

## Litigation Management Agreement

**LITIGATION MANAGEMENT AGREEMENT**

This Litigation Management Agreement ("Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between Sharon E. Pomeranz ("Attorney") and Litigation Management and Financial Services, LLC ("Company") (collectively referred to herein as "Parties") as follows:

**RECITALS**

1. On July 26, 1990, the Americans with Disabilities Act ("ADA") was signed into law. The ADA is a comprehensive civil rights law prohibiting discrimination on the basis of disability.
2. The ADA contains four sub-parts. The first three sections of the statute, Titles I, II, and III, bar discrimination on the basis of disability in different areas of public life.
  - a. ADA Title I addresses discrimination in employment and bars disability discrimination by an "employer, employment agency, labor organization, or joint labor-management committee." 42 U.S.C. §§ 12111(2), 12112. Title I contains its own enforcement provision, § 12117, which incorporates the remedies of Title VII of the Civil Rights Act, 42 U.S.C. §§ 2000e-4 to -9.
  - b. ADA Title II, in pertinent part, bars disability discrimination in the services, programs, or activities of a "public entity," defined as a state or local government, its agencies or instrumentalities, and the National Railroad Passenger Corporation or any commuter authority. *Id.* §§ 12131(1), 12132. Title II contains an enforcement provision, § 12133, which incorporates the remedies of the Rehabilitation Act, 29 U.S.C. § 794a(a)(2), which, in turn, incorporates Title VI of the Civil Rights Act, 42 U.S.C. §§ 2000d, et seq.
  - c. ADA Title III addresses disability discrimination in public accommodations, defined to include places of education including post-graduate private schools, and bars disability discrimination by "any person who owns, leases (or leases to), or operates a place of public accommodation." §§ 12181(7)(J), 12182. The enforcement provision of Title III, § 12188, incorporates the remedies of Title II of the Civil Rights Act, 42 U.S.C. § 2000a-3.
  - d. The final sub-part of the ADA, Title IV, contains miscellaneous provisions. One of these provisions, § 12203, forbids retaliation against anyone for opposing actions made unlawful under the ADA or for participating in a charge under the ADA. § 12203(a). It also forbids coercion or intimidation against anyone exercising his or her rights under the statute. § 12203(b).
3. Title III of the ADA contains a list of general activities that it defines as discrimination: the denial of an opportunity to participate, 42 U.S.C. §§ 12182(b)(1)(A)(i), 12182(b)(1)(C); the provision of an unequal benefit, *id.* § 12182(b)(1)(A)(ii); and the provision of a separate benefit, unless doing so is necessary to provide a benefit that is as effective as that provided to others. *Id.* § 12182(b)(1)(A)(iii).<sup>13</sup> Furthermore, the statute requires benefits provided to people

with disabilities to be afforded in the most integrated setting appropriate to the needs of the individual. *Id.* § 12182(b)(1)(B).

4. Title III of the ADA prohibits discrimination on the basis of disability by those who own or operate places of public accommodation. 42 U.S.C. § 12182(a). In enacting the ADA, Congress found that “historically, society has tended to isolate and segregate individuals with disabilities.” 42 U.S.C. § 12101(a)(2). The ADA’s legislative history states that “[i]ntegration is fundamental to the purposes of the ADA. Provision of segregated accommodations and services relegate persons with disabilities to second-class citizen status.” H. Rep. 101–485(III), 101st Cong., 2d Sess., at 56, *reprinted in* 1990 U.S.C.C.A.N. 445, 479. “ ‘[T]he goal [is to] eradica[t]e the “invisibility of the handicapped.” ’ Separate-but-equal services do not accomplish this central goal and should be rejected.” *Id.* at 50, 1990 U.S.C.C.A.N. at 473. The ADA provides a “broad mandate” to “eliminate discrimination against disabled individuals, and to integrate them ‘into the economic and social mainstream of American life.’ ” *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 675, 121 S.Ct. 1879, 149 L.Ed.2d 904 (2001) (quoting H.R.Rep. No. 101–485, pt. 2, p. 50 (1990), *reprinted in* 1990 U.S.C.C.A.N. 303, 332).
5. This integration mandate is found in two sections of the statute. Title III makes it discriminatory to provide individuals with disabilities “with a good, service, facility, privilege, advantage, or accommodation that is different or separate from that provided to other individuals, unless such action is necessary” to provide facilities, accommodations and the like that are as effective as those provided others. 42 U.S.C. § 12182(b)(1)(A)(iii). It also requires that “[g]oods, services, facilities, privileges, advantages, and accommodations shall be afforded to an individual with a disability in the most integrated setting appropriate to the needs of the individual.” *Id.*, § 12182(b)(1)(B).
6. Section 303 of the ADA required that all facilities designed and constructed after January 26, 1993 must be “readily accessible to and useable by” individuals with disabilities. 42 U.S.C. § 12183(a)(1). The statute further instructed the DOJ to adopt implementing standards and regulations. 42 U.S.C. § 12186(b). On July 26, 1991, the DOJ adopted the Americans with Disabilities Act Accessibility Guidelines as the 1991 Standards. 28 C.F.R. § 36.406(a) (1991). The 1991 Standards are now published as Appendix D to title 28, part 36 of the Code of Federal Regulations. On September 15, 2010, the DOJ amended its regulations and adopted the 2010 Standards.
7. The ADA also provides a private right of action for preventative relief, including an application for a permanent or temporary injunction or restraining order for ‘any person who is being subjected to discrimination on the basis of disability in violation of’ Title III.” 42 USC §§ 12182(a)(1), 2000a-3(a)).
8. Virtually all individual States have passed legislation similar in intent and scope to the ADA.
9. Private enforcement suits are the primary method of obtaining relief under the ADA.

10. Private enforcement suits are often brought by committed and passionate individuals desiring to ensure compliance with the ADA.
11. Company has been contacted by one or more individuals with disabilities (“Testers”), for the purpose of privately enforcing the ADA.
12. Testers desire to bring private civil rights enforcement lawsuits against places of public accommodations that discriminate against Testers and other individuals with disabilities.
13. Attorney is authorized to practice law in United States District Court for the District of \_\_\_\_\_.
14. Attorney desires to act as Testers’ attorney in ADA civil rights enforcement actions.
15. Company is a litigation management company with ability to manage ADA litigation matters from the due diligence, pre-filing investigations, drafting, conducting discovery, and all phases of civil litigation.

**NOW, THEREFORE**, the Parties enter the following

#### **AGREEMENT**

- 1. Limitation of Engagement:** This Agreement is limited to providing management services to Attorney only in ADA Actions filed by Attorney on behalf of Testers.
- 2. Attorney – Company Relationship.**
  - a. Generally: Attorney is retaining Company to provide all litigation support services within the broadest scope of ethical rules governing the practice of law. The litigation support includes Company providing receptionist, telephone, e-mail, paralegal and consulting services by Company attorneys knowledgeable and experienced in ADA enforcement actions.
  - b. Attorney Direction and Supervision of Company: Attorney directs Company to provide services described in this Agreement.
  - c. Company’s Management Assets Assigned to Attorney: Company shall assign paralegals, staff and personnel to work for Attorney. Company shall purchase and maintain a new telephone number and e-mail address for Attorney in order to communicate and settle ADA actions with Defendant or Defendant’s attorney. As required by local rules, Attorney’s name, address, new telephone number and new e-mail address shall appear in every filing with the Court. Attorney’s new telephone number and new e-mail address shall be implemented in each case through the Company’s selection of an appropriate number and e-mail address. Attorney herein agrees to the implementation of a new number and email address on his behalf for the cases filed for Tester.

- d. Logistics: Upon the filing of a new complaint and the completion of service of process, Defendant or Defendant's Attorney is expected to contact Attorney. The contact will be made through Attorney's assigned paralegal or other staff who will answer the new phone line and the new address and commence negotiations. The paralegal shall maintain a log of all communications with opposing parties which log shall be maintained in a file accessible to Attorney and Tester through a secure file sharing and storage location. Likewise, the paralegal assigned to Attorney shall maintain all e-mail communications in a communications file available to Attorney and Client through a secure file sharing and storage location
- e. Communications: It is expected that all communications with opposing parties shall occur through phone calls and e-mails. All telephone and email communications shall be documented, saved, and shared through a log referenced above. In such cases when a defendant party contact's attorney directly, attorney shall immediately advise the assigned paralegal and give instructions whether Attorney will take over the negotiations or whether Attorney wishes paralegal to do so. In the event Attorney takes over communications, attorney shall be responsible for notating the communications logs in a secure file sharing and storage location.

**3. Company's Duties and Obligations:** The Company, under the supervision, authority and consent of Attorney, shall manage all aspects of ADA civil actions. The Company shall:

- a. Design, pay for and maintain Pre-Filing Due Diligence Software ("DD Software") for the use of the Tester and Tester's assistant; and
- b. Develop, pay for and maintain Case Management Software specifically designed for ADA Actions; and
- c. Design, pay for and maintain a secure file sharing and storage location, such as dropbox, accessible to the Company, Attorney and Tester; and
  - d. Hire, retain, and/or train employees with expertise in ADA litigation including, but not limited to, paralegals, secretaries, inspectors, and attorneys licensed to practice in a Federal District Court.
- e. Aid Tester and Tester's assistant to investigate and document ADA violations in public accommodations with the use of DD Software; and
- f. Based on DD software and ownership / control investigation, prepare a Due Diligence Report ("DDR") and file same in the dropbox; and
- g. Contact Tester directly for the purpose of preparing and submitting Motion to Proceed in Forma Pauperis pursuant to 28 U.S.C. § 1915 and to complete the Affidavit; and

- h. On the basis of the DDR, prepare a (1) draft Verified Complaint which shall generally describe the ADA violations and append as Exhibit A the DDR for specific violations, (2) draft Motion to Proceed in Forma Pauperis, (3) draft Summons(es), (4) draft Civil Action Coversheet(s), and (5) other standard documents required to be filed in the Jurisdiction (cumulatively “Initial Court Documents”) and save the same in the Dropbox; and
- i. Conduct a review of Initial Court Documents by Company; and
- j. Invite Attorney and Tester to review and approve / disapprove the draft documents for filing; and
- k. Upon Attorney’s approval of the Initial Court Documents, file the same with the US District Court; and
- l. Pay the filing fee unless waived; and
- m. Serve Defendants and pay for service of process; and
- n. Conduct settlement discussions and:
  - i. Settle Cases, or
  - ii. Litigate cases under the direction of Attorney including drafting and filing a motion for preliminary injunction, motion for default judgment, motions for judgment on the pleadings, motion for summary judgment, and responses to Defendant(s)’ motions.
- o. Prepare closing documents for approval by Attorney.

**4. Attorney’s Duties and Obligations:** Attorney shall

- a. Contact the US District Court in which ADA enforcement actions are to be filed, and ensure that the Clerk’s PACER distribution e-mails contain both Attorney’s primary e-mail and paralegal’s secondary e-mail.
- b. Review, approve (or disapprove) Initial Court Documents and any subsequent work papers; and
- c. Authorize Company in writing to file Initial Court Documents over Attorney’s electronic signature; and
- d. Regularly review all Actions in the secure file sharing and storage location; and

- e. In those cases where Attorney handles negotiations and litigation, if any, maintain the current status of the case in a secure file sharing and storage location for review by Company and Tester; and
- f. Receive settlement amounts, if any, and distribute same as indicated below.

**5. The Attorney – Tester Relationship:** The Attorney-Tester Relationship shall be governed by a separate Attorney-Client Agreement. The Attorney's agreement with Testers shall provide, *inter alia*, the following:

- a. That Testers are aware that in a federal ADA action, a plaintiff is not entitled to damages or recompense other than for costs, expenses and attorney's fees.
- b. That Testers are aware of the Attorney – Company Agreement (this Agreement) and consents to litigation services provided by Company for Attorney.

**6. Compensation:** No compensation shall be due to Company until and unless an Action results in an actual judicial award or settlement payment ("Monetary Recovery") and the Monetary Recovery has cleared Attorney's Trust Account. Where the award has cleared Attorney's Trust Account, the following shall apply:

- 7. Acknowledgement of Fee Receipt: a) "Attorney acknowledges that they will be paid One Hundred Dollars (\$100.00) per case filed, no matter the outcome of the cases filed." Attorney acknowledges that they have agreed, or will agree, in a separate agreement to receive from Tester(s) an amount of Attorney's fees in a negotiated attorney-client agreement with Testers. Attorney acknowledges that Testers pay the Attorney, via the Company, within twenty-one (21) calendar days of filing a Complaint. Attorney and Company recognize that the reasonable fees for Attorney's work on each case may be greater than or less than the actual amount received from Tester and the rates Attorney agrees upon are done so for purposes of serving the underserved and advancing ADA enforcement and compliance.
- a. Management Payment Fee: The Parties acknowledge and agree that a fair market rate for Company's services would exceed \$10,000.00 per case filed. Despite the fair market rate, Company agrees to take a lower fee for purposes of serving the underserved and advancing ADA enforcement and compliance. Attorney agrees to convey to Company the full amount of any Monetary Recovery obtained through settlement. Attorney also agrees to convey to Company \$2,000.00 for any case in which a Monetary Recovery is obtained through judicial order or other administrative order awarding costs, attorneys' fees, or other damages. Attorney's obligation to pay Company following an order does not arise until at least \$2,000 is recovered in actual liquid funds.

**8. Avoiding Unauthorized Practice of Law**

- a. General Guidelines: A lawyer may use nonlawyers outside the firm to assist the lawyer in rendering legal services to the client. The ABA's Model Rule 5.3 and

accompanying comments shall serve as instruction and models for the conduct between Attorney and Company.

- b. No Practice of Law by Company: Company affirms its commitment to avoid any unauthorized practice of law. Company will maintain the professional independence of Attorney. Company will make reasonable efforts to ensure that the Company's conduct is compatible with the professional obligations of Attorney.
- c. Guidance by Attorney: Attorney will make reasonable efforts to ensure that the services provided by Company are done so in a manner that is compatible with the lawyer's professional obligations. Attorney will communicate directions appropriate under the circumstances to give reasonable assurance that the Company's conduct is compatible with the professional obligations of the lawyer.
  - i. Local Standard: Attorney avers that he/she will review all local ethical rules in order to direct conduct of Company.

## **9. Mutual Confidentiality and Non-Disclosure**

- a. During the Course of Attorney and Company's relationship, the Parties may be exposed to or come into possession of information that is confidential and proprietary to the other party. For purposes of this section, the party receiving Protected Information (as hereinafter defined) is referred to as the "Recipient" and the party disclosing Protected Information is referred to as the "Disclosing Party." Each such party shall be responsible and liable for its respective representatives the same as if such representatives were co-parties to this section.
- b. "Protected Information" means all information of either party (or information of a third party which either party has in its possession) including, but not limited to, information relating to business, trade secrets, financial information, marketing information, intellectual property rights, customer lists, operations and software products, computer source code and object code, hardware and software designs and specifications, reports, flow charts, technology, tax returns, client lists, pricing, business plans and related documents, and any such other information that either party would reasonably consider to be confidential or proprietary. Unless excluded in writing by Disclosing Party, both Parties shall assume that any and all information disclosed in Protected Information, whether in oral form, metadata, written, or in some other tangible or intangible form, and whether designated as confidential or unmarked.
- c. If disclosure of the Protected Information is required by any court order or similar order to which Recipient must comply, Recipient shall immediately notify Disclosing Party to allow Disclosing Party to object to the disclosure and to take additional confidentiality precautions. Recipient shall take precautions to protect the confidentiality of the Protected Information to be disclosed. Recipient will make formal or legal objections on its own behalf and on behalf of Disclosing party if so requested by Disclosing Party.
- d. Recipient shall not use or disclose Protected Information of Disclosing Party except in further of the relationship between the Parties hereto. The Parties agree to disclose Protected Information to their representatives only on a need-to-know basis, and only after such representatives have been informed of the terms of this Agreement and been given an opportunity to review it. All Protected Information

shall remain the sole property of Disclosing Party. Upon termination of this Agreement or upon request by Disclosing Party, Recipient shall promptly return to Disclosing Party, or destroy at Disclosing Party's request, all materials in Recipient's possession or control that contain any Protected Information. Any copies of such items or material shall also be returned or destroyed. Nothing contained in this Agreement shall be construed as granting or conferring any right, title, or interest, in any Protected Information, patent, trademark, copyright, trade secret or other proprietary right that is now or subsequently owned by Disclosing Party. Recipient shall not reverse engineer, decompile or disassemble any software disclosed by Disclosing Party. Recipient shall not alter, modify or prepare derivative works from the Protected Information except in connection with the business relationship among the parties, and all such derivative works shall be destroyed at the request of Disclosing Party.

- e. Recipient shall not utilize any knowledge gained or access to Disclosing Party's Proprietary Information to develop products or solutions that are competitive to those of Disclosing Party; provided however, that nothing in this Section shall preclude Recipient from independently developing products or solutions if such Recipient can demonstrate by competent evidence that such product or solution was independently developed through no use of Protected Information provided by Disclosing Party.
- f. Neither party has made or is making any representation or warranty regarding the accuracy or completeness of the Protected Information.

#### **10. Damages**

- a. The parties acknowledge and agree that violation of this Agreement may cause irreparable harm, which may not be fully or adequately compensated by recovery of monetary damages. Accordingly, in the event of any violation or threatened violation of the terms of this Agreement, the breaching party shall be entitled to injunctive relief from a court of competent jurisdiction in addition to damages and any other remedy available at law or in equity. If any action at law or in equity is brought to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to recover, at trial and on appeal, reasonable attorneys' fees, costs and disbursements in addition to any other relief that may be granted.

#### **11. Term and Termination**

- a. Term: This Agreement shall become effective on the date first written above and, unless superseded by a subsequent agreement, shall remain in effect for so long as Company refers Testers to Attorney.
- b. Termination of Relationship: Any party to this Agreement may terminate the relationship established by this agreement upon delivery of a written 20-day notice of intent not to continue the Parties' relationship.
- c. Remaining Obligations: In the event a party terminates the Parties' relationship, all duties and obligations under this Agreement will remain in effect for cases filed including Company's obligation to provide litigation support, Attorney's obligation to represent Testers, and Attorney's obligation to pay Company all funds received from judgment or settlement.
- d. Opportunity to substitute: If a party elects to terminate the Parties' relationship, a party may elect to use a substitute or alternative to provide the services described

within this Agreement. Despite the opportunity to substitute services, the obligations for monetary payment to Company will remain in effect for all cases filed.

- e. Non-Delegable Duty to Pay: Company acknowledges the attorney-client relationship between Attorney and Testers. The parties affirmatively agree that the obligation to pay settlement proceeds from Testers' cases is the sole obligation of Attorney and such duty is non-delegable.

**The parties have executed this Agreement as of the date first written above.**

**By:** \_\_\_\_\_

**By:** \_\_\_\_\_

**Name:** Alex Callan

**Name:** Sharon E. Pomeranz

**Agent of Litigation Management and  
Financial Services, LLC**

**Litigation Management Agreement**

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