

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

Spencer Neal

v.

Case No. 23-cv-314-PB
Opinion No. 2025 DNH 101

Omni Mount Washington, LLC

MEMORANDUM AND ORDER

A. Introduction

Spencer Neal, a disabled individual requiring the use of a wheelchair for mobility, encountered multiple access barriers during his two-day stay at the Omni Mount Washington Hotel in July 2021. Neal filed suit against Omni Mount Washington, LLC (“Omni”) under Title III of the Americans with Disabilities Act, 42 U.S.C. §§ 12181–88. He encountered barriers in various parts of the hotel including (1) parking, (2) the entrance and lobby, (3) the lobby men’s restroom, (4) the porch area, (5) guest room 203, (6) the indoor pool area, (7) the outdoor pool area, (8) the laundry area, (9) the lower level store, (10) the lower level restroom, (11) the second floor vending, and (12) other accessible guestrooms throughout the hotel.

During his stay, Neal photographed portions of the hotel property he believed were ADA noncompliant. He later submitted these photographs to

an ADA expert who analyzed them and produced a report identifying 119 separate ADA violations at the hotel property. See [Doc. 27-1](#). Neal filed his complaint on June 14, 2023. See [Doc. 1](#).

B. Procedural History

In an unusual move, Omni promptly moved for judgment on the pleadings against itself and admitted every material allegation in Neal’s complaint. See [Doc. 10](#); [Doc. 11](#). Neal did not object to Omni’s motion but argued instead that his expert should be permitted to inspect the property to identify any additional ADA violations in “all public use areas and hotel guest rooms held out by Defendant as mobility-handicap accessible.” [Doc. 13-1 at 2](#). Omni disagreed, claiming that the injunction’s scope should be limited to those ADA violations alleged in the complaint and that Neal was not entitled to additional relief. See [Doc. 16](#).

On November 27, 2023, the Court granted Omni’s motion and moved forward with determining the scope of the injunctive relief to which Neal was entitled. See [Doc. 17](#). Given the procedural posture of the case at that time, the Court did not enter a case management order as contemplated by Fed. R. Civ. P. 16. Instead, the Court held a status conference on December 4, 2023, and asked the parties to work together to submit proposed injunctive relief language. The Court set a sixty-day deadline for the parties to submit a proposed order.

On February 2, 2024, the parties submitted a status report requesting a thirty-day extension, [Doc. 20](#), which the Court granted. In March, April, and May of 2024, the parties sought and obtained additional extensions as they tried to reach agreement on injunctive relief language. See [Doc. 21](#); [Doc. 22](#); [Doc. 23](#). On May 21, 2024, Neal unilaterally submitted a status report that proposed a plan for inspection and site evaluation. See [Doc. 24](#). Neal proposed that his expert would inspect the hotel on or before November 1, 2024, and that he would prepare and submit to Omni a site evaluation within thirty days of that deadline. [Id. at 3-4](#). I reviewed the status report, and a docket entry was made noting my review.¹ At no point during this period did Neal file a motion requesting an order from the Court.

Between May and November of 2024, Neal made no attempt to send his expert to the property, did not file any updates with the Court on the progress of the site inspection, and requested no extensions. When thirty days had elapsed after Neal’s self-imposed November 1 deadline, the Court requested a status report from the parties and scheduled a conference for January 27, 2025.

¹ Neal acknowledges that when the Court “reviewed” his May 21, 2024, status report, Neal’s lead counsel asked local counsel what this docket entry meant. Local counsel replied “All it means is that the judge read your status report. If you want the judge to issue an order you need to file a motion.” [Doc. 28 at 10](#).

During the status conference, the parties indicated that they were still at an impasse over whether Neal's expert should be entitled to conduct a site inspection to identify additional violations before an injunction has issued. Neal acknowledged that he had failed to follow his own proposed inspection schedule and stated that his expert had been busy during the second half of 2024 and could not travel to New Hampshire to visit the hotel. See also [Doc. 25 at 3](#). Three days later, the Court issued a written order, [Doc. 26](#), instructing the parties to file separate injunction proposals addressing those ADA violations which had been identified in the litigation to date, with Omni to provide additional briefing on the issue of whether Neal was entitled to a site inspection.

In response to the Court's order, Omni filed a motion for injunctive relief and submitted a proposed order specifying over one hundred specific violations to be remedied and the timelines for each. See [Doc. 27](#); [Doc. 27-2](#). Neal filed a response to Omni's motion and submitted his own proposed order for relief. See [Doc. 28](#); [Doc. 28-5](#). Omni's motion and the parties' separate proposed injunction orders are now before me for consideration.

C. Analysis

The parties present competing proposals for injunctive relief. Omni proposes a comprehensive injunction addressing all the violations stated in the complaint and identified by Neal's ADA expert. See [Doc. 27-2](#). By

contrast, Neal requests a two-phase injunction: “Phase 1” would remedy the ADA violations Neal encountered during his stay that his expert identified using Neal’s photographs, [Doc. 28-5 at 1-13](#), while “Phase 2” would permit Neal’s expert to inspect the hotel to identify additional potential violations in the hotel’s public areas and accessible guest rooms. See [Doc. 28-5 at 13](#).

Because “Phase 1” of Neal’s proposed injunction and Omni’s entire proposal are functionally identical in scope—differing only in completion deadlines²—and Neal does not dispute Omni’s proposed order, I find that Omni’s proposal for injunctive relief as to these matters is acceptable. See [Doc. 27-2](#); [Doc. 28-5](#). Accordingly, I will issue an immediate injunction ordering Omni to remedy those violations.

The central remaining dispute concerns whether Neal should be entitled to send his expert to identify further potential violations in the hotel’s public areas and mobility-accessible guest rooms. Omni presents two principal arguments against granting Neal additional relief.³ First, Omni

² To the extent that there are differences in deadlines, I find Omni’s deadlines to be reasonable and appropriate.

³ Omni also presents other arguments criticizing Neal’s conduct in prosecuting this litigation. See [Doc. 27](#). But while these arguments may impact any award of attorney’s fees, none, either alone or in combination, entitle Omni to prevent Neal from seeking additional injunctive relief. I thus reserve for another day the issue of how, if at all, those arguments would affect any attorney’s fees Neal is entitled to recover.

argues that Neal has already received full and fair relief for any ADA violations he experienced and further relief is not warranted. Second, Omni contends that Neal forfeited any right he might otherwise have to discover additional ADA violations because he failed to pursue this request appropriately. I address each argument below.

1. Scope of Injunctive Relief

The ADA provides that where a defendant fails to remove barriers in existing facilities and removal is “readily achievable,” [42 U.S.C. § 12182\(b\)\(2\)\(a\)\(iv\)](#), injunctive relief is mandated to “make such facilities readily accessible to and usable by individuals with disabilities.” [42 U.S.C. § 12188\(a\)\(2\)](#). The statute further provides that “[n]othing in this section shall require a person with a disability to engage in a futile gesture if such person has actual notice that a person or organization covered by this subchapter does not intend to comply with its provisions.” [Id. at § 12188\(a\)\(1\)](#).

The ADA is a remedial statute and should be broadly construed to effectuate its purpose. See [Webb v. Garelick Mfg. Co.](#), 94 F.3d 484, 487 (8th Cir. 1996) (abrogated on other grounds by [Torgerson v. City of Rochester](#), 643 F.3d 1031 (8th Cir. 2011)). Courts have consistently held that plaintiffs are entitled to full ADA relief and are not limited to remediation of barriers they personally encountered. Thus, Neal need not have encountered all the barriers he seeks to remedy to obtain complete relief. As the Eighth Circuit

explained in [Steger v. Franco](#), 228 F.3d 889, 894 (8th Cir. 2000), holding otherwise would lead to “piecemeal compliance.” [Id.](#) See also [Doran v. 7-Eleven, Inc.](#), 524 F.3d 1034, 1047 (9th Cir. 2008) (“[A] rule limiting a plaintiff to challenging the barriers he or she had encountered or personally knew about would burden businesses and other places of accommodation with more ADA litigation, encourage piecemeal compliance with the ADA, and ultimately thwart the ADA’s remedial goals of eliminating widespread discrimination against the disabled and integrating the disabled into the mainstream of American life.”).

Although Neal may seek relief for certain ADA violations that he did not experience during his visit, his ability to seek injunctive relief is not boundless. Injunctions should be narrowly tailored to remedy the harm suffered by the plaintiff. See [Bone v. Univ. of N. C. Health Care Sys.](#), 678 F. Supp. 3d 660, 698 (M.D.N.C. 2023) (citing [Dep’t of Homeland Sec. v. New York](#), 140 S. Ct. 599, 600, 206 L. Ed. 2d 115 (2020) (Gorsuch, J., concurring) (“Equitable remedies, like remedies in general, are meant to redress the injuries sustained by a particular plaintiff in a particular lawsuit.”)). The Supreme Court has emphasized that “the scope of injunctive relief is dictated by the extent of the violation established.” [Califano v. Yamasaki](#), 442 U.S. 682, 702 (1979); see also [Bone](#), 678 F. Supp. 3d at 698. As an equitable remedy, an injunction “focuses on the precise individuals and the precise

conduct causing a particular problem.” [McCullen v. Coakley](#), 573 U.S. 464, 492 (2014).

In the ADA context, the injunctive relief must reflect the plaintiff’s particular disability. Determining the proper scope of injunctive relief requires courts to consider “the precise nature and scope of the injury that [the plaintiff] and similarly situated plaintiffs have suffered when they encounter . . . architectural barriers violative of the ADA.” [Doran](#), 524 F.3d at 1042. While Neal may seek relief for barriers beyond those he personally encountered, he is only entitled to relief for violations that he, or any person with a mobility disability, would likely encounter on future visits to the facility. See [Chapman v. Pier 1 Imports \(U.S.\) Inc.](#), 631 F.3d 939, 950 (9th Cir. 2011); [Steger](#), 228 F.3d at 891-92 (ADA plaintiff may pursue an injunction to remove all accessibility barriers related to his disability he would likely encounter upon return). The scope of an ADA plaintiff’s discovery and claims, therefore, should “naturally permit challenge to any barriers to use related to that person’s disability.” [Doran](#), 524 F.3d at 1047.

Although Omni notes that the First Circuit has not determined whether an ADA plaintiff has standing to seek relief for ADA violations he did not personally encounter, see [Suárez-Torres v. Panaderia y Reposteria España, Inc.](#), 988 F.3d 542, 555 (1st Cir. 2021) (leaving issue unresolved), it recognizes that several other circuit courts have held that an ADA plaintiff

has standing to seek such relief. [Doc. 29 at 1-2](#). See, e.g., [Doran](#), 524 F.3d at 1044; [Kreisler v. Second Ave. Diner Corp.](#), 731 F.3d 184, 188-89 (2d Cir. 2013); [Chapman](#), 631 F.3d at 950; [Steger](#), 228 F.3d at 891. But cf. [Norkunas v. Seahorse NB, LLC](#), 444 F. App'x 412, 416 (11th Cir. 2011) (finding plaintiff lacked standing to bring accessible rooms into compliance where he had never attempted to avail himself of an accessible room).

Because I am persuaded by the majority of courts that have addressed this issue, I conclude that Neal has standing to seek relief for violations at the hotel beyond those he personally encountered. Omni's effort to limit Neal's right to seek relief for additional potential violations related to his disability in the hotel's public areas and mobility-accessible guest rooms is inconsistent with the ADA's remedial provision and cases interpreting it.

2. Failure to Diligently Pursue Relief

Regarding Neal's diligence in pursuing relief, his efforts were clearly inadequate. The Court instructed the parties to meet and confer on proposed injunction language and, following repeated extensions, Neal submitted a status report proposing a timeline for completing an inspection and producing a final injunction order. Having reviewed that status report on May 23, 2024, the Court expected Neal to comply with his proposed plan, seek court intervention in the case by filing a motion, or request an extension of the

deadline. Neal's failure to do any of these things has resulted in a substantial delay in the case.

Omni, however, incorrectly construes the May 23, 2024, docket entry noting that the Court had reviewed Neal's status report as a court order setting a firm deadline. Omni claims Neal's failure to meet this deadline forecloses any additional relief. I disagree. Although I am dissatisfied with Neal's pursuit of relief, his proposed timeline was never embodied in a court order. Neal has not forfeited his right to inspect the property simply by failing to meet a self-imposed deadline in a status report. But while Neal's failure to meet his commitment to the Court does not forfeit his right to relief, it does justify a short and strict deadline for seeking that additional relief.

D. Conclusion

For the reasons stated herein, Omni's motion for injunctive relief is granted with respect to the 119 specific ADA violations identified in its motion. See [Doc. 27-2](#).

To the extent that Omni deems further relief to have been forfeited, its motion is denied without prejudice. Neal will have thirty (30) days from the date of this order to arrange for an expert to visit the hotel premises, prepare a supplemental report, and submit that report to Omni. Omni will then have thirty (30) days to review the report. The Court will then hold a status conference regarding relief, at which Omni may object to any additional relief

sought. The Court will issue a separate order granting injunctive relief with respect to the violations that have been documented to date and reserves the right to modify the injunction after completion of the supplemental expert report.

SO ORDERED.

/s/ Paul J. Barbadoro
Paul J. Barbadoro
United States District Judge

September 3, 2025

cc: Counsel of Record