant, and not ... th[e] result [of] the independent action of some third party not before the court." *Simon v. Eastern Ky. Welfare Rights Organization*, 426 U.S. 26, 41-42 (1976). But here, Plaintiffs fail short of satisfying that requirement. There cannot be an injury if you did not attempt to book a stay. Thus, Plaintiffs cannot plausibly demonstrate a connection between the non-existing injury and the complained of conduct.

Because Plaintiffs have not sufficiently pled facts to meet the first and second *Lujan* elements, there is no need to assess the third. Accordingly, because Plaintiffs lack standing to sue Defendant on their claim for relief concerning website accessibility, this Court declines to reach the merits of the claim, specifically, whether Defendant's website complies with the ADA.

III. PLAINTIFFS HAVE FAILED TO STATE A CLAIM THAT THE RIDER ELIGIBILITY CRITERIA IMPOSED BY THE DEFENDANT VIOLATES THE ADA.

Title III of the ADA provides that "[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation." 42 U.S.C. § 12182(a). Discrimination is defined by the Act to include "a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such

steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden." *Id.* § 12182(b)(2)(A)(iii).

To state a claim under Title III, Plaintiffs must allege (1) that they are disabled within the meaning of the ADA; (2) that Defendant owns, leases, or operates a place of public accommodation; and (3) that Defendant discriminated against Plaintiffs within the meaning of the ADA. *See Roberts v. Royal Atlantic Corp.*, 542 F.3d 363, 368 (2d Cir. 2008); *Dominguez*, 613 F. Supp. 2d at 764.

We find that only the last element is in question here as Plaintiffs have sufficiently pled the first two. Plaintiffs contend that the Complaint sufficiently alleges that they were not afforded a "full and equal" opportunity to enjoy the amusement park rides, because Isles & Rivers did not provide spoken dialogue, Mountain & Vale imposed a 60-inch height requirement, and The North required riders to have "two hands on the front panel of the passenger car at all times while the ride was in motion." Defendant argues that Aemon cannot state a claim because he, in fact, participated in the ride and that Tyrion and Jaimie were prohibited from riding due to safety concerns that Defendant was required to address under Arryn state law.

Even assuming that all allegations in the Complaint are true and drawing all reasonable inferences in Plaintiffs' favor, we find that Plaintiffs have not adequately plead their rider eligibility claims. *First*, we agree with Defendant that Aemon had the benefit of reasonable accommodations because he was able to participate in the Isle & Rivers ride, and was able to hear the sound effects on the ride. *Second*, we again agree with Defendant that Tyrion was prohibited from riding the Mountain & Vale ride for safety reasons as there

was no reasonable accommodation that could be provided due to the nature of the ride and Tyrion's short statute. *Third*, we agree with Defendant that Jaimie was prohibited from riding The North for legitimate safety reasons as there was no possible way for Jaimie to remain secured in place during the ride absent a "forearm" or "full arm."

Although they do not state so, the gist of Plaintiffs' claim is that they appear to interpret "reasonable accommodation" in the context of an amusement park as requiring amusement parks such as The Red Keep to permit all individuals with all disabilities the opportunity to ride all of the rides in the park. We disagree. As a practical matter, this would appear to be an impossible task. Moreover, the language of the ADA does not support Plaintiffs' implied interpretation.

Under the ADA, companies are allowed to impose eligibility criteria that screen out individuals with disabilities from participating if "such criteria can be shown to be ***necessary***." 42 U.S.C. § 12182(b)(2)(A)(ii). The ADA does not define "necessary," and without a statutory definition, we rely on the basic rule of statutory construction that terms are generally interpreted in accordance with their ordinary meaning. *Sebelius v. Cloer*, 569 U.S. 369, 376 (2013).

According to Merriam-Webster, "necessary" has several ordinary meanings, one of which we find appropriate here – "absolutely needed." It is axiomatic that "safety" is "absolutely needed" when riding a roller coaster that "zig zags" and "propels riders forward at extreme speeds up to 100 miles per hour." It is also axiomatic that "safety" is "absolutely needed" when riding The North, with seats that "move up and down" and which purports to "swivel upside down" at regular intervals. Accordingly, we find that "safety" falls within the ordinary meaning of "necessary." We also find that Defendant was permitted under the

ADA to impose a height requirement on Mountain & Vale and to require riders to have two hands placed on the front panel of the passenger seat of The North at all times because both rider eligibility criteria were necessary to maintain safety.

Accordingly, we find that Plaintiffs have failed to state a claim under the ADA.

CONCLUSION

For the foregoing reasons, the Court **GRANTS DEFENDANT'S MOTION TO DISMISS IN ITS ENTIRETY** with prejudice.

IT IS SO ORDERED.

DATED: May 1, 2024

/s/Hon. Robert Baratheon
ROBERT BARATHEON, District Judge
UNITED STATE DISTRICT COURT

UNITED STATES COURT OF APPEALS
FOURTEENTH CIRCUIT

Docket No. 102064

July 22, 2024

THE RED KEEP,
Appellant,

v.

TARGARYEN FAMILY,
Appellees.

OPINION

STARK, A. LANNISTER, C., AND TARTH, B., CIRCUIT JUDGES:

BACKGROUND

We direct the parties to the District Court's recitation of the facts, which are drawn from the allegations of the Complaint. The District Court's factual findings are incorporated herein and thus we do not restate the facts here other than when relevant to the Court's reasoning.

PROCEDURAL HISTORY

In a Complaint filed in the United States District Court of King's Landing, the Targaryens allege that The Red Keep violated Title III of the Americans with Disabilities Act ("ADA"), 2 U.S.C. § 12182 *et seq*., by: (1) not making its website fully accessible to disabled and visually impaired individuals; and (2) by imposing rider eligibility criteria which exclude disabled persons protected under the statute. The Red Keep filed a motion to dismiss asserting that: (1) Plaintiffs lacked standing to sue under Title III of the ADA

because Aemon Targaryen accessed the website as a "tester" and did not attempt to use the website for arranging family travel, and (2) as a park owner, it reserved the right to determine what protective measures were required for safety reasons. The District Court granted Defendant's motion in full by dismissing Plaintiff's website accessibility claim for lack of standing, and finding Plaintiff's rider eligibility claims were not properly pled. For the reasons that follow, we **REVERSE** on both claims.

LEGAL STANDARD

We review *de novo* the district court's rulings on Defendant's motion to dismiss. *Kassner v. 2nd Ave. Delicatessen Inc.,* 496 F.3d 229, 237 (2d Cir. 2007). "To survive dismissal, the plaintiff[s] must provide the grounds upon which [their] claims rest through factual allegations sufficient 'raise a right to relief above a speculative level.'" *ATSI Commc'ns, Inc. v. Shaar Fund, Ltd.,* 493 F.3d 87, 98 (2d Cir. 2007) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007).

DISCUSSION

I. The Targaryens have standing to bring a claim under the ADA because the alleged informational injury accords them Article III standing.

The District Court concisely laid out the varying tests adopted by the federal circuit courts to ascertain whether the Targaryens established an injury-in-fact to satisfy the first of the *Lujan* elements. We agree with the First Circuit view that Plaintiffs can establish standing based on an informational injury.

The Supreme Court previously contemplated whether informational injury accords Article III standing to sue under the ADA. In *Federal Election Com'n v. Akins*, the plaintiffs, a group of voters, challenged the decision of the Federal Election Commission

that refused to make disclosures about a political committee as required by the Federal Election Campaign Act. 524 U.S. 11, 13 (1998). The Court concluded that the injury alleged by the plaintiffs – "their inability to obtain information…" – satisfied the first *Lujan* element for an injury-in-fact because the information would help plaintiffs, and the public, evaluate candidates for public office. *Id*. at 21. Here, in line with *Akins*, Plaintiffs can establish injury-in-fact because Aemon was not able to obtain publicly disclosed information – that needed to book a stay at the resort – through The Red Keep's website. He was also unable to reserve his family's stay the following summer. What's more, we find that Aemon's injury extends beyond that suffered by the plaintiffs in *Akins* because it was virtually impossible for Aemon to navigate and obtain information regarding the services provided by The Red Keep's website.

Further, Plaintiffs can establish standing because the injury is particularized. To be so, the injury must "affect the plaintiff in a personal and individual way." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016). In other words, the injury must be "personal," "distinct," and "not undifferentiated." *Id*. (cleaned up and citations omitted). Indeed, Aemon's injury suffices because it directly affected his ability to utilize and obtain information from The Red Keep, albeit even if only for research purposes as a software tester.

Relatedly, in *Public Citizen v. United States Department of Justice*, the Court rejected the defendants' argument that the plaintiffs' lacked standing because they have "advanced a general grievance shared in substantially equal measure by all or a large class of citizens. 491 U.S. 440, 449 (1989). Specifically, the Court reasoned that "[t]he fact that other citizens or groups of citizens might make the same complaint after unsuccessfully demanding disclosure… does not lessen [the plaintiffs'] asserted injury." *Id*. at 450. Here,

if we follow the Court's sound reasoning in *Public Citizen* we can only arrive at this conclusion: Aemon suffered a particularized injury. It does not matter that other visually impaired users can make a similar complaint about the website's inability to recognize technology essential for them to engage in its booking system.

Lastly, we disagree with the Second, Fifth, and Tenth Circuits on the intent requirement for determining an injury-in-fact. We find that Aemon's intended use of the website is irrelevant. It doesn't matter that he accessed the Red Keep's website as a software tester. The point is that he tried to utilize the website but could not do so due to its incompatibility with all screen reader software aimed to translate text to spoken word.

We conclude that Aemon's informational injury accords Plaintiffs Article III standing to sue The Red Keep – irrespective of whether he ever had a definite plan to visit the all-inclusive resort.

II. The Targaryens Have Sufficiently Pled Their Claim Under the ADA Because Compliance With State Law That Conflicts With The ADA Is Not "Necessary" Under The ADA.

The ADA has a broad mandate that disabled individuals be able to participate in all aspects of society. 42 U.S.C. § 12101(1); *see also PGA Tour, Inc. v. Martin*, 532 U.S. 661, 675 (2001). Under Title III of the ADA, The Red Keep is a place of public accommodation as an amusement park. To demonstrate discrimination under Title III of the ADA, Plaintiff must show that (1) they are disabled within the meaning of the ADA; (2) that the Defendant owns, leases, or operates a place of public accommodation; and (3) that the Defendant discriminated against Plaintiffs within the meaning of the ADA. *See Roberts v. Royal Atlantic Corp.*, 542 F.3d 363, 368 (2d Cir. 2008); *Dominguez*, 613 F. Supp. 2d at 764. "Discrimination under the ADA includes a failure to make reasonable accommodations for

the plaintiff's disability." *Loadholt v. Shirtspace*, 2023 WL 2368972, at *3 (S.D.N.Y. Mar. 6, 2023); *see also* 42 U.S.C. § 12182 (b)(2)(A)(ii).

We agree with the district court that Plaintiffs have sufficiently pled the first two elements of their claim. As to the *third* prong, we part ways with the district court. Plaintiffs must plausibly plead that The Red Keep discriminated against Plaintiffs within the meaning of the ADA by failing to make reasonable accommodations for the Plaintiff's disabilities. Accepting all factual allegations in the Complaint as true, we agree with Plaintiffs that they have made such a showing. Plaintiffs sufficiently allege that The Red Keep failed to make reasonable accommodations for the Plaintiffs' disabilities because it posted and enforced rider eligibility criteria that was not "necessary" under the ADA.

But at the heart of our opinion, we take issue with The Red Keep's position that it complied with all relevant Arryn state laws to skirt around a potential ADA violation. We are not persuaded. To the contrary, "a state law at odds with a valid Act of Congress is no law at all." *Barber ex rel. Barber v. Colo. Dep't of Revenue*, 562 F.3d 1222, 1234 (10th Cir. 2009) (Gorsuch, J., concurring). If compliance with state law qualified as "necessary" when it required discrimination that violates the ADA, it would essentially conflict with the ADA's preemption provision. *Id*.

Arryn State law provides for rider eligibility criteria that gives places of public accommodation the option to prohibit riders with prosthetic and/or missing limbs from participating in the amusement park rides. Even more, riders that do not meet imposed height or mobility requirements may also be prevented from engaging in the rides. The Red Keep alleges that as a park owner, it reserved the right to determine what protective

measures were required for guests' safety. But even safety cannot usurp the ADA's purpose of protecting individuals from discriminatory practices.

It appears that the District Court accepted, without expressly stating, the notion that "necessary" under the ADA encompasses compliance with Arryn State law. In other words, Arryn State law says that places of public accommodation, like The Red Keep, may impose discriminatory eligibility criteria because the state law allows for it. But this construction would suggest that no conflict arises between Arryn state law and the ADA (*i.e.*, federal law), even if state law provides a means for discrimination to take place. To say it differently, the ADA prohibits discrimination except where "necessary," and compliance with state law is "necessary." *See Campbell v. Universal City Dev. Partners, Ltd.*, 72 F.4th 1245, 1257 (11th Cir. 2023).

But this interpretation is highly problematic because it conflicts with the "plain meaning of the statutory language" and "the context of the entire statute, as assisted by the canons of statutory construction." *Edison v. Douberly*, 604 F.3d 1307, 1310 (11th Cir. 2010). Applied here, it is the very reason why Jaimie Targaryen and Tyrion Targaryen could not share in the same experience as the other park visitors because of the state's rider criteria. This we cannot tolerate. Therefore, in the wise words that the Eleventh Circuit used in *Campbell*, we "must conclude that the text of the ADA precludes us from finding that it is 'necessary' to comply with state law when [Arryn] state law otherwise requires a place of public accommodation to violate the ADA." *Campbell*, 72 F.4th at 1257.

In sum, the District Court failed to consider that compliance with state law, in and of itself, cannot qualify as "necessary" under the ADA. *Campbell*, 72 F.4th at 1259.

Because of this, we disagree with the lower court's ruling that Plaintiffs failed to state a rider eligibility claim under the ADA. Accordingly, the District Court's ruling is reversed.

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OPINION CONCURRING IN PART AND DISSENTING IN PART BY SNOW, J.

I agree with my fellow jurists that the Targaryens have stated a claim as to the rider eligibility. I don't feel anything more needs to be said on this matter. Fish don't talk about water.

However, I disagree that that the Targaryens have standing to bring a claim under the ADA with respect to The Red Keep's website, albeit for a different reason.

The District Court erred when it assumed without deciding that the website is a public accommodation under the ADA. I don't agree that it is. The ADA expressly provides that a place of public accommodation engages in unlawful discrimination if it fails to "take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services." 42 U.S.C. § 12182(b)(2)(A)(iii). But because The Red Keep's website should not be deemed a public accommodation, there was no requirement that it be accessible to disabled individuals. Hence, the Targaryens cannot feasibly show that they have standing to bring a claim under the ADA with respect to The Red Keep's website.

Title III of the ADA expressly defines examples of public accommodations to include facilities such as hotels, restaurants, theaters, or an amusement park. 42 U.S.C. §§ 12181(7)(A), (B), (I). Accordingly, the District Court incorrectly assumed that The Red Keep's website, without question, qualifies as a place of public accommodation.

Title III of the ADA provides that "[n]o individual shall be discriminated against on the basis of disability 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. § 12282(a). Title III then defines a public accommodation as, a "facility operated by a private entity whose operations affect commerce…" Twelve examples are then listed, all of which are physical locations. *See* 42 U.S.C. § 12181(7). The question then becomes whether this Court should consider websites to be places of public accommodations subject to the regulations of the ADA. Courts have taken different approaches to assess whether websites can be deemed places of public accommodation and are split on the issue of whether the ADA intended for places of public accommodation to only mean *physical* locations. In my humble opinion, websites should not be categorized as such based on the strict textualist approach as outlined by the Eleventh Circuit.

The Ninth Circuit in *Robles v. Domino's Pizza, L.L.C.* adopted the nexus approach. 913 F.3d 898 (9th Cir. 2019). Under this view, a website can be deemed a place of public accommodation if there is a sufficient nexus or connection to the physical location. *Robles*, 913 F.3d at 905. The *Robles* court, however, chose not to give a ruling on whether the website at issue complied with the ADA and neither addressed the relevant concern of whether the website's purported inaccessibility impedes access to the physical location. *See id*. at 911. Because of that, I believe this approach falls short.

The First and Second Circuits adopted the "non-limiting" approach. *See Nat'l Ass'n of the Deaf v. Netflix, Inc.*, 869 F. Supp. 2d 196, 200-01 (D. Mass. 2012); *Carparts Distrib.*

Ctr., Inc. v. Auto. Wholesaler's Ass'n of New England, Inc., 37 F.3d 12, 18-19 (1st Cir. 1994); *Nat'l Fed'n of the Blind v. Scribd Inc.*, 97 F. Supp. 3d 565, 570 (D. Vt. 2015). Under this view, a website is always considered a place of public accommodation. *See Netflix*, 869 F. Supp. 2d at 200-202. In *Carparts Distribution Center v. Auto Wholesaler's Association*, the court looked to the novel issue of whether establishments of "public accommodation" are limited to actual, physical structures. *Carparts Distrib. Ctr., Inc*., 37 F.3d at 19. The court reasoned that, "[i]t would be irrational to conclude that persons who enter an office to purchase services are protected by the ADA, but persons who purchase the same services over the telephone or by mail are not. Congress could not have intended such an absurd result." *Id*. But even in that case, the court failed to specifically provide whether websites were deemed places of public accommodation. *Id*. Rather, it relied on a broad interpretation to avoid placing limitations on the application of Title III. *Id*.

Websites should not be deemed places of public accommodation. The Eleventh Circuit has held similarly and adopted the strict textualist approach, finding that a website is *never* a place of public accommodation. *See Gil v. Winn-Dixie Stores, Inc.*, 993 F.3d 1266, 1283-84 (11th Cir. 2021) (vacated on reh'g, 21 F.4th 775 (11th Cir. 2021). The reasoning under this approach is sound: "When the words of a statute are unambiguous… [our] judicial inquiry is complete." *Villarreal v. R.J. Reynolds Tobacco Co.*, 839 F.3d 958, 969 (11th Cir. 2016) (quoting *Conn. Nat'l Bank,* 503 U.S. at 254). Further, courts must presume that a legislature says in a statute what it means and means in a statute what it says there." *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992).

The statutory language in Title III of the ADA defining "public accommodation" is unambiguous and clear. All examples of public accommodations are tangible, physical

places and do not reflect intangible places or spaces, such as websites. Accordingly, the District Court's failure to analyze whether The Red Keep's website is a place of public accommodation under the ADA was improper. Based on the clear definition in the statute, it is not.

SUPREME COURT OF THE UNITED STATES
October Term 2024

Docket No. 2024-25

THE RED KEEP, Petitioner,

v.

TARGARYEN FAMILY, Respondents.

Petition for certiorari is GRANTED. The Court certifies the following questions:

1. Does the Targaryen family have Article III standing to bring a claim under the Americans with Disabilities Act (ADA) against The Red Keep for its website accessibility?

2. Is the rider eligibility criteria posted by The Red Keep "necessary" under the meaning of the Americans with Disabilities Act (ADA)?