**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF FLORIDA**
**CASE NO. 16-22966-CIV-WILLIAMS**

ANDRES GOMEZ,

Plaintiff,

v.

J. LINDEBERG USA, LLC,

Defendant.
_____/

**ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION FOR DEFAULT FINAL JUDGMENT**

**THIS MATTER** is before the Court on Plaintiff's amended motion for entry of default judgment brought against Defendant J. Lindeberg USA, LLC. (DE 22). On September 16, 2016, the Court entered an order upon a *sua sponte* review of the record directing the Clerk of the Court to enter default against Defendant for failing to appear and answer. (DE 11). The Court also ordered Plaintiff to file a motion for default judgment pursuant to Federal Rule of Civil Procedure 55(b). (*Id.*). The Clerk entered default against Defendant, and Plaintiff filed an initial motion seeking default judgment, including the entry of an injunction against the Defendant and an award of attorneys' fees and litigation costs. (DE 12, 13). The Court ordered that Plaintiff provide the expert report support of his request for an injunction, and Plaintiff complied. (DE 14, 21). Plaintiff subsequently filed an amended motion for default judgment. (DE 22). For the reasons set forth below, Plaintiff's amended motion for default judgment (DE 22) is **GRANTED IN PART AND DENIED IN PART**.

## I. DEFAULT JUDGMENT AS TO LIABILITY

Upon a clerk's entry of default, a defendant is deemed to have admitted the well-

pleaded allegations of the complaint. *Cotton v. Mass Mutual Life Ins. Co.*, 402 F.3d 1267, 1277-78 (11th Cir. 2005). The Court must determine whether, in light of those admissions, Plaintiff is entitled to the judgment sought. According to the Complaint, Plaintiff Andres Gomez is a Florida resident who is legally blind. He acts as a "tester" who visits public accommodations to determine whether barriers to access exist under the Americans with Disability Act ("ADA"), 42 U.S.C. § 12181. In this connection and for personal reasons, Plaintiff visited Defendant's website, www.jlindebergusa.com, to locate one of Defendant's physical clothing stores within this district. Plaintiff alleges that in attempting to visit the website, he encountered barriers to access, including the website's lack of compatibility with Plaintiff's screen reader software, or other function that would allow Plaintiff to access the site. He asserts one count for violation(s) of the ADA.

The ADA requires 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 accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation." 42 U.S.C. § 12182(a). Discrimination under the Act includes "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 . . ." *Id.* § 12182(b)(2)(iii). The Court has the authority to order that accommodations be modified so as to comply with the Act. 42 U.S.C. § 12188(a)(2).

Here, Plaintiff has sufficiently established Defendant has violated the ADA. Although the Eleventh Circuit has not ruled on this issue directly, courts have found that a website is a public accommodation for purposes of the ADA if there is a sufficient

nexus between the challenged service and the place of public accommodation. *See, e.g.*, *Nat'l Fed. Of the Blind v. Target Corp.*, 452 F. Supp.2d 946 (N.D. Cal. 2006) (retailer's website was a place of public accommodation subject to the ADA because website had a sufficient nexus to the physical store); *cf. Cullen v. Netflix, Inc.*, 880 F.Supp.2d 1017 (N.D. Cal. 2012) (video streaming website not a place of public accommodation for purposes of the ADA); *Young v. Facebook, Inc.*, 790 F. Supp. 2d 1110 (N.D. Cal. 2011) (social media website not a public of public accommodation). In this case, Plaintiff alleges Defendant's website permits customers to purchase J. Lindeberg-brand clothing online and search for physical store locations. He alleges that he visited Defendant's website several times in an attempt to purchase menswear and active wear, but that he was prevented from doing so because Defendant's website was incompatible with Plaintiff's JAWS Screen Reader program, which he alleges "is the most popular screen reader software utilized worldwide." (DE 1 ¶ 27). Plaintiff claims that Defendant has therefore failed to provide "full and equal enjoyment of the services, facilities, privileges, and accommodations provided by and through its website . . ." in violation of the ADA. (DE 1 ¶ 46). The Court finds that Plaintiff has sufficiently stated a claim for a violation of the ADA, and therefore his motion for default judgment as to liability is **GRANTED**.

## II. PLAINTIFF'S REQUEST FOR AN INJUNCTION

Plaintiff's motion further requests that the Court enter an injunction that requires Defendant to (1) institute a "web accessibility policy"; (2) institute a "web accessibility committee"; (3) employ a "web accessibility coordinator'"; (3) institute a "web accessibility testing group"; (4) institute an "automated web accessibility testing program"; (5) institute a "bug fix priority policy"; (6) institute a specialized customer

assistance line for the visually impaired; and (7) institute a page on its website for individuals with disabilities including a hotline and/or portal to explain how its website is accessible to the visually impaired. However, Plaintiff has failed to provide the support necessary for this Court to enter such an injunction. The motion and the record fail to explain what any of the "web accessibility" terms mean, or how any of these measures would make Defendant's website compliant with the ADA. Counsel's affidavit in support of his motion for default judgment merely repeats these terms, and the expert report submitted by Plaintiff fails to mention any of them. Indeed, the so-called expert report is merely a chart identifying a series "scenarios" on Defendant's website that reference guidelines with no explanation (and therefore no meaning) to the Court. The chart is followed by a collection of screenshots from Defendant's website, biographies of a group of individuals (none of whom are identified as the attesting expert), and a collection of webpage printouts that appear to be the group's publications.

Plaintiff has plainly failed to develop the record necessary to allow the Court to enter an affirmative injunction, and therefore the Court must decline to enter Plaintiff's injunction as requested. Nonetheless, Plaintiff has established that Defendant should undertake remedial measures to make its website accessible to the visually disabled. Accordingly, Plaintiff's motion for an injunction is **GRANTED IN PART AND DENIED IN PART**. Defendant shall be ordered to undertake immediate remedial measures to make its website readily accessible and usable to people with visual disabilities.

## III. PLAINTIFF'S MOTION FOR ATTORNEYS' FEES

Finally, Plaintiff moves for attorneys' fees and costs. Pursuant to 42 U.S.C. § 12205, the Court has discretion to allow a prevailing party in an ADA case to recover "a reasonable attorney's fee, including litigation expenses, and costs." Here, Plaintiff

asks for an award of $7,045 in attorneys' fees and $963 in costs. Upon review of the motion and time entries submitted in connection with the motion, the Court finds that several reductions are in order to appropriately reflect a reasonable fee. First, the fee award will be reduced by $390 in time spent downloading and printing all filings to the docket (including Plaintiff's own filings) because that is clerical and not attorney work. Second, the motion requests $557.50 for two-and-a-half hours of attorney work drafting a one-and-a-half-page notice that no prior ADA filings have been made against Defendant. (Researching prior ADA filings is subject to separate time entries.) The Court finds it appropriate to reduce the fees related to drafting and filing this notice to one time entry by "K.L" for $87.50.[1]

Third, a review of the Southern District of Florida's CM/ECF records shows that Plaintiff's counsel of record, Scott R. Dinin, has filed more than 90 cases on Plaintiff's behalf for violations of the ADA in this district since 2013. Ninety percent of those cases challenge the websites of retailers and restaurants because they are not accessible to people with visual impairments, and Dinin filed substantially similar complaints on Plaintiff's behalf in all of them. Nonetheless, his request for fees include $3,895 for 13.9 hours of time spent meeting with Plaintiff, researching the Defendant, the website, and prior ADA filings, and drafting and filing the complaint. Accordingly, the Court finds it appropriate to reduce his requested attorneys' fees by two thirds of the remaining amount. *Houston v. South Bay Investors #101, LLC*, No. 13-80193-CV, 2013 WL 3874026 (S.D. Fla. July 25, 2013) (reducing ADA plaintiff's requested attorneys' fees by

[1] The fees in relation to the notice must also be reduced because the entries are duplicative (*e.g.*, $120 for S.R.D.'s "review prior ada and approve to efile" on 7/12/2016; $105 for K.L.'s finalize draft prior ADA and to scott to review, efile after approval on 7/12/2016; $35 for K.L.'s review order to file prior ADA on 7/12/2016).

35 percent in default judgment context because of counsel's submission of four identical complaints in previous lawsuits).

This reduction is all the more appropriate because counsel has failed to provide any basis for the requested hourly rates. Local Rule 7.3 requires a party seeking fees to, among other things, "provide the identity, experience, and qualifications for each timekeeper for whom fees are sought." S.D. Fla. L.R. 7.3(a)(5)(A). Here, Plaintiff has presented no basis for any of the hourly rates of the three timekeepers, including Dinin's rate of $400 per hour, nor does the record establish whether "K.L." and "A.3" are attorneys or paralegals, or their relative seniority. For the reasons outlined above, Plaintiff will only be awarded $2,061.67 in attorneys' fees.

Finally, the Court finds it appropriate to reduce the costs by $250 related to the expert report because Plaintiff has not provided any specific details for why the report costs $500, or who the expert authoring the report is. *Houston*, 2013 WL 3874026, at *3. Moreover, the report carries very little (if any) evidentiary weight and has not assisted the Court in any meaningful way. Accordingly, Plaintiff's motion for attorneys' fees and costs is **GRANTED IN PART AND DENIED IN PART**. Plaintiff may recover a total **$2,061.67** in attorneys' fees and **$713.00** in costs.

## IV. CONCLUSION

For these reasons, Plaintiff's amended motion for default judgment (DE 22) is **GRANTED IN PART AND DENIED IN PART.** A separate order of final judgment and injunctive relief will be issued separately consistent with this opinion. All other motions are **DENIED AS MOOT**.

**DONE AND ORDERED** in chambers in Miami, Florida, this 17th day of October, 2016.

KATHLEEN M. WILLIAMS
UNITED STATES DISTRICT JUDGE