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Defendant Spirit Airlines, Inc. (“Spirit Airlines”) hereby files this Motion to Dismiss Plaintiff’s Class Action Complaint with prejudice for failure to state a claim upon which relief can be granted pursuant to [Rule 12\(b\)\(6\) of the Federal Rules of Civil Procedure](#).

SUMMARY OF ARGUMENT

The accessibility of Spirit Airlines’ website, www.spirit.com (“Website”), is exclusively governed by the Air Carrier Access Act of 1986 (“ACAA”) and a comprehensive regulatory regime promulgated thereunder by the U.S. Department of Transportation (“DOT”) after an extensive notice and comment period involving careful consideration of the views of the aviation industry, advocacy organizations, academic institutions, and members of the public, as well as a comprehensive cost-benefit analysis of the regulations. If an individual wishes to assert a claim relating to the accessibility of an air carrier’s website, the individual is limited to making an administrative complaint with the DOT pursuant to the ACAA (*see* 49 U.S.C. §§ [46101\(a\)\(1\)](#), [41705\(c\)](#)) because the ACAA does not confer a private right of action to litigants. *See, e.g., Stokes v. Sw. Airlines*, 887 F.3d 199, 203, 205 (5th Cir. 2018). Notwithstanding the foregoing, Plaintiff, who alleges she is legally blind, seeks to bypass the ACAA-based DOT website accessibility regulatory regime to impose her own views about website accessibility through an unprecedented application of the Americans with Disabilities Act of 1990 (“ADA”) to an air carrier’s website.

Congress enacted the ACAA in 1986 to prohibit air carriers from discriminating against individuals on the basis of disability. *See* [49 U.S.C. § 41705\(a\)](#). Since the ACAA’s enactment, the DOT has promulgated a pervasive regulatory regime to protect individuals against discrimination on the basis of disability and to promote the rights of individuals with disabilities

in the provision of services relating to air travel while balancing its broader air transportation-related objectives.¹

In this context, the DOT has issued regulations that set forth detailed requirements relating to air carrier website accessibility for the visually impaired. *See* 14 C.F.R. § 382.43(c)(1) (adopting Web Content Accessibility Guidelines (“WCAG”) 2.0 Level AA accessibility standard); 14 C.F.R. § 382.43(c)(2) (requiring air carriers to test their websites with input from individuals with disabilities or members of disability organizations); 14 C.F.R. § 382.43(c)(4) (requiring air carriers to provide assistance through other channels to individuals who cannot use a website due to their disability).

The ACAA’s statutory and regulatory regime requires the DOT to investigate each complaint made to it alleging discrimination by an air carrier on the basis of disability. *See* 49 U.S.C. § 41705(c). In enforcing its regulatory regime, the DOT has the authority to revoke an air carrier’s operating certificate (*see* 49 U.S.C. § 41110(a)(2)(B)), impose fines (*see id.* § 46301), initiate an enforcement action in a federal district court (*see id.* § 46106), or request that the Attorney General bring a civil enforcement action (*see id.* § 46107(b)(1)). The ACAA also requires that the DOT regularly publish disability-related complaint data; review the data and report annually to Congress on the results; and implement a plan to provide technical assistance to air carriers and individuals with disabilities in understanding the rights and responsibilities set forth in the ACAA. *See* 49 U.S.C. § 41705(c)(2)-(4).

In issuing ACAA-based website accessibility regulations, the DOT has stressed the importance that air carriers be subject only to “a single regulatory and enforcement scheme” to ensure uniformity in the application of the ACAA to air carriers and to avoid creating a

¹ *See* 49 U.S.C. § 101(a) (Congress created the DOT to develop “transportation policies and programs that contribute to providing fast, safe, efficient, and convenient transportation at the lowest cost . . .”).

patchwork of regulations and standards. [Nondiscrimination on the Basis of Disability in Air Travel: Accessibility of Web Sites and Automated Kiosks at U.S. Airports](#), 78 Fed. Reg. 67911 (Nov. 12, 2013) (hereinafter “Nondiscrimination on the Basis of Disability in Air Travel”).

When enacting the ADA, Congress clearly contemplated that the ACAA—and not the ADA—would continue to govern air carriers’ disability accessibility requirements. *See* [H.R. Rep. No. 101-485\(II\)](#), at 121 (1990), *reprinted in* 1990 U.S.C.C.A.N. 303, 404. Consistent with Congressional intent, no reported decision has ever found that the ADA governs air carrier website accessibility.

Since the enactment of the ADA in 1990, both the DOT and the U.S. Department of Justice (“DOJ”), the agency charged with promulgating regulations pursuant to the ADA, have stated that only the ACAA and the DOT’s ACAA-based regulatory scheme govern air carriers. *See* [Introduction to the Unified Agenda of Federal Regulatory and Deregulatory Actions](#), 77 Fed. Reg. 7804 (Feb. 13, 2012); [Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities](#), 75 Fed. Reg. 56240 (Sept. 15, 2010). These longstanding views of the DOT and DOJ are entitled to “particular deference.” *Alaska Dep’t of Env’t Conservation v. E.P.A.*, 540 U.S. 461, 487 (2004).

The ACAA and its implementing regulations exclusively govern the accessibility of Spirit Airlines’ Website, and the ACAA does not confer a private right of action to litigants. If Plaintiff wishes to assert a claim relating to the accessibility of Spirit Airlines’ Website, she is limited to making an administrative complaint with the DOT pursuant to the ACAA. Accordingly, Plaintiff’s Class Action Complaint should be dismissed with prejudice because permitting its amendment would be futile.

NATURE OF ALLEGATIONS IN THE CLASS ACTION COMPLAINT

Plaintiff alleges that she is “a visually-impaired and legally blind person who requires screen-reading software to read website content using her computer.” [Dkt. No. 1 ¶ 2](#). Specifically, Plaintiff alleges that on May 22 and 24, 2023, she attempted to book round-trip tickets for air transportation from Chicago to Los Angeles on Spirit Airlines’ Website, but was unable to complete her purchase due to the incompatibility of the Website with her screen-reading program. *See id.* [¶¶ 20-24](#). On June 2, 2023, Plaintiff filed the instant action.²

Plaintiff claims that Spirit Airlines’ Website is not compatible with various screen access software products and, thus, Plaintiff was “denied the benefit of purchasing the flight she wished to acquire from the Website.” *Id.* [¶ 24](#). As a result, Plaintiff asserts that Spirit Airlines’ Website “contains access barriers denying blind customers the full and equal access to the products, services and facilities of [Spirit Airlines’] website” in violation of the ADA. *Id.* [¶ 71](#).

Plaintiff seeks to represent a putative class defined as “all legally blind individuals in the United States who have attempted to access Defendant’s Website and as a result have been

² On March 27, 2023, the Supreme Court granted a petition for writ of certiorari in *Acheson Hotels, LLC v. Laufer* that will address the circumstances under which an ADA “tester” plaintiff has standing to sue pursuant to the ADA. *See Acheson Hotels, LLC v. Laufer*, 143 S. Ct. 1053 (2023); *see also* Pet. for a Writ of Cert. at i, *Acheson Hotels, LLC v. Laufer*, 143 S. Ct. 1053, 2022 WL 16838117 (Nov. 4, 2022). The Petitioner filed its Brief with the Supreme Court on June 5, 2023 (*Acheson Hotels, LLC v. Laufer*, 143 S. Ct. 1053 (No. 22-429), Dkt. No. 22); the Respondent’s Brief is due by August 2, 2023; and oral argument is scheduled to be heard during the Court’s October 2023 Term. In this context, Plaintiff Hussein has filed seven (7) putative class action lawsuits (including the instant action) in this District since May 31, 2023 alleging various defendants’ websites violate the ADA. *See Hussein v. United Airlines, Inc.*, No. 1:23-cv-3441 (N.D. Ill. filed May 31, 2023); *Hussein v. Artist Frame Service, Inc.*, No. 1:23-cv-3478 (N.D. Ill. filed June 2, 2023); *Hussein v. Tom Ford International LLC*, No. 1:23-cv-3480 (N.D. Ill. filed June 2, 2023); *Hussein v. Edible Arrangements, LLC*, No. 1:23-cv-3482 (N.D. Ill. filed June 2, 2023); *Hussein v. Oska Shop New York, LLC*, No. 1:23-cv-3865 (N.D. Ill. filed June 20, 2023); and *Hussein v. Nike, Inc.*, No. 1:23-cv-3869 (N.D. Ill. filed June 20, 2023). Plaintiff did not inform Spirit Airlines of the alleged inaccessibility of its website, or attempt to remedy any accessibility issues with Spirit Airlines, before filing the subject lawsuit. Plaintiff did not need to file her Complaint to obtain redress for the alleged website inaccessibility. Although the ACAA does not confer a private right of action to litigants, it does allow Plaintiff to file an administrative complaint with the DOT. The primary distinction between pursuing an administrative complaint with the DOT and filing an ADA-based lawsuit is that the ADA provides for the recovery of reasonable attorneys’ fees and costs by the prevailing party.

denied access to the equal enjoyment of goods and services, during the relevant statutory period.” *Id.* ¶ 56.

Plaintiff does not allege that she filed an ACAA-based administrative complaint with the DOT, which has been mandated by Congress to promulgate and enforce comprehensive regulations about air carrier website accessibility and investigate complaints relating thereto. Instead, Plaintiff bases her Class Action Complaint on alleged violations of the ADA. Specifically, she alleges that Spirit Airlines’ Website is a “public accommodation within the definition of Title III of the ADA, 42 U.S.C. § 12181(7).” *Id.* ¶ 16.

Plaintiff seeks a permanent injunction to impose her individual views about the accessibility of Spirit Airlines’ Website, including, *inter alia*, the obligation to make its Website compliant with, and test to, WCAG 2.1 guidelines (*see id.* ¶¶ 52(a)-(c)), even though the DOT only requires compliance with, and testing to, WCAG 2.0 Level AA.³

LEGAL STANDARD

Dismissal of a complaint under [Rule 12\(b\)\(6\) of the Federal Rules of Civil Procedure](#) is warranted “if no relief could be granted under any set of facts that could be proved consistent with the allegations.” *Lekas v. Briley*, 405 F.3d 602, 606 (7th Cir. 2005) (internal quotation marks omitted). Courts “are not obligated to accept ‘sheer speculation, bald assertions, and unsupported conclusory statements’ on a motion to dismiss.” *Lanahan v. Cnty. of Cook*, 41 F.4th 854, 862 (7th Cir. 2022) (quoting *Taha v. Int’l Bhd. of Teamsters, Loc. 781*, 947 F.3d 464, 469 (7th Cir. 2020)).

“Although leave to amend should be freely given, [. . .] that does not mean it must always be given.” *Hukic v. Aurora Loan Servs.*, 588 F.3d 420, 432 (7th Cir. 2009). District courts

³ Notably, the DOJ has never issued regulations (*e.g.*, requiring compliance with WCAG 2.0 Level AA) pursuant to the ADA specifically addressing the accessibility of air carrier websites, or for that matter, website accessibility generally.

“have broad discretion to deny leave to amend [. . .] where the amendment would be futile.” *Arreola v. Godinez*, 546 F.3d 788, 796 (7th Cir. 2008). A proposed amendment to a complaint is futile “when the new pleading would not survive a motion to dismiss.” *Gandhi v. Sitara Cap. Mgmt., LLC*, 721 F.3d 865, 869 (7th Cir. 2013); *see also Denton v. Ne. Illinois Reg’l Commuter R.R. Corp.*, No. 02 C 2220, 2004 WL 1005790, at *1 (N.D. Ill. Apr. 26, 2004) (Brown, M.J.) (citing *General Elec. Capital Corp. v. Lease Resolution Corp.*, 128 F.3d 1074, 1085 (7th Cir. 1997)).

ARGUMENT

While Plaintiff brings this lawsuit pursuant to the ADA, the ACAA and the regulations promulgated thereunder by the DOT—and not the ADA—exclusively govern air carrier website accessibility for those with disabilities.

I. The ACAA-Based DOT Regulatory Regime Exclusively Governs Plaintiff’s Website Accessibility Claims

A. The ACAA Prohibits Air Carriers from Engaging in Disability-Based Discrimination Relating to Air Travel Services

Enacted in 1986 (four years before the enactment of the ADA), the ACAA “prohibits airlines from discriminating on the basis of disability. . . .” *Stokes*, 887 F.3d at 202. Specifically, the ACAA provides, in pertinent part:

(a) In general.—In providing air transportation, an air carrier [. . .] may not discriminate against an otherwise qualified individual on the following grounds:

- (1) the individual has a physical or mental impairment that substantially limits one or more major life activities.
- (2) the individual has a record of such an impairment.
- (3) the individual is regarded as having such an impairment.

49 U.S.C. § 41705(a); see *Gilstrap v. United Air Lines, Inc.*, 709 F.3d 995, 1005 n.14 (9th Cir. 2013) (The ACAA was “designed primarily to regulate airlines’ interactions with their customers who have disabilities.”).

Congress had three primary goals in enacting the ACAA. First, Congress intended to address the “unique difficulties” faced by individuals with disabilities, who often had no way to predict the extent of a given air carrier’s or flight crew’s accommodations for disabled passengers. *S. Rep. No. 99-400*, at 2 (1986), *reprinted in* 1986 U.S.C.C.A.N. 2328, 2329-30. The Senate explained that the purpose of the ACAA is “to prohibit specifically air carriers from discriminating against handicapped individuals in the provision of air transportation.” *Id.* at 1, *reprinted in* 1986 U.S.C.C.A.N. at 2329. Second, Congress intended the ACAA to overrule the Supreme Court’s decision in *Department of Transportation v. Paralyzed Veterans of America*, 477 U.S. 597 (1986), in which the Court held that certain non-discrimination regulations then in effect could not be enforced against commercial air carriers. *See id.* at 2, *reprinted in* 1986 U.S.C.C.A.N. at 2330 (“[The ACAA] would mitigate the effect of [*Paralyzed Veterans*] by [prohibiting] discrimination against otherwise qualified handicapped individuals.”). Third, Congress sought to balance protecting individuals with disabilities from discrimination, on one hand, and the need to ensure aviation safety, on the other. *See id.* (“[The ACAA] does not mandate any compromise of existing DOT or Federal Aviation Administration (FAA) safety regulations.”).

B. The ACAA Does Not Confer a Private Right of Action to Litigants

While the Seventh Circuit has not yet addressed whether the ACAA confers a private right of action, the vast majority of Circuit Courts of Appeals have found that the ACAA does not provide litigants with a private right of action—particularly following the Supreme Court’s decision in *Alexander v. Sandoval*, 532 U.S. 275 (2001). *See Stokes*, 887 F.3d at 200–01 (“We

therefore join every post-*Sandoval* federal court to consider the issue and hold that the ACAA confers no such private right of action.”); *Segalman v. Sw. Airlines Co.*, 895 F.3d 1219, 1229 (9th Cir. 2018); *Lopez v. Jet Blue Airways*, 662 F.3d 593, 597 (2d Cir. 2011); *Boswell v. Skywest Airlines, Inc.*, 361 F.3d 1263, 1270 (10th Cir. 2004); *Love v. Delta Air Lines*, 310 F.3d 1347, 1359 (11th Cir. 2002).

C. Congress Vested the DOT With the Authority to Promulgate and Enforce Regulations Pursuant to the ACAA

With the enactment of the ACAA, Congress directed that “the Secretary of Transportation shall promulgate regulations to ensure non-discriminatory treatment of qualified handicapped individuals consistent with safe carriage of all passengers on air carriers.” *Air Carrier Access Act of 1986*, Pub. L. No. 99-435, § 3, 100 Stat. 1080 (1986); *see also* 14 C.F.R. § 382.1; *Love*, 310 F.3d at 1360 (noting the “elaborate administrative enforcement regime” created by Congress with the enactment of the ACAA).

The DOT first promulgated regulations based on the ACAA in 1990. *See Nondiscrimination on the Basis of Handicap in Air Travel*, 55 Fed. Reg. 8008 (Mar. 6, 1990). These regulations “prohibit[] both U.S. and foreign carriers from discriminating against passengers on the basis of disability; require[] carriers to make aircraft, other facilities, and *services* accessible; and require[] carriers to take steps to accommodate passengers with a disability.” 14 C.F.R. § 382.1 (emphasis added). DOT regulations define flight-related services as “functions related to air travel including, but not limited to, ticket purchase, rebooking cancelled flights, seat selection, and obtaining boarding passes or bag tags.” 14 C.F.R. § 382.3.

The ACAA requires that the DOT investigate each complaint that an air carrier has acted discriminatorily on the basis of disability. *See* 49 U.S.C. § 41705(c)(1); *see also* *Wendell H. Ford Aviation Investment and Reform Act for the 21st Century*, Pub. L. No. 106-181, § 707, 114

Stat. 61 (2000) (amending the ACAA to require, *inter alia*, the DOT to investigate each complaint of air carrier discrimination on the basis of disability). The ACAA further requires that the DOT regularly publish disability-related complaint data; review the data and report annually to Congress on the results; and implement a plan to provide technical assistance to air carriers and individuals with disabilities in understanding the rights and responsibilities set forth in the ACAA. *See* 49 U.S.C. § 41705(c)(2)-(4).

D. The DOT Has Promulgated a Comprehensive ACAA-Based Regulatory Regime Specifically Addressing Air Carrier Website Accessibility

On November 23, 2013, the DOT issued regulations specifically governing air carrier website accessibility approximately five (5) years after providing notice of its intention to issue such regulations. *See* 14 C.F.R. § 382.43; [Nondiscrimination on the Basis of Disability in Air Travel](#), 78 Fed. Reg. 67884. Before issuing the final regulations, the DOT received 84 comments from the aviation industry, advocacy organizations,⁴ academic institutions, and members of the public, and “carefully reviewed and considered all the comments received.” [Nondiscrimination on the Basis of Disability in Air Travel](#), 78 Fed. Reg. 67884-86. The DOT also examined the costs and benefits of the website accessibility requirements and concluded that “the qualitative and non-quantifiable benefits of the Web site [. . .] accessibility requirements combined with the quantifiable benefits justify the costs and make the total benefits of the rule exceed the total costs of the rule.” *Id.* 67883-84.

The DOT regulations, which took effect on December 12, 2013, require, *inter alia*, that an air carrier’s “primary Web site must conform to all Success Criteria and all Conformance Requirements from the World Wide Web Consortium (W3C) Recommendation 11 December

⁴ The advocacy organizations that provided comments included the American Council of the Blind, the American Foundation of the Blind, and the National Federation of the Blind. *See* [Nondiscrimination on the Basis of Disability in Air Travel](#), 78 Fed. Reg. 67884-86.

2008, Web site Content Accessibility Guidelines (WCAG) 2.0 for Level AA” 14 C.F.R. § 382.43(c)(1); *see* [Nondiscrimination on the Basis of Disability in Air Travel](#), 78 Fed. Reg. 67882.

In this context, the DOT noted the necessity of website accessibility regulations, stating:

Today’s passengers increasingly rely on air travel Web sites for information about airline services, making reservations, and obtaining discounted airfares. While these Web sites are more accessible to people with disabilities today than ever before, the degree of accessibility can vary significantly not only from one Web site to another, but also from page to page on a given site. Not all information and services available to the public on these Web sites are accessible to people with disabilities. The Department views Web site accessibility as a vital step toward making the convenience and cost savings of booking the best airfares and checking-in online available to people with disabilities.

[Nondiscrimination on the Basis of Disability in Air Travel: Accessibility of Web Sites and Automated Kiosks at U.S. Airports](#), 76 Fed. Reg. 59310 (Sept. 26, 2011).

To enforce these regulations, the DOT has the authority to revoke an air carrier’s operating certificate (*see* 49 U.S.C. § 41110(a)(2)(B)), impose fines (*see id.* § 46301(a)(1)), initiate an enforcement action in a federal district court (*see id.* § 46106), or request that the Attorney General bring a civil enforcement action (*see id.* § 46107(b)(1)).

Here, Plaintiff claims she was unable to purchase a flight from Chicago to Los Angeles due to the alleged inaccessibility of Spirit Airlines’ website. *See* Dkt. No. 1 ¶¶ 20-24, 39-40. Plaintiff’s allegations clearly implicate “core air travel services” (*e.g.*, booking a flight reservation) on Spirit Airlines’ Website that are exclusively subject to the DOT’s website accessibility regulations promulgated pursuant to the ACAA. *See* 14 C.F.R. § 382.43(c)(1)(i)(A).

II. The ADA Does Not Govern the Accessibility of Spirit Airlines' Website

A. The ADA Expressly Exempts Transportation By Aircraft From the Definition of "Public Transportation"

The statutory text of the ADA excludes air carriers from coverage. *See* [42 U.S.C. § 12181\(10\)](#) (“The term ‘specified public transportation’ means transportation by bus, rail, or any other conveyance (*other than by aircraft*) that provides the general public with general or special service (including charter service) on a regular and continuing basis.”) (emphasis added); *see Lopez*, [662 F.3d at 598](#) (“In this case, Lopez cannot state a claim under § 12184(a) [ADA provision prohibiting discrimination in specified public transportation services provided by private entities] because the alleged discrimination occurred in the provision of *services related to air transportation . . .*”) (quoting [42 U.S.C. § 12184\(a\)](#)) (emphasis added).

B. Congress Did Not Intend the ADA to Apply to Air Travel Services

The legislative history of the ADA confirms that Congress intended the ACAA—and not the ADA—to address air travel services because the ACAA already governed air carrier disability access at the time the ADA was enacted. For example, a Report from the House of Representatives explains that “[t]he Committee excluded transportation by air [from the definition of the term ‘public transportation’] because the Congress recently passed the Air Carrier[] Access Act, which was designed to address the problem of discrimination by air carriers and it is the Committee’s expectation that regulations will be issued that reflect congressional intent.” [H.R. Rep. 101-485\(II\)](#), at 121 (1990), *reprinted in* [1990 U.S.C.C.A.N. 303, 404](#); *see also* [H.R. Rep. No. 101-485\(I\)](#), at 36 (1990), *reprinted in* [1990 U.S.C.C.A.N. 267, 280](#) (“The Committee excluded transportation by aircraft [from the ADA’s definition of the term ‘public transportation’] because of the existence of the Air Carrier Access Act of 1986 (P.L. 99–435).”); [136 Cong. Rec. E1913-01, E1917, 1990 WL 80290](#) (“Subtitle B [governing application

of the ADA to transportation services provided by public entities] addresses specifically public bus and public rail transportation. Part I of the subtitle deals with all public transportation other than transportation by aircraft – *which Congress has recently addressed in the Air Carrier Access Act . . .*”) (emphasis added).

C. No Reported Decision Has Found that the ADA Applies to Air Carrier Website Accessibility Claims

No reported decision has found that the ADA applies to an air carrier’s website.⁵ Furthermore, courts have found that the ADA does not apply to air carriers in other circumstances. *See, e.g., Lopez v. Jet Blue Airways*, No. 10-CV-1552 JG JMA, 2010 WL 3311428, at *4 (E.D.N.Y. Aug. 19, 2010) (“The effect of [42 U.S.C. § 12181(10)] is essentially to exempt airlines from Title III of the ADA when, as in this case, *they are providing transportation services.*”) (emphasis added), *aff’d*, 662 F.3d 593; *Perez-Ramos v. Spirit Airlines, Inc.*, No. 08–1574(SEC), 2009 WL 890484, at *2 (D.P.R. Mar. 25, 2009) (finding that “the ADA does not apply to air travel”) (citing 42 U.S.C. § 12181(10)); *Love v. Delta Air Lines*, 179 F. Supp. 2d 1313, 1324 (M.D. Ala. 2001) (“[I]t is clear that Congress did not prohibit air carriers from discriminating against disabled individuals under the ADA because Congress considered that air carriers were already prohibited from doing so by the ACAA.”), *rev’d on other grounds*, 310 F.3d 1347.

⁵ The decision of the Court in *Access Now, Inc. v. Sw. Airlines, Co.*—which pre-dates the issuance of the DOT’s ACAA-based website accessibility regulations—found that the ADA does not apply to an air carrier’s website. *See* 227 F. Supp. 2d 1312, 1317, 1321-22 (S.D. Fla. 2002), *appeal dismissed*, *Access Now, Inc. v. Sw. Airlines Co.*, 385 F.3d 1324 (11th Cir. 2004). Indeed, the DOT and DOJ have confirmed—after the *Access Now* decision—that the ADA does not apply to air carriers. *See* Discussion *infra* at II.D addressing Introduction to the [Unified Agenda of Federal Regulatory and Deregulatory Actions](#), 77 Fed. Reg. 7804 and [Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities](#), 75 Fed. Reg. 56240.

D. The Longstanding Views of the DOJ and DOT Confirm that the ADA Does Not Apply to Air Carrier Website Accessibility

Both the DOJ and the DOT, the agencies tasked with promulgating and enforcing regulations under the ADA and ACAA, respectively, have issued commentary or implementation guidance demonstrating that the ADA does not apply to air travel services provided by air carriers. Specifically, the DOJ, which is authorized by Congress to promulgate ADA-implementing regulations (*see* 42 U.S.C. § 12186(b)), has explained that the ADA does not apply to air carriers:

For example, a quick service restaurant at an airport is, as a public accommodation, subject to the title III requirements, not to the ACAA requirements. *Conversely, an air carrier that flies in and out of the same airport is required to comply with the ACAA, but is not covered by title III of the ADA.*

[Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, 75 Fed. Reg. 56240](#) (emphasis added);⁶ *see* [Introduction to the Unified Agenda of Federal Regulatory and Deregulatory Actions, 77 Fed. Reg. 7804](#) (The DOT has stated that “[o]nly DOT can protect air travelers with disabilities as states are preempted from regulating in these areas and no private right of action exists for airline consumers to enforce the Air Carrier Access Act.”).⁷

These longstanding views of the DOT and DOJ about the application of the ACAA and ADA to air carriers are entitled to “particular deference.” *Alaska, 540 U.S. at 487.*

⁶ The ADA National Network, a disability advocacy group, recognizes that the ADA does not apply to air carriers. *See Does the ADA cover air transportation?*, ADA National Network, <https://adata.org/faq/does-ada-cover-air-transportation> (last accessed Jun. 23, 2023) (stating on its website that “Discrimination by air carriers in areas other than employment is not covered by the ADA but rather by the Air Carrier Access Act . . .”).

⁷ To the extent Plaintiff’s claims seek relief for alleged violations of “the laws of Illinois” (*Dkt. No. 1, Prayer for Relief, at 17 ¶ a*) rather than the ADA, those state law claims are preempted by the ACAA. *See Foley v. JetBlue Airways, Corp.*, No. C 10-3882 JCS, 2011 WL 3359730, at *13 (N.D. Cal. Aug. 3, 2011) (finding state law claims preempted where the DOT’s “ACAA regulations establish with specificity the obligations of an airline regarding website and kiosk accessibility”), *appeal dismissed*, No. 11-17128, *Dkt. No. 12* (9th Cir. filed Feb. 5, 2016); *Nat’l Fed’n of the Blind v. United Airlines Inc.*, 813 F.3d 718, 737 (9th Cir. 2016).

III. Amendment of the Class Action Complaint Would be Futile Because the ACAA Does Not Confer a Private Right of Action

Amendment of Plaintiff's Class Action Complaint would be futile because the ACAA exclusively governs this action, and the ACAA does not confer a private right of action to litigants. *See, e.g., Stokes*, 887 F.3d at 205. Thus, any amended complaint "would not survive a motion to dismiss." *Gandhi*, 721 F.3d at 869.

IV. Plaintiff's Sole Recourse Under the ACAA Is to Make an Administrative Complaint With the DOT

If Plaintiff wishes to pursue her claims relating to the accessibility of Spirit Airlines' Website, she is limited to making an administrative complaint with the DOT pursuant to the ACAA, as per the express dictates of Congress.⁸ *See* 49 U.S.C. §§ 46101(a)(1), 41705(c); *Stokes*, 887 F.3d at 203; *Lopez*, 2010 WL 3311428, at *3. If, following its investigation, the DOT determines that Spirit Airlines' Website does not comply with the applicable regulations, the DOT can take enforcement action requiring Spirit Airlines to remedy the situation. As such, pursuing her complaint with the DOT would allow Plaintiff to continue her claims with the administrative agency tasked by Congress to investigate such claims and to enforce the applicable website accessibility standards.

If this Court were to permit otherwise, it would allow Plaintiff to bypass the DOT's ACAA-based regulatory regime, which exclusively governs air carrier website accessibility, in contravention of Congress's intent and the longstanding regulatory guidance of the DOT and

⁸ Plaintiff's claims are of the type routinely addressed by the DOT. *Compare Scandinavian Airlines System Violations of 14 CFR Parts 259 and 382 & 49 U.S.C. §§ 41705 and 41712, DOT-OST-2018-0001, 2018-11-8 Consent Order, at 1 (Nov. 16, 2018)* (DOT imposed a \$100,000 fine on Scandinavian Airlines and ordered the air carrier to cease its non-compliance with the WCAG 2.0 Level AA accessibility standard within one year) *with Dkt. No. 1 ¶ 52* (Plaintiff demands that Spirit Airlines bring its website into compliance with WCAG 2.1 accessibility standard) *and 14 C.F.R. § 382.43(c)(2)* (DOT regulations requiring that air carrier websites "be tested in consultation with individuals with disabilities or members of disability organization(s)") *with Dkt. No. 1 ¶ 52(c)* (Plaintiff demands that Spirit Airlines "[r]egularly test user accessibility by blind or vision-impaired persons . . .").

DOJ. Further, subjecting air carriers to regulation under two different statutory schemes and by two different agencies would undercut the regulatory uniformity that has been a key to the success of air carrier disability accessibility. *See Nondiscrimination on the Basis of Disability in Air Travel*, 78 Fed. Reg. 67911 (“This outcome has largely come about today due to airlines throughout the U.S. market being freed to focus their resources on meeting a single regulatory and enforcement scheme for ensuring accessibility.”)

CONCLUSION

Plaintiff has failed to state a claim upon which relief can be granted. The accessibility of Spirit Airlines’ Website is governed solely by the ACAA. Plaintiff cannot assert a cause of action against Spirit Airlines pursuant to the ACAA because it does not confer a private right of action to a litigant. As such, amendment of Plaintiff’s Complaint would be futile. Accordingly, Defendant Spirit Airlines, Inc. respectfully requests that this Court grant its [Rule 12\(b\)\(6\)](#) Motion to Dismiss and enter an order dismissing Plaintiff’s Complaint with prejudice.

Date: June 27, 2023

Respectfully submitted,

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- and -

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CERTIFICATE OF SERVICE

I hereby certify the foregoing Memorandum of Law in Support of Defendant Spirit Airlines Inc.'s Motion to Dismiss Plaintiff's Class Action Complaint with Prejudice Pursuant to Fed. R. Civ. P. 12(b)(6) was electronically filed with the Clerk of the Court using the CM-ECF system on June 27, 2023, which will send notification of such filing to all counsel of record.

/s/ Jonathan E. DeMay
Jonathan E. DeMay