UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOSE MEJIA,

Plaintiff,

-v- No. 1:22-CV-03667-LTS

HIGH BREW COFFEE INC.,

Defendant.

……x

MEMORANDUM ORDER

Plaintiff Jose Mejia ("Plaintiff") brings this putative class action against High Brew Coffee, Inc. ("Defendant") asserting violations of Title III ("Title III") of the Americans with Disabilities Act of 1990, 42 U.S.C. section 12101 et seq. (the "ADA"), and the New York City Human Rights Law, N.Y.C. Administrative Code sections 8-101 et seq. ("NYCHRL"). (Docket entry no. 1 (the "Complaint" or "Compl.").) Count I of the Complaint seeks injunctive relief under the ADA pertaining to Defendant's website. Count II seeks damages under the NYCHRL. Count III seeks declaratory relief with respect to the ADA and NYCHRL violations alleged in Counts I and II.

Defendant has moved pursuant to Federal Rule of Civil Procedure 12(b)(6) to dismiss the Complaint in its entirety, for failure to state a claim. The Court has jurisdiction of Plaintiff's federal claims pursuant to 28 U.S.C. section 1331. The Court has considered carefully the parties' submissions and, for the following reasons, Defendant's motion to dismiss the Complaint is granted.

BACKGROUND

The following allegations are taken from the Complaint and are presumed true for the purposes of this motion. Plaintiff is a legally blind individual who the parties agree is disabled within the meaning of the ADA. (Compl. ¶ 1.) Defendant sells coffee solely through an online platform, highbrewcoffee.com (the "Website"). (Id.)

On April 10 and on August 10, 2022, Plaintiff attempted to purchase a twelve-pack of Double Espresso flavored coffee on the Website, but he was unsuccessful both times. (Id. ¶¶ 1-2.) Due to Plaintiff's disability, he uses screen-reading software to navigate online. (Id. ¶ 1.) He was unable to use this software to make a purchase on the Website, however, because problems with the website's coding rendered the screen-reader unusable. (Id. ¶¶ 2-4.) In the Complaint, Plaintiff lists several accessibility issues that arose when he attempted to use his screen-reader software with the website. Plaintiff's screen-reading software was unable to: read when an item has been added to the "shopping cart," (id. ¶ 4(a)), indicate which products were added (id. ¶ 4(b)), read full details about, and descriptions of, the products (id. ¶ 4(c)), or accurately describe images of products on the Website (id. ¶ 4(d)). When used with the Website, the screen reader also fails to read some of the Website's text (id. ¶ 4(e)), does not highlight all the text it is reading (id. ¶ 4(f)), reads information that Plaintiff has not selected for reading (id. ¶ 4(g)), reads certain text out of order (id. ¶ 4(h)), and reads text that is not visible on the Website (id. ¶ 4(i)). These errors "impede Plaintiff's ability to navigate the [W]ebsite as a sighted New York customer would." (Id.) Plaintiff asserts that "the barriers continue to exist as of the date of the filing of this amended complaint." (Id. ¶ 5.) Plaintiff intends to complete his purchase if and when the Website's accessibility issues are resolved. (Id. ¶ 8.)

DISCUSSION

To survive a motion to dismiss pursuant to Rule 12(b)(6), "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 663 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). This requirement is satisfied when the factual content in the complaint "allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. (citation omitted). A complaint that contains only "naked assertions" or "a formulaic recitation of the elements of a cause of action" does not suffice. Twombly, 550 U.S. at 555. "In deciding a Rule 12(b)(6) motion, a court assumes the truth of the facts asserted in the complaint and draws all reasonable inferences from those facts in favor of the plaintiff." Sara Designs, Inc. v. A Classic Time Watch Co. Inc., 234 F. Supp. 3d 548, 554 (S.D.N.Y. 2017) (citing Harris v. Mills, 572 F.3d 66, 71 (2d Cir. 2009)).

Title III of the ADA dictates 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.A. § 12182(a) (Westlaw through P.L. 118-82). To state a claim for relief under Title III of the ADA, a plaintiff "must allege (1) that [he] is disabled within the meaning of the ADA; (2) that defendants own, lease, or operate a place of public accommodation; and (3) that defendants discriminated against [him] by denying [him] a full and equal opportunity to enjoy the services defendants provide." Camarillo v. Carrols Corp., 518 F.3d 153, 156 (2d Cir. 2008). Defendant does not contest the first or third elements of Plaintiff's claim, arguing instead that the Website is not a place of public accommodation, and therefore is not covered by the ADA.

"The [ADA] does not contain a definition of the term 'place of public accommodation.'" Andrews v. Blick Art Materials, LLC, 268 F. Supp. 3d 381, 388 (E.D.N.Y. 2017). Instead, it provides that private entities are to be considered public accommodations if their operations affect commerce, and they fall within one of twelve enumerated categories, expressed in the statute as non-exclusive lists of different types of enterprises. These categories are:

> (A) an inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;
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> (B) a restaurant, bar, or other establishment serving food or drink;
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> (C) a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;
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> (D) an auditorium, convention center, lecture hall, or other place of public gathering;
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> (E) a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;
>
> (F) a laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;
>
> (G) a terminal, depot, or other station used for specified public transportation;
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> (H) a museum, library, gallery, or other place of public display or collection;
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> (I) a park, zoo, amusement park, or other place of recreation;
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> (J) a nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education;
>
> (K) a day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and

> (L) a gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

42. U.S.C.A. § 12181(7)(A)-(L) (Westlaw through P.L. 118-82).

A majority of circuit courts – the Third, Sixth, Seventh, Ninth, and Eleventh – have found that a website constitutes a place of public accommodation only if it has a connection to a physical location (i.e., a "brick and mortar" store or establishment). See Ford v. Schering-Plough Corp., 145 F.3d 601, 614 (3d Cir. 1998) ("The plain meaning of Title III is that a public accommodation is a place. . . . This is in keeping with the host of examples of public accommodations provided by the ADA, all of which refer to places."), accord Peoples v. Discover Fin. Servs., Inc., 387 F. App'x 179, 183 (3d Cir. 2010); see also Parker v. Metro. Life Ins. Co., 121 F.3d 1006, 1011-12 (6th Cir. 1997) ("The clear connotation of the words in § 12181(7) is that a public accommodation is a physical place."); Weyer v. Twentieth Century Fox Film Corp., 198 F.3d 1104, 1114 (9th Cir. 2000) ("The principle of noscitur a socis requires that the term, "place of public accommodation," be interpreted within the context of the accompanying words, and this context suggests that some connection between the good or service complained of and an actual physical space is required."); Gil v. Winn-Dixie Stores, Inc., 993 F.3d 1266, 1277 (11th Cir. 2021) (finding that the "unambiguous and clear" language of the statute only "describes twelve types of locations that are tangible, physical spaces" and thus limits public accommodations "to actual, physical places" and does not encompass websites (internal citations omitted)), vacated on reh'g on other grounds, 21 F.4th 775 (2021). The First and Seventh Circuits have adopted the minority position, that no "physical nexus" is required for a private entity, when engaged in commerce, to fall under the ADA's ambit. See Carparts Distrib. Ctr. v. Auto. Wholesaler's Ass'n of New Eng., 37 F.3d 12, 19 (1st Cir. 1994) ("By

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