

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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DEBORAH LAUFER, Individually,

Plaintiff,

1:19-cv-01501 (BKS/ML)

v.

LAXMI & SONS, LLC,

Defendant.

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**Appearances:**

*For Plaintiff:*

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*For Defendant Laxmi & Sons, LLC:*

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*For Defendant The Fort William Henry Corporation:*

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*For Defendant Shree Hari Holdings, LLC:*

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*For Defendants Dhani, LLC and NIRAG Inc.:*

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*For Defendants 7 Hills Hotel, LLC and MJ Cayuga, LLC:*

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**Hon. Brenda K. Sannes, United States District Judge:**

## **MEMORANDUM-DECISION AND ORDER**

### **I. INTRODUCTION**

Plaintiff Deborah Laufer, a Florida resident and an individual with a disability, filed this action asserting causes of action under Title III of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12181, et seq. and the New York State Human Rights Law (“NYSHRL”), N.Y. Exec. Law § 296(2)(a). (Dkt. No. 1). Plaintiff alleges that Defendant owns a place of lodging known as the Capital Inn & Suites—Rensselaer NY in Rensselaer, New York, that is obligated to comply with the requirements of 28 C.F.R. § 36.302(e), and that Defendant maintains an online reservation system (“ORS”) that fails to meet these requirements. (*Id.* ¶¶ 3, 7, 10-11). Plaintiff seeks a declaratory judgment that Defendant is in violation of the ADA, the NYSHRL and 28 C.F.R. § 36.302(e), and injunctive relief ordering Defendant to bring its ORS into compliance

with these laws. (*Id.*). Plaintiff also seeks an award of attorney's fees, costs and litigation expenses pursuant to the ADA and, under the NYSHRL, an award of damages in the amount of \$1,000. (*Id.*).

Plaintiff has filed 63 nearly identical cases against different defendants in the Northern District of New York, 17 of which remain open and assigned to this Court.<sup>1</sup> *See Laufer v. the Fort William Henry Corporation*, Case No. 20-845, Dkt. No. 31-1, at 29-32. Plaintiff's initial complaints in these cases alleged that she is a "tester" who visits hotel ORSs for the purpose of ensuring compliance with the ADA, and did not allege that she has, or ever had, any plans to actually stay in any Defendant's hotel or visit the area near any Defendant's property. (*See, e.g.*, Dkt. No. 1, at 2, 4-6). On May 6, 2020, the Court issued an order, which was subsequently filed in all of Plaintiff's cases that were open at the time and have since been opened, requiring Plaintiff to submit briefing explaining why the complaint should not be dismissed for lack of subject matter jurisdiction, given questions the Court raised regarding whether her allegations as a "tester" sufficiently alleged standing. (Dkt. No. 15).

In one of Plaintiff's then-open cases, *Laufer v. Dove Hess Holdings, LLC*, No. 5:20-cv-00379, after the parties fully briefed the standing questions raised by the Court, Case No. 5:20-cv-00379, Dkt. Nos. 7, 11, 17, Plaintiff filed a motion to amend her complaint, seeking to add new allegations averring that she intended to actually travel to, and visit particular sites near, the vicinity of Defendant's hotel, and needed to return to Defendant's ORS in the future for purposes

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<sup>1</sup> Most of Plaintiff's 63 cases were dismissed by reason of settlement, or voluntarily dismissed without explanation. Three of the cases were transferred to other Districts, Case Nos. 19-1435, 19-1436 and 19-1592, and, as described below, three cases were dismissed by the Court for lack of standing, Case Nos. 20-273, 20-379, 20-1075. Of the remaining 17 Defendants, eight are represented by counsel. Case No. 8:20-cv-00376, Dkt. Nos. 5, 21; Case No. 8:20-cv-00357, Dkt. Nos. 6, 9, 27, 34; Case No. 8:20-cv-00384, Dkt. Nos. 5, 19; Case No. 5:21-cv-00448, Dkt. No. 4; Case No. 1:19-cv-01501, Dkt. No. 22; Case No. 1:20-cv-00845, Dkt. Nos. 4, 21; Case No. 3:19-cv-01559, Dkt. No. 39; Case No. 3:19-cv-01581, Dkt. No. 22. Defense counsel has not appeared in the remaining nine cases. Case No. 3:19-cv-01509; Case No. 3:19-cv-01557; Case No. 3:19-cv-01564; Case No. 3:20-cv-00281; Case No. 3:20-cv-00378; Case No. 3:20-cv-00383; Case No. 5:19-cv-01585; Case No. 6:19-cv-01432; Case No. 8:20-cv-00350.

of planning that visit. Case No. 5:20-cv-00379, Dkt. No. 26. After the parties fully briefed the motion to amend, Case No. 5:20-cv-00379, Dkt. Nos. 26, 32, the Court issued a decision finding that neither Plaintiff's original complaint nor her amended complaint sufficiently alleged standing (the "Dove Hess Decision").<sup>2</sup> The Court recognized that "the caselaw reflects widespread disagreement among the District Courts about the circumstances under which an ADA tester has standing to bring suit under 36.302(e)(1)." *Lauffer v. Dove Hess Holdings, LLC*, No. 20-cv-00379, 2020 WL 7974268, at \*14 n.12, 2020 U.S. Dist. LEXIS 246614, at \*40 n.12 (N.D.N.Y. Nov. 18, 2020). The Court agreed with the cases which ruled that encountering a non-compliant ORS while visiting it solely as a tester was an insufficient injury for standing purposes. Specifically, the Court found that: (1) to allege the type of "concrete and particularized" past injury and likelihood of future injury that would give her standing in this context, Plaintiff needed to demonstrate that she "had a purpose for using the [ORS] that the complained-of ADA violations frustrated" and "that her intent to return to the [ORS] to book a room, or at least to obtain information that would allow her to decide whether to book a room, is plausible"; (2) the allegations in Plaintiff's amended complaint regarding her intent to visit the area near Defendant's property in the future, and her consequent need for the ORS to comply with 28 C.F.R. § 36.302(e) so that she could make an "informed choice" as to whether or not to book a room at Defendant's hotel, sufficiently alleged a likelihood of *future* injury; but (3) her amended complaint failed to allege *past* injury, as her allegations regarding her visits to the ORS prior to filing her complaint were unchanged and "relied solely on her status as a 'tester.'" *Id.*, at \*15-17, 2020 U.S. Dist. LEXIS 246614, at \*41-50.

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<sup>2</sup> The Court assumes familiarity with the facts, procedural history and legal analysis set forth in the Dove Hess Decision, and therefore does not repeat them here.

Based on this analysis, the Court denied Plaintiff's motion to amend as futile, but granted her an opportunity to seek to further amend the complaint to cure the standing deficiencies the Court identified. *Id.* at \*19, 2020 U.S. Dist. LEXIS 246614, at \*56-57. As Plaintiff's approximately 20 other cases then-pending before this Court implicated virtually identical standing issues, the Court subsequently issued an order in each of those cases similarly dismissing them for lack of standing and granting Plaintiff permission to attempt to cure the standing issues through further amendment. *Laufer v. Laxmi & Sons, LLC*, No. 19-cv-1501, 2020 WL 6940734, 2020 U.S. Dist. LEXIS 216752 (N.D.N.Y. Nov. 19, 2020).

Plaintiff subsequently sought to amend the complaints in most of her remaining open cases<sup>3</sup> to add allegations that both her planned future visits to each Defendant's ORS *and* her visits to those ORSs prior to filing her complaints were motivated in part by her desire to travel to the area near each Defendant's hotel. The Court found that, with one exception (the amended complaint in the *Dove Hess* case itself), Plaintiff's proposed amended complaints, on their face, sufficiently alleged standing, and thus granted each of Plaintiff's motions to amend (with the exception of the motion in the *Dove Hess* case, which the Court denied, in turn dismissing the case for lack of subject matter jurisdiction). *Laufer v. Laxmi & Sons, LLC*, No. 19-cv-1501, 2021 WL 1970264<sup>4</sup> (N.D.N.Y. April 1, 2021). However, the Court also found that there were "significant reasons to question whether Plaintiff does, in fact, have a plausible intention to travel to the area near each particular Defendant's hotel, and thus a genuine need to utilize the accessibility information on each Defendant's ORS";<sup>5</sup> therefore, in accordance with the Second

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<sup>3</sup> Plaintiff did not seek to file an amended complaint in Case Nos. 5:20-cv-00273 or 1:20-cv-01075, and these cases were therefore dismissed for lack of subject matter jurisdiction. Case No. 5:20-cv-00273, Dkt. No. 16; Case No. 1:20-cv-01075, Dkt. No. 14.

<sup>4</sup> No parallel LEXIS citation available.

<sup>5</sup> As noted in the Court's decision, these reasons included "the sheer number of nearly identical cases Plaintiff has filed against hundreds of Defendants not only in New York, but across the country; the cut-and-paste nature of

Circuit's guidance in *Harty v. Simon Prop. Grp.*, 428 F. App'x 69, 72 (2d Cir. 2011), it determined that "an evidentiary hearing to test the credibility of Plaintiff's standing allegations is an appropriate means to confirm that Plaintiff actually has standing to pursue these cases before moving forward with the discovery and litigation process." *Id.* at \*5-6.

On May 14, 2021, the Court held a consolidated evidentiary hearing in all of Plaintiff's 17 remaining pending cases. Plaintiff testified and five defense counsel, who collectively represented eight Defendants, appeared at the hearing. The Court admitted 25 exhibits proffered by counsel to Defendant The Fort William Henry Corporation, including a list of 664 cases (including appeals) throughout the United States in which Laufer has sued hotels from April 30, 2016 through and including April 30, 2021;<sup>6</sup> a selection of affidavits and complaints Plaintiff has filed in several of those cases; and a transcript of a prior, similar evidentiary hearing held in the actions *Deborah Laufer v. Naranda Hotels, LLC*, Case No. 1:20-cv-02136-SAG, and *Deborah Laufer v. Fort Meade Hospitality, LLC*, Case No. 8:20-cv-01974-SAG before the United States District Court for the District of Maryland. *See* Case No. 20-845. Case No. 20-845, Dkt. No. 31. Following the hearing, the Court allowed the parties to submit supplementary letter briefs arguing their positions; Plaintiff has done so, as have all of the Defendants who are represented by counsel.<sup>7</sup>

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Plaintiff's allegations in each of these cases; the vague and generalized nature of the allegations surrounding Plaintiff's travel plans and her familial contacts in the state; the fact that Plaintiff's original complaint relied solely on her tester status and made no mention of actual plans to visit New York State, and that allegations regarding these plans were only added after standing questions were raised by the Court and opposing parties; and the fact that at least one other court in another state has tested Plaintiff's standing allegations through an evidentiary hearing, and found them not to be credible." *Id.* at \*5.

<sup>6</sup> Counsel to Defendant The Fort William Henry Corporation represented that "[t]his list was compiled by going to the website, <https://pcl.uscourts.gov/pcl/pages/search/findPartyAdvanced.jsf>, typing 'Laufer' in the Last/Business Name field and 'Deborah' in the First Name field, and entering the date range April 30, 2016 through April 30, 2021 in the 'Date Filed' Date Range field." Case No. 20-845, Dkt. No. 31, at 1.

<sup>7</sup> *See* Case No. 8:20-cv-00376, Dkt. Nos. 33, 36; Case No. 8:20-cv-00357, Dkt. Nos. 42, 45; Case No. 8:20-cv-00384, Dkt. Nos. 29, 32; Case No. 5:21-cv-00448, Dkt. Nos. 8, 11; Case No. 1:19-cv-01501, Dkt. Nos. 29, 30; Case No. 1:20-cv-00845, Dkt. Nos. 36, 37; Case No. 3:19-cv-01509, Dkt. No. 24; Case No. 3:19-cv-01557, Dkt. No. 31; Case No.

Having fully considered Plaintiff's testimony, the other evidence presented at the hearing, and the parties' post-hearing submissions, the Court finds that Plaintiff lacks standing to pursue these cases, and dismisses them for lack of subject matter jurisdiction.

## II. DISCUSSION

### A. Motion to Stay Proceedings

As an initial matter, Plaintiff has moved to temporarily stay these proceedings pending the Second Circuit's decision in several cases that raise related standing issues: *Harty v. West Point Realty, Inc.*, 20-2672, and *Laufer v. Ganesha, Hospitality, LLC*, 21-995. *See, e.g.*, Case No. 20-cv-00845, Dkt. No. 34. Defendants have not consented to Plaintiff's motion. *Id.* at 1; *see also* Case No. 20-cv-00845, Dkt. No. 38 (letter brief from Defendant The Fort William Henry Corporation opposing Plaintiff's request for a stay). Plaintiff argues that the aforementioned appeals present the Second Circuit with the imminent opportunity to resolve the question of whether Article III standing requires a plaintiff alleging ADA violations on a defendant hotel's ORS to have a concrete purpose for using the ORS beyond merely a desire to test it for such violations. Case No. 20-cv-00845, Dkt. No. 34, at 2-3. Plaintiff argues that "[t]he similarity of the actions now before [t]his Court and the fact that the higher court is close [to] resolving an issue of law with direct bearing on these actions makes these cases ripe for a stay at this juncture." *Id.* at 3.

The Court recognizes the divergence in case law among District Courts in this Circuit (much of which developed after this Court issued the Dove Hess Decision in November 2020) regarding the question of whether a plaintiff's visit to a hotel's non-compliant ORS as an ADA

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3:19-cv-01559, Dkt. Nos. 42, 43; Case No. 3:19-cv-01564, Dkt. No. 22; Case No. 3:19-cv-01581, Dkt. Nos. 39, 40; Case No. 3:20-cv-00281, Dkt. No. 21; Case No. 3:20-cv-00378, Dkt. No. 17; Case No. 3:20-cv-00383, Dkt. No. 17; Case No. 5:19-cv-01585, Dkt. No. 26; Case No. 6:19-cv-01432, Dkt. No. 34; Case No. 8:20-cv-00350, Dkt. No. 37.

“tester,” without more, is sufficient for standing. However, for purposes of the pending cases, the Court already resolved this question, and explained what it believes to be the applicable test for standing, in the Dove Hess Decision. The Court’s only remaining task is to determine whether Plaintiff credibly satisfies that standard. Given the fact that the Court now has all the information it needs to resolve this question, as well as the length of time these cases have been pending and the substantial resources that have been expended by the Court and all parties, the Court does not believe that the interests of justice or judicial efficiency are best served by continuing to allow these cases to linger on while the Court and the parties wait for a Second Circuit decision in separate cases. Moreover, issuing a final decision in these matters now will not prejudice Plaintiff, since she is free to appeal this Court’s decision, and may obtain reversal if the Second Circuit disagrees with this Court’s standing analysis. Therefore, the Court declines to stay its ruling on subject matter jurisdiction.

**B. Plaintiff’s Standing**

**1. Plaintiff’s Allegations Regarding Her Purpose for Checking the ORSs**

Plaintiff’s original complaint in this action alleged that she is an “advocate of the rights of similarly situated disabled persons” and a “‘tester’ for the purpose of asserting her civil rights, and monitoring, ensuring, and determining whether places of public accommodation and their websites are in compliance with the ADA”; that she “visited [Defendant’s] ORS for the purpose of reviewing and accessing the accessible features at the Property and ascertain[ing] whether it meets the requirements of 28 C.F.R. Section 36.302(e) and her accessibility needs”; and that “[i]n the near future, Plaintiff intends to revisit Defendant’s ORS in order to test it for compliance with 28 C.F.R. Section 36.302(e) and/or to utilize the system to reserve a guest room and otherwise avail herself of the goods, services, features, facilities, benefits, advantages, and accommodations of the Property.” (Dkt. No. 1, at 2, 4-6). Plaintiff’s original complaint did not



allege that she had any plans to actually stay in Defendant's hotel or visit the area near Defendant's property.

Plaintiff's amended complaint adds additional allegations regarding her intent to return to Defendant's ORS as a "tester":

Plaintiff has a system of rechecking the online reservations systems of each and every hotel she has sued. In this regard, she maintains a list of every hotel she has sued, and records the dates she visits their reservations systems. In this case, one of the times was on November 8, 2019. Pursuant to that system, she visited the websites for Defendant's hotel multiple times prior to filing the instant lawsuit. In every case, once the complaint is filed, she also marks a date for the near future to revisit the hotel's system. Once it is established when the hotel's system is required to become compliant, whether by settlement agreement or court order, the plaintiff records the date. She then revisits the hotel's system when that date arrives. By this system, Plaintiff revisits the websites for every hotel she sues at least two times after the complaint is filed.

(Dkt. No. 25, at 3). The amended complaint also alleges that, in addition to her role as a tester, Plaintiff has visited Defendant's ORS in the past, and intends to visit Defendant's ORS in the future, because she is planning a trip across New York State, and needs to be able to compare hotels in the areas she wants to travel to in order to find one that satisfies her accessibility needs:

Plaintiff has family in New York and travels to the State to visit them frequently. She also has traveled extensively throughout the State. When she visits, she stays in hotels. She plans to return to the State and to travel to all the regions of the State as soon as the Covid crisis is over and will return again in the subsequent future consistent with her frequent visits to the area.

Since prior to her filing any cases in New York, Plaintiff has had, and continues to have, plans to travel to the State with her daughter and grandchild. She will visit her family and also travel throughout the entire state, to every area. The purpose of traveling throughout the entire state is to show the state to her grandchild, to sightsee, including the mountains, lakes, coastlines, historic sites, tourist attractions, rivers, museums, cities, towns and countryside. Plaintiff has also long since been considering relocating to the state. Plaintiff will have to stay in hotels located throughout the entire state when she travels up. For this reason, and prior to the filing of this action, Plaintiff has searched the online reservations systems of hotels throughout the entire state not only to test them for compliance with the regulation set forth at 28 C.F.R. Section 36.203(e), but also to ascertain what hotels are accessible to her when she finalizes her travel arrangements. Plaintiff therefore needs hotels to provide the accessibility information required so that she can make a meaningful choice in selecting hotels. The failure of this defendant's and so many other hotels to

provide the information required deprived Plaintiff of the information she required in planning her travels before this lawsuit (and any other New York law suit) was filed. Originally, Plaintiff planned to visit New York and travel throughout during the Summer of 2020. However, as a result of the present travel restrictions, Plaintiff intends to travel to the State as soon as the Covid Crisis is over.

Sites and locations that the Plaintiff would like to visit and otherwise explore include Albany Riverfront Park, Tanglewood Arts Center, Destroyer Escort Historical Museum located in around Rensselaer, New York. The Defendant's hotel is in the vicinity of those sites and attractions, and the Plaintiff visited the ORS for the purpose of reviewing and assessing the accessible features at the Property to ascertain whether it meets her accessibility needs.

Plaintiff needs Defendant's hotel reservations system to be compliant so that she can compare hotels and ascertain whether or not their features and rooms are accessible to her. Unless and until Defendant's hotel's system becomes compliant, Plaintiff is deprived the ability to make a meaningful choice in making her upcoming travel plans and stay in hotels in the area.

(*Id.* at 3-4). As in this action, Plaintiff's original complaints in her other actions relied on her status as an ADA tester to establish standing,<sup>8</sup> and her amended complaints in those actions contain materially identical allegations to those in this action regarding her future travel plans, with each complaint expressing an interest in visiting specific attractions near the relevant defendant's hotel.<sup>9</sup>

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<sup>8</sup> See Case No. 8:20-cv-00376, Dkt. No. 1, at 2, 4-6; Case No. 8:20-cv-00357, Dkt. No. 1, at 2, 4-6; Case No. 8:20-cv-00384, Dkt. No. 1, at 2, 4-6; Case No. 1:19-cv-01501, Dkt. No. 1, at 2, 4-6; Case No. 1:20-cv-00845, Dkt. No. 1, at 2, 4-6; Case No. 3:19-cv-01509, Dkt. No. 1, at 2, 4-6; Case No. 3:19-cv-01557, Dkt. No. 1, at 2, 4-6; Case No. 3:19-cv-01559, Dkt. No. 1, at 2, 4-6; Case No. 3:19-cv-01564, Dkt. No. 1, at 2, 4-6; Case No. 3:19-cv-01581, Dkt. No. 1, at 2, 4-6; Case No. 3:20-cv-00281, Dkt. No. 1, at 2, 4-6; Case No. 3:20-cv-00378, Dkt. No. 1, at 2, 4-5; Case No. 3:20-cv-00383, Dkt. No. 1, at 2, 4-5; Case No. 5:19-cv-01585, Dkt. No. 1, at 2, 4-6; Case No. 6:19-cv-01432, Dkt. No. 1, at 2, 4-6; Case No. 8:20-cv-00350, Dkt. No. 1, at 2, 4-6. In one case, which Plaintiff first filed in April 2021 after the Court's Dove Hess Decision, Plaintiff's original complaint included allegations about her plans to visit New York. Case No. 5:21-cv-00448, Dkt. No. 1, at 3-4.

<sup>9</sup> See Case No. 8:20-cv-00376, Dkt. No. 30, at 3-4; Case No. 8:20-cv-00357, Dkt. No. 40, at 3-5; Case No. 8:20-cv-00384, Dkt. No. 27, at 3-4; Case No. 1:19-cv-01501, Dkt. No. 25, at 3-4; Case No. 1:20-cv-00845, Dkt. No. 29, at 3-4; Case No. 3:19-cv-01509, Dkt. No. 21, at 3-5; Case No. 3:19-cv-01557, Dkt. No. 28, at 3-5; Case No. 3:19-cv-01559, Dkt. No. 37, at 3-4; Case No. 3:19-cv-01564, Dkt. No. 19, at 3-4; Case No. 3:19-cv-01581, Dkt. No. 36, at 3-4; Case No. 3:20-cv-00281, Dkt. No. 18, at 3-5; Case No. 3:20-cv-00378, Dkt. No. 14, at 3-5; Case No. 3:20-cv-00383, Dkt. No. 14, at 3-5; Case No. 5:19-cv-01585, Dkt. No. 23, at 3-5; Case No. 6:19-cv-01432, Dkt. No. 31, at 3-5; Case No. 8:20-cv-00350, Dkt. No. 34, at 3-4. As previously noted, in one case that Plaintiff first filed in April 2021 after the Court's Dove Hess Decision, these allegations were included in Plaintiff's original complaint, not an amended complaint. Case No. 5:21-cv-00448, Dkt. No. 1, at 3-4.

Defendants do not challenge the credibility of Plaintiff's allegations that she visited their ORSs in the past, and intends to visit them in the future, in her capacity as a tester, and the Court has no reason to doubt the credibility of those allegations. However, because the Court found in the Dove Hess Decision that Article III standing requires Plaintiff to plausibly allege a purpose for using the ORS beyond merely testing it for ADA violations, the question before the Court is whether Plaintiff's allegations regarding her additional need to check the ORSs for purposes of an upcoming trip to New York are credible.

## 2. Plaintiff's Testimony

Plaintiff testified<sup>10</sup> that she was born in Albany, New York, and lived in various places in the surrounding area<sup>11</sup> until she first moved out of New York State when she was approximately 20 years old. Her family—including a sister, a brother, and various other family members—remained in the area and continue to live there. Shortly after Plaintiff was first diagnosed with Multiple Sclerosis (“MS”), she moved back to New York for several years. She initially lived with her sister in Rensselaer County, but experienced difficulties due to the lack of accommodations for her disability in her sister's home, and later moved into her own home with

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<sup>10</sup> The Court notes that, at times throughout the hearing, Plaintiff was unable to remember significant details about particular hotels whose ORSs she had visited, locations she claimed to want to visit as part of her trip, reasons she wanted to visit particular areas, or specific sites that she wanted to see. As one example, Plaintiff testified that she did not know where Norwich, New York was located, despite having sued an operator of a hotel located there and avowed an intent to visit the area. Plaintiff was also unable to recall with specificity the years and time periods during which she lived in New York. Plaintiff testified numerous times that she suffers from memory problems resulting from her disability, and that she therefore would need to refer to her notes in order to recall details about her travel plans with respect to particular areas. The Court advised Plaintiff that Defendants' counsel would be entitled to production of any notes she referenced during the hearing, and Plaintiff's counsel later reiterated this instruction. With the exception of one question for which Defendants' counsel explicitly asked her to refer to her notes, Plaintiff generally did not refer to notes during the hearing and instead testified from memory. Given these circumstances, the Court evaluates Plaintiff's credibility in full consideration of her testimony regarding her disability's severe impact on her memory, and does not give significant weight to her inability to recall details about particular hotels, areas or attractions.

<sup>11</sup> In addition to Albany itself, Plaintiff specifically named Troy, Kinderhook, Valatie, Nassau, Glens Falls, and Claremont as places she has lived in New York State. The Court takes judicial notice of the fact that each of these locations is within an approximately 1-hour drive of Albany.

her daughter. Approximately four years ago, Plaintiff again left New York and moved to Florida, where she currently lives with her daughter and two granddaughters, ages 9 and 2. Since moving to Florida, Plaintiff has returned to the Albany area to visit her family five or six times, each time traveling by car with her daughter driving. Plaintiff testified that these visits were for specific purposes, such as visiting her family and attending her niece's funeral, and that she did not travel to other places throughout the state during these visits. She further testified that she stayed in hotels during each visit due to the lack of accommodations for her disability at her family members' homes. Plaintiff could not recall which hotels she stayed at in the Albany area.

Plaintiff testified that, in the future, she plans to travel throughout New York State as part of a larger trip spanning multiple states with her daughter and 9-year old granddaughter, with the purpose of showing her granddaughter key historical and cultural sites in the United States. As part of her trip, Plaintiff also plans to visit her family in the Albany area, as well as friends and family she has in other states. Plaintiff plans to travel by car, with her daughter driving.<sup>12</sup> She began planning this trip in late 2019, with the intention of traveling in the summer of 2020. However, she postponed her trip as a result of the COVID-19 pandemic, which began in early 2020 and resulted in the imposition of restrictions on interstate travel. She now hopes to take the trip in the summer of 2021, but due in part to ongoing uncertainty regarding the COVID-19 pandemic's impact on her ability to travel safely, she has not yet made any definitive travel plans. Plaintiff claims that her past visits to Defendants' ORS were, and that her planned future visits to Defendants' ORS are, at least partially motivated by her desire to plan this trip, and specifically her need to compare hotels in the areas she wants to travel to and determine which hotels met her accessibility needs.

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<sup>12</sup> Plaintiff testified that she is unable to drive herself, apparently due to her disability.

Despite ostensibly having been planning this wide-ranging, cross-country road trip (which she apparently intends to begin a short time from now, subject to continuing uncertainty arising from the COVID-19 pandemic) since late 2019, Plaintiff was unable to provide any other concrete details about her travel plans beyond those described above. She could not provide even a general sense of how long she expects the trip to last, which specific areas in New York and elsewhere she intends to travel to, how much the trip will cost, or how she intends to fund the trip.<sup>13</sup> Indeed, her testimony throughout the hearing consistently suggested that she has not even begun to think through these details, much less taken any concrete steps toward the trip such as booking any hotels or planning an itinerary. Plaintiff testified that she intends to complete the road trip before her granddaughter begins school in the fall—a goal which necessarily and inevitably limits the window of time she has to take the trip—but admitted that she had no idea when school will begin, and was unable to articulate any concrete plan for completing her trip before it does.

Moreover, Plaintiff testified that her plan for traveling throughout New York and the country—both at the time she was originally planning the trip in late 2019, and currently—is to have her daughter drive her and her granddaughter. However, at the time Plaintiff was originally planning the trip, Plaintiff's daughter was employed full-time doing data entry work; now, she is attending online school to obtain a degree in medical billing. Plaintiff testified that, at the time she filed her complaints, the plan was for her daughter to work part-time during the road trip and

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<sup>13</sup> Plaintiff testified that she is not employed, and that her income consists of \$1,129 in social security benefits. She further testified that her expenses consist of \$500 per month in rent, plus additional expenses for electric, water, internet and credit card bills. Plaintiff testified that she does not intend to fund her entire trip from her income alone, and that the trip may be funded from her savings, her daughter's income or money from other family members. However, she was unable to provide any specific plans for how she intends to fund her trip, other than a vague assertion that she will "find a way to borrow [the] money" if it turns out that the trip will cost more than she and her daughter can afford themselves.

complete her work during periods when she was not driving, including while the family was at the hotel at night and while Plaintiff and her granddaughter were sightseeing. Plaintiff further testified that, now that her daughter is attending online school rather than working, her daughter's new plan is to either not enroll in online coursework during the summer, or to complete her coursework during periods when she is not driving.

It is difficult to square Plaintiff's testimony about her daughter's obligations with her claims that, since 2019 when her daughter was working full-time, she has been planning an ambitious road trip that would (according to Plaintiff's own testimony) require her daughter to drive as many as nine hours per day. Furthermore, Plaintiff did not present any credible testimony as to whether her daughter's second child, who is two-years old, impacts her travel plans. Plaintiff's fluctuating and vague responses to questioning about this issue suggests that, over a year and a half into planning her trip and mere weeks before her (tentative) planned departure, she has not begun to seriously think through this potentially important hurdle, casting further doubt on the credibility of her claim that her visits to Defendants' ORSs were motivated by actual plans to take a wide-ranging road trip across New York.

Of course, an ADA plaintiff alleging that a hotel's ORS violations impede her from making a decision about whether to book a room for a future trip need not have an itinerary, with specific travel dates and logistics thought through, in order to meet her relatively low burden of demonstrating that she had "a purpose for using the website that the complained-of ADA violations frustrated." *Dove Hess Holdings, LLC*, 2020 WL 7974268, at \*15, 2020 U.S. Dist. LEXIS 246614, at \*42. Plaintiff's problem is simply one of credibility: she has sued owners of hotels located in virtually every part of New York State,<sup>14</sup> and in hundreds more areas

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<sup>14</sup> Indeed, the record reflects that, in addition to the approximately 60 lawsuits she has filed in this District against Defendants located all over the District, Plaintiff has filed at least 14 cases in the Eastern District of New York, 14

throughout many other states (including some that are very far-flung from New York, such as Colorado and Texas). She originally asserted that she visited these hotels' ORSs simply for the purpose of determining whether they complied with the requirements of 28 C.F.R. § 36.302(e), and it was only after the Court questioned Plaintiff's standing that she sought to add allegations avowing an intention to travel throughout New York State, and stay in hotels in "every area" along the way.<sup>15</sup>

It defies credibility that, for approximately a year and a half, Plaintiff has been planning a trip involving such a massive time and financial commitment, which she intends to begin a short time from now and complete before her granddaughter begins school in the fall, and yet she cannot answer the most basic questions regarding how much time she is setting aside for the trip, which specific locations she intends to travel to, how much the trip will cost, how she will fund it, how the inevitably lengthy trip comports with her daughter's professional, educational and child-care obligations, or anything else about the trip aside from her vague desire to travel "all over" New York State and the rest of the country. Even for the most efficient and financially prudent of travelers, a trip covering even a selection of the places that Plaintiff has targeted with

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cases in the Southern District of New York, and 52 cases in the Western District of New York. *See* Hr'g. Ex. 1, at 27-34.

<sup>15</sup> Moreover, when asked by one Defendant's counsel about when she became an ADA tester, she claimed to lack understanding of how counsel was using that term—an incredible claim in light of the fact that, not only did her avowed tester status initially form the basis of virtually all of these lawsuits, her sworn affidavits and complaints filed in these actions (and those she has filed in many other states) clearly identify herself as a "tester" and explain the meaning of the term. *See, e.g.*, Case no. 20-845, Dkt. No. 31-2, at 2-3 ("As a tester, I visit hotel online reservations systems to ascertain whether they are in compliance with the Americans With Disabilities Act. In the event that they are not, I request that a law suit be filed to bring the website into compliance with the ADA so that I and other disabled persons can use it. If a law suit is filed to bring the website into compliance, I frequently revisit the website to ascertain whether or not it has been made accessible with the information required by law. With respect to each law suit I file, I subsequently revisit each website because that is my system."); *see also, e.g.*, Dkt. No. 31-3, at 2-3; Dkt. No. 31-4, at 2-3; Dkt. No. 31-5, at 2-3; Dkt. No. 31-6, at 2-3; Dkt. No. 31-7, at 2-3; Dkt. No. 31-8, at 2; Dkt. No. 31-9, at 2-3; Dkt. No. 31-11, at 2-3; Dkt. No. 31-12, at 2-3; Dkt. No. 31-13, at 2-3; Dkt. No. 31-14, at 2-3; Dkt. No. 31-15, at 2-3; Dkt. No. 31-16, at 2-3; Dkt. No. 31-17, at 2-3; Dkt. No. 31-18, at 2-3; Dkt. No. 31-19, at 2-3; Dkt. No. 31-20, at 2-3; Dkt. No. 31-21, at 2; Dkt. No. 31-22, at 2-3; Dkt. No. 31-23, at 2-3; Dkt. No. 31-24, at 3; Dkt. No. 31-25, at 2-3.

her lawsuits would inevitably take many months and cost thousands of dollars or more. Indeed, the many locations Plaintiff has asserted an intent to travel to in New York alone span the entire state and are separated by many hours by car.

Now, in her post-hearing letter brief, Plaintiff appears to argue that she genuinely plans to travel *somewhere* in New York during the summer of 2021, and that she needs to compare hotels in different locations in order to decide which locations have hotels that meet her disability needs and, consequently, which locations to include on her ultimate itinerary. (*See, e.g.,* Dkt. No. 30, at 1-2). Such a theory may well be sufficient to give a plaintiff standing where she has a genuine intent to make travel plans. However, given the evolution of Plaintiff's explanations over the course of these cases and the problems with her testimony's credibility, Plaintiff's last-minute assertion of a theory that was not clearly pled in her complaint or discussed in her testimony appears most consistent with a strategic attempt to meet the Court's standing requirements and keep these cases alive.

The Court notes that Plaintiff may well have a plausible, concrete intent to visit the area in and around Albany—where Defendant Laxmi & Sons, LLC's hotel is located—in the near future, given that she has multiple family members who live there and has traveled to the area numerous times to visit them since moving out of the state. Even so, Plaintiff's testimony casts doubt on her assertion that she visited Defendant Laxmi & Sons' ORS in the past (or intends to re-visit that ORS in the future) even partially with the intention of finding an ADA-accessible hotel to stay in during her visit to the area. Despite having traveled to the area multiple times over the past several years, and claiming that she stayed in hotels each time, Plaintiff appeared to have no familiarity with any ADA-accessible hotels in the area. Even accounting for any memory issues caused by Plaintiff's disability, this complete lack of familiarity with ADA-



accessible hotels in an area Plaintiff frequently travels to raises serious questions about the credibility of her testimony that she stays in hotels when she travels there, or intends to do so in the future.

As the Court has made clear, the burden faced by an ADA plaintiff seeking standing to sue alleged ADA violations on a hotel's ORS is not high. Such a plaintiff need only "demonstrate that she had a purpose for using the website that the complained-of ADA violations frustrated, such that any injury is concrete and particularized to the plaintiff," and that "her intent to return to the website to book a room, or at least to obtain information that would allow her to decide whether to book a room, is plausible." *Dove Hess Holdings, LLC*, 2020 WL 7974268, at \*15, 2020 U.S. Dist. LEXIS 246614, at \*42. And a plaintiff who meets these requirements is not deprived of standing merely because she has filed a large number of similar lawsuits against different defendants,<sup>16</sup> as Plaintiff has done here—to the contrary, a plaintiff with severe disabilities who is making travel plans may well have a sincere need to compare accessibility information from multiple hotels in different areas in order to make an "informed choice" about where to book a room, and may thus plausibly be able to meet the standing requirements with respect to a large number of hotels' ORSs. *Cf. Camancho v. Vanderbilt Univ.*, No. 18-cv-10694, 2019 WL 6528974, at \*11, 2019 U.S. Dist. LEXIS 209202, at \*30-31 (S.D.N.Y. Dec. 4, 2019) (finding standing plausibly alleged where a plaintiff alleged that he "does not intend to visit each of the schools against which he has filed complaints," but "wishes to visit each of the schools'

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<sup>16</sup> The Court reiterates its agreement with the Ninth Circuit's warning that "[c]ourts must tread carefully before construing a Disability Act plaintiff's history of litigation against him," as "[f]or the [Disabilities Act] to yield its promise of equal access for the disabled, it may be necessary and desirable for committed individuals to bring serial litigation advancing the time when public accommodations will be compliant with" the ADA. *Antoninetti v. Chipotle Mexican Grill, Inc.*, 643 F.3d 1165, 1175 (9th Cir. 2010).

websites, learn more about them, and then make an informed choice regarding which schools it would be worth visiting in person”).

The problem here is that, for all the reasons discussed above, the allegations Plaintiff has made in an attempt to save her complaints, after unsuccessfully relying solely on her “tester” status as a basis for standing, are not credible. Having carefully considered Plaintiff’s testimony, the parties’ arguments and all of the evidence in this record, the Court does not credit Plaintiff’s allegations that she visited Defendants’ ORSs, or intends to do so in the future, for any purpose other than to determine compliance with 28 C.F.R. § 36.302(e). As a result, Plaintiff is left only with the dignitary injuries she suffered when she visited Defendants’ ORSs as a tester, for the purpose of seeking out and remedying ADA violations. The Court does not question the worthiness of that goal or the sincerity of Plaintiff’s desire, in acting as a tester, to help create a more equal, just society for disabled individuals. However, because the Court believes that, at least in this context, Article III standing requires more, the Court must find that Plaintiff lacks standing to pursue these cases.<sup>17</sup>

### III. CONCLUSION

For these reasons, it is hereby

**ORDERED** that the Clerk of the Court is directed to file this Order in each of the cases identified in Exhibit A to this Order; and it is further

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<sup>17</sup> Defendant Shree Hari Holdings LLC has also filed a motion to dismiss or, in the alternative, for summary judgment. The motion argues, in summary, that, pursuant to a franchise agreement with Choice Hotels International, Inc. (“Choice”), Choice owns and controls the ORS for Defendant’s hotel; that Defendant does not own or operate its ORS, has no control over it, and has no ability to make any modifications to it, including to bring it into compliance with the ADA; that Defendant also has no control over the ORSs found on third-party websites such as Expedia and Booking.com; and that as a result, either Defendant is entitled to summary judgment on Plaintiff’s claim against it, or Plaintiff’s claim must be dismissed under Fed. R. Civ. P. 12(b)(7) for failure to join necessary parties. (Case No. 19-cv-01559, Dkt. No. 35). Because the Court finds that Plaintiff’s claim must be dismissed for lack of standing, the Court does not reach the merits of that motion.

**ORDERED** that Plaintiff's request to stay a ruling on subject matter jurisdiction pending the Second Circuit's decision in cases with related standing issues is **DENIED**; and it is further

**ORDERED** that the following cases are **DISMISSED** without prejudice for lack of subject matter jurisdiction: 1:19-cv-01501; 1:20-cv-00845; 3:19-cv-01509; 3:19-cv-01557; 3:19-cv-01559; 3:19-cv-01564; 3:19-cv-01581; 3:20-cv-00281; 3:20-cv-00378; 3:20-cv-00383; 5:19-cv-01585; 6:19-cv-01432; 8:20-cv-00350; 8:20-cv-00357; 8:20-cv-00376; 8:20-cv-00384; 5:21-cv-00448; and it is further

**ORDERED** that the Clerk of the Court is directed to close the foregoing cases.

**IT IS SO ORDERED.**

Dated: June 14, 2021  
Syracuse, New York

  
Brenda K. Sannes  
Brenda K. Sannes  
U.S. District Judge

**Exhibit A**

Docket Numbers

1:19-cv-01501

1:20-cv-00845

3:19-cv-01509

3:19-cv-01557

3:19-cv-01559

3:19-cv-01564

3:19-cv-01581

3:20-cv-00281

3:20-cv-00378

3:20-cv-00383

5:19-cv-01585

6:19-cv-01432

8:20-cv-00350

8:20-cv-00357

8:20-cv-00376

8:20-cv-00384

5:21-cv-00448