No. 22-429

In the Supreme Court of the United States

ACHESON HOTELS, LLC, PETITIONER

v.

DEBORAH LAUFER

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF OF RETAIL LITIGATION CENTER, INC., AND NATIONAL RETAIL FEDERATION AS AMICI CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

Does a self-appointed Americans with Disabilities Act "tester" have Article III standing to challenge a place of public accommodation's failure to provide disability accessibility information on its website, even if she lacks any intention of visiting that place of public accommodation?

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INTERESTS OF AMICI CURIAE

The Retail Litigation Center, Inc. (RLC), provides courts with the perspective of the retail industry on important legal issues affecting its members. Collectively, the RLC's members employ millions of workers nationwide, provide goods and services to tens of millions of consumers, and generate tens of billions of dollars in annual sales. Since its founding in 2010, the RLC has filed more than 200 amicus briefs. This Court and others have favorably cited its briefs. *See, e.g.*, *South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080, 2097 (2018); *Kirtsaeng v. John Wiley & Sons, Inc.*, 568 U.S. 519, 542 (2013).*

The National Retail Federation (NRF) is the world's largest retail trade association, representing discount and department stores, home goods and specialty stores, Main Street merchants, grocers, wholesalers, chain restaurants, and internet retailers from the United States and more than 45 countries. For over a century, NRF has been a voice for retailers, educating and communicating the impact retail has on local communities and global economies. NRF regularly submits amicus curiae briefs in cases raising significant legal issues for the retail community.

The question presented is of significant interest to amici. The Americans with Disabilities Act (ADA) is important legislation, and plaintiffs bringing good-faith, legitimate ADA claims should have full access to courts. But the decision below undermines the

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* No counsel for any party authored this brief in whole or in part. No person or entity other than amicus curiae or its counsel made a monetary contribution to the brief's preparation or submission.

ADA's promise for individuals with disabilities by enabling serial plaintiffs to file abusive litigation threatening well-meaning businesses—and potentially public entities as well. As discussed below, serial ADA litigants have filed thousands of lawsuits not to improve accessibility for people with disabilities but to enrich themselves and their lawyers. The consequence is less accessibility, not more. By reversing the decision below and limiting the ability of serial ADA litigants to file meritless or bad-faith lawsuits, the Court can help ensure that litigants are using the ADA as a tool to promote accessibility, not to promote the lawyer-as-a-business model or as a ploy for attorneys and serial litigants to extort businesses.

INTRODUCTION AND SUMMARY OF ARGUMENT

The ADA is important legislation, and many Americans rely on its protections from disability discrimination. But serial ADA litigants and their lawyers have coopted the ADA as an instrument for personal financial gain. Relying on an expansive and unfounded theory of standing, those litigants have filed thousands of ADA suits across the country. These lawsuits do not rest on any concrete injuries. Instead, serial plaintiffs, like Respondent Deborah Laufer, go out of their way to find alleged regulatory violations by businesses they never intend to patronize. The scheme is simple: Sue as many businesses as possible using a boilerplate complaint, and hope to extract easy money through settlements or attorneys' fees awards.

The problem, as many courts and lawmakers have observed, is that these suits don't make businesses more accessible. Indeed, a simple phone call often could have produced the desired information or result.

But that's not what serial plaintiffs care about. Indeed, their litigation can even make businesses *less* accessible by forcing them to shutter in the face of threatened liability.

I. Serial ADA litigants like Laufer—whose alleged injury is self-inflicted "frustration and humiliation"—lack standing.

A. Under well-established standing principles, the "frustration and humiliation" Laufer claims she experiences when visiting the websites of hotels she never intends to visit is not a concrete or particularized injury. *See, e.g.*, *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). In his concurring opinion in *American Legion v. American Humanist Ass'n*, 139 S. Ct. 2067, 2098 (2019), Justice Gorsuch, joined by Justice Thomas, reiterated that, even when a plaintiff alleges a *constitutional* violation, she doesn't have standing just because she is an "offended observer." That reasoning applies with even more force to Laufer, who has alleged only a regulatory violation.

B. What's more, plaintiffs cannot manufacture standing by intentionally inflicting harm on themselves. That is exactly what serial litigants like Laufer do. In holding that Laufer's self-inflicted frustration from viewing a website confers standing, the decision below opens the courthouse doors to countless suits from serial plaintiffs who need only feign offense at something a business across the country is doing.

II. Giving serial litigants like Laufer standing has serious consequences for businesses and courts.

A. This lawsuit is not unique. Laufer herself has brought more than 600 just like it—and she is just one of many serial ADA litigants who have suffered no real injury. Their goal appears to be to extract

settlements or attorneys' fees from as many defendants as possible.

B. Some serial ADA litigants target small businesses—particularly those run by non-English speakers—that lack the resources to defend themselves and might be bullied into complying with monetary demands. Facing the specter of high litigation costs, those businesses often have no choice but to settle. And because of the number of serial ADA litigants, some businesses might face a new ADA suit just as soon as they settle an old one. Some businesses have even been forced to shutter as a result of ADA litigation. Those consequences undermine Congress' goal of promoting accessibility for people with disabilities. Because their aim is simply cash, serial plaintiffs don't care whether businesses know about the ADA's complex regulations or are willing to improve accessibility without litigation.

III. Unless this Court rejects the expansive theory of standing embraced by the First Circuit below, serial ADA litigants will continue wreaking havoc on businesses—and potentially public entities subject to Title II of the ADA—and clogging up federal court dockets.

ARGUMENT

I. The decision below is wrong and sets a dangerous precedent because self-inflicted "frustration and humiliation" alone do not confer standing.

Both the First Circuit below and the Eleventh Circuit held that the "frustration" and "humiliation" Laufer allegedly experienced from visiting a hotel website that purportedly violated ADA regulations could give her standing, even though she disclaimed any intention to visit that hotel. Pet. App. 11a, 26a;

Laufer v. Arpan LLC, 29 F.4th 1268, 1270, 1274-75 (11th Cir. 2022). The notion that a litigant has standing just because she takes offense at something she observes conflicts with well-established standing principles. As Justice Gorsuch and Justice Thomas recently explained, such "[o]ffended observer standing is deeply inconsistent" with many "longstanding principles and precedents." *American Legion*, 139 S. Ct. at 2100 (Gorsuch, J., joined by Thomas, J., concurring in the judgment). And Laufer's case for standing is all the weaker because she went out of her way to inflict her alleged frustration on herself by visiting websites of hotels she never planned to visit. Lawsuits like Laufer's do not advance the purpose of the ADA. In fact, holding that serial plaintiffs like Laufer have standing makes it harder for the government to carry out its Article II duty to enforce the statute in a way that promotes accessibility for people with disabilities.

A. Basic standing principles do not allow federal courts to hear a case just because the plaintiff alleges "frustration and humiliation."

1. The "frustration and humiliation" that Laufer has allegedly experienced by visiting the websites of hotels she never intends to visit does not confer Article III standing. To have standing, a plaintiff must suffer an injury, traceable to the defendant and redressable by the court, that is "concrete and particularized" and "actual or imminent." *Lujan*, 504 U.S. at 560 (citation omitted). Three basic injury principles show that Laufer lacks standing.

First, frustration and humiliation, by themselves, are not cognizable injuries. This Court has made clear that discriminatory stigma "accords a basis for

standing only to 'those persons who are personally denied equal treatment' by the challenged discriminatory conduct." *Allen v. Wright*, 468 U.S. 737, 755 (1984) (citation omitted). Thus, for example, *Allen* held that the parents of African American schoolchildren who had not personally suffered any discrimination lacked standing to sue the IRS over its refusal to deny tax-exempt status to schools that discriminated on the basis of race. *See id.*

Second, and relatedly, a plaintiff must show that the alleged harm is "particularized" *to her*—or else Congress could "freely creat[e] causes of action for vast classes of *unharmed* plaintiffs to sue any defendants who violate any federal law." *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2206 n.2 (2021).

Third, a plaintiff cannot rely on "'some day' intentions" that may cause her to suffer an alleged injury. *Lujan*, 504 U.S. at 564. A plaintiff must have sufficiently "concrete plans" that will cause her to suffer "actual or imminent" injury. *Id.*

Those standing principles foreclose serial ADA lawsuits like Laufer's. As *Allen* makes clear, whatever Laufer's frustrations with viewing a hotel website that is missing particular information, she suffers no Article III injury without unequal *treatment*—that is, without unequal access to the hotel's services. And as *Lujan* and *TransUnion* instruct, Laufer cannot rely on a bare regulatory violation that causes her no particularized harm. Finally, Laufer doesn't even have "'some day' intentions" to visit the hotels she sues, much less "concrete plans." *Lujan*, 504 U.S. at 564. In short, Laufer doesn't have standing to sue a hotel just because she thinks its website doesn't comply with a regulation.

Judge Sutton put it well in another case involving an ADA litigant claiming that viewing a website conferred standing: the purpose of these standing rules is "to prevent the federal judiciary from becoming a 'vehicle for the vindication of the value interests of concerned bystanders.'" *Brintley v. Aeroquip Credit Union*, 936 F.3d 489, 494 (6th Cir. 2019) (quoting *United States v. Students Challenging Regul. Agency Procs. (SCRAP)*, 412 U.S. 669, 687 (1973)). But "[t]hose who merely peruse websites that they can't benefit from have less in common with bystanders than they do with passersby." *Id.*

2. Justice Gorsuch's concurrence in the judgment in *American Legion*, joined by Justice Thomas, reinforces these principles. *American Legion* held that a World War I memorial cross on public land did not violate the Establishment Clause. 139 S. Ct. at 2074. Justice Gorsuch explained that taking offense when seeing the cross could not confer standing on the challengers. *See id.* at 2098. Pointing to several decisions of this Court, Justice Gorsuch explained that the "'offended observer' theory of standing has no basis in law." *Id.* Besides *Allen*, for example, Justice Gorsuch discussed *Harris v. McRae*, 448 U.S. 297, 321 n.24 (1980) (citation omitted), where the Court held that members of a religious group did not have standing to challenge federal restrictions on abortion funding because they had not alleged that the law "in any way coerce[d] them *as individuals* in the practice of their religion."

That view makes sense. If an observer offended by a legal violation had standing for that reason alone, the concreteness and particularity requirements wouldn't mean much. "Congress might, for example, provide that everyone has an individual right to clean

air and can sue any defendant who violates any air-pollution law." *TransUnion*, 141 S. Ct. at 2206 & n.2. That, of course, isn't how Article III works. *See id.*

Laufer's standing arguments are even weaker still. For one thing, the plaintiffs in *Allen*, *Harris*, and *American Legion* claimed to be offended by constitutional violations (which still wasn't enough), whereas Laufer's claim is that she took offense at alleged non-compliance with 28 C.F.R. § 36.302(e)(1)(ii). For another, Laufer is not even alleging that the hotels she sues are otherwise violating the ADA. *See* Pet. App. 42a. Her purported injury is that she is frustrated about "'bare procedural violation[s],' divorced from any concrete harm" to her. *TransUnion*, 141 S. Ct. at 2213 (quoting *Spokeo, Inc. v. Robins*, 578 U.S. 330, 341 (2016)). That generalized frustration does not give her standing.

B. Laufer's purported "frustration and humiliation" injury also fails because it is self-inflicted.

Laufer's standing claim fails for another reason, too: she has sought out her purported injury just so she can sue. But plaintiffs "cannot manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 416 (2013).

That is exactly what serial plaintiffs like Laufer try to do. Laufer admits she does not intend to visit many of the hotels she sues. *See* Pet. App. 11a n.3. Instead, as she stated in a declaration in this case, she "visit[s] hotel online reservation services to ascertain whether they are in compliance with the Americans With Disabilities Act." D. Ct. Doc. 17, ¶ 3. Her

complaint is that she "suffer[s] humiliation and frustration" when she thinks they aren't. *Id.* ¶¶ 6-7.

Even assuming a serial ADA plaintiff could actually be humiliated by finding exactly what she's looking for online, this self-inflicted offense cannot confer standing. As Judge Sutton put it, "[t]he internet is a vast and often unpleasant place. It contains plenty that may offend, and those who set out *looking* for dignitary slights won't be disappointed. But merely browsing the web, without more, isn't enough to satisfy Article III." *Brintley*, 936 F.3d at 494. The First and Eleventh Circuits' contrary reasoning has startling ramifications. For example, if Laufer can sue a hotel she never intends to visit for a regulatory violation that merely offends her, what would prevent any plaintiff from suing a library, school, or city council anywhere in the country for failing to post something on its website that the plaintiff thinks federal law requires?

C. Failing to apply fundamental standing principles will undermine the ADA by interfering with reasonable government enforcement.

The First Circuit's decision is not just doctrinally wrong. It also threatens to undermine effective ADA enforcement.

A primary purpose of the ADA is "to address the major areas of discrimination faced day-to-day by people with disabilities." 42 U.S.C. § 12101. Lawsuits like Laufer's do not advance that purpose. As Acheson Hotels points out (Br. 49), many businesses may be unaware of alleged regulatory violations, like the need to post certain information on a website, and may be willing to make changes or provide the requested

information by phone. A quick call to the business serves the ADA's purposes of promoting accessibility. The threat of gratuitous litigation, and business-destroying liability, does not.

Government regulators can weigh those considerations when enforcing "the public interest that private entities comply with the law" and deciding "how to prioritize and how aggressively to pursue legal actions against defendants who violate the law." *TransUnion*, 141 S. Ct. at 2206-07. "Private plaintiffs" like Laufer, in contrast, "are not accountable to the people and are not charged with pursuing the public interest in enforcing a defendant's general compliance with regulatory law." *Id.* at 2207. That's exactly what the California legislature found when it amended the state's laws to make serial disability litigation harder to bring in state court—that serial litigants often "seek[] quick cash settlements rather than correction of the accessibility violation." Cal. Code Civ. P. § 425.55(a)(2). As a district court explained when dismissing one of Laufer's lawsuits for lack of standing, "Congress's intent in creating the ADA was to ensure that disabled individuals have equal access to public accommodations, not to facilitate the creation of litigation factories to allow attorneys to reap fees from hundreds of lawsuits while clogging the dockets of the federal courts." *Laufer v. Naranda Hotels, LLC*, No. 20-cv-1974, 2020 WL 7384726, at *9 (D. Md. Dec. 16, 2020).

II. Serial ADA litigants like Laufer present serious problems for businesses and the courts.

Getting the doctrine right matters, because affording serial ADA litigants like Laufer standing is

devastating to both businesses and federal court dockets. Serial litigants like Laufer have filed thousands of lawsuits against a wide range of businesses nationwide, pursuing theories of ADA liability ranging from implausible to creative. The common link is that the plaintiffs themselves usually haven't suffered any real injury. Instead, such "abusive ADA litigation" often relies on "form complaints containing a multitude of boilerplate allegations," *Shayler v. 1310 PCH, LLC*, 51 F.4th 1015, 1018 (9th Cir. 2022), to extract settlements or attorneys' fees from as many defendants as possible.

The problem has become so severe that the District Attorneys of San Francisco and Los Angeles have sued a law firm that has filed thousands of federal ADA lawsuits, alleging that the firm's attorneys and the plaintiffs they represent "demand large cash settlements even if the business quickly fixed all potential violations … and generally refuse to engage in good faith negotiations." Compl. ¶ 64, *People v. Potter Handy*, No. CGC-22-599079 (Cal. Sup. Ct. Apr. 11, 2022) (Potter Handy Complaint). The district attorneys described this scheme as "a shakedown perpetrated by unethical lawyers." *Id.* ¶ 68.

Ultimately, serial ADA lawsuits harm businesses, clog federal court dockets with thousands of lawsuits that have little to no merit, and do not advance the interests of Americans with disabilities. Given the breadth of legal theories that serial ADA litigants have pursued, there is no reason to believe they will not continue to sue businesses—and potentially public entities—subject to the ADA, with little consideration of whether those lawsuits are meritorious or whether any alleged accessibility violations could be resolved without litigation.

A. Laufer is just one of many serial litigants pursuing countless ADA lawsuits premised on dubious standing theories or meritless underlying claims.

1. Laufer has filed hundreds of lawsuits.

Acheson Hotels isn't the only defendant Laufer has sued. Laufer has filed more than 600 federal ADA lawsuits since 2018 against hotels across the country. *See* Acheson Hotels Br. 5. Indeed, with her aggressive nationwide approach, Laufer singlehandedly created the circuit split here. *See* Pet. 5, 16-22. Laufer's standard procedure is to bring boilerplate lawsuits with little regard for merit. She has disclaimed (or at least not shown) that she intends to visit many hotels she sues. *See* Pet. App. 11a n.3.

Unsurprisingly, many courts have correctly held that Laufer lacks standing. But she continues to bring these lawsuits, even in jurisdictions where courts have already dismissed her suits for lack of standing. One federal court has warned Laufer and her counsel "that future filings in her existing Maryland cases, and future lawsuits brought in the same vein while the impediments identified in this opinion persist, will be subject to close review for futility and frivolity, including the possible awarding of attorneys' fees as sanctions." *Naranda Hotels*, 2020 WL 7384726, at *9. Still, Laufer files on. In fact, despite a Tenth Circuit holding earlier this year that Laufer lacked standing, *see Laufer v. Looper*, 22 F.4th 871, 878-80 (10th Cir. 2022), Laufer and her lawyers continue to press her lawsuits in that circuit. At oral arguments in two of Laufer's consolidated appeals, *Laufer v. Red Door 88 LLC*, No. 22-1055 (10th Cir.), and *Laufer v. Campfield Properties, LLC*, No. 22-1106 (10th Cir.), her lawyer

could not explain what factual allegations distinguished those cases from *Looper*. Oral Argument at 9:33-12:20, *Red Door 88*, No. 22-1055.

2. Laufer is just one of many serial ADA litigants.

The problems caused by Laufer alone are bad enough, but she's not unique. Other serial ADA plaintiffs have collectively brought staggering numbers of similarly troubling suits. Some litigants, like Laufer, seek out hotels with website listings they say are not compliant with 28 C.F.R. § 36.302(e)(1)(ii)—despite having little or no actual connection with those hotels. *See* Pet. 27. One district court observed that a plaintiff had "filed more than 250 ADA cases in this district alone," *Kennedy v. Floridian Hotel, Inc.*, No. 18-cv-62486, 2020 WL 9762992, at *1 (S.D. Fla. Jan. 28, 2020), *aff'd and remanded*, 998 F.3d 1221 (11th Cir. 2021), while another noted that a plaintiff "has filed approximately 300 such lawsuits," *Sarwar v. Patel Invs. Inc.*, No. 21-cv-118, 2022 WL 1422196, at *1 (D. Vt. May 5, 2022).

Other litigants have relied on a range of legal theories to exploit the ADA. To describe just a few: Some litigants have sued retail stores for not stocking Braille gift cards (which the ADA does not require stores to sell). Others have targeted gas stations that do not provide closed captioning for pumpside televisions, even though the litigants' sole reason for visiting the stations was to sue, not buy gas (or watch TV). Some litigants have challenged credit unions for failing to maintain accessible websites, even though they are not eligible to join those credit unions. Still others have tacked meritless ADA claims onto state-law disability claims so they can sue in federal court

and circumvent state-court rules designed to crack down on serial filers. These litigants have collectively brought many thousands of suits—seeking primarily to extort settlements from businesses or secure an award of attorneys' fees.

a. Beginning in 2019, the Southern and Eastern Districts of New York were "flooded with litigation from a handful of plaintiffs seeking injunctive relief, compensatory damages, and, of course, attorneys' costs" from retail and service businesses that did not sell specialty Braille gift cards for the visually impaired. *Dominguez v. Banana Republic, LLC*, No. 19-cv-10171, 2020 WL 1950496, at *1 (S.D.N.Y. Apr. 23, 2020), *aff'd sub nom. Calcano v. Swarovski N. Am. Ltd.*, 36 F.4th 68 (2d Cir. 2022). One district judge noted that he had eleven such cases from the same two attorneys. *Id.* at *1 n.1. He found the suits "meritless," because there was "simply no legal support for Plaintiff's assertion that Title III requires Banana Republic to create Brailled gift cards for the visually impaired"—"the plain text of the ADA and the Department of Justice's implementing regulations make clear the exact opposite." *Id.* at *1, *7. The court ultimately dismissed the lawsuits for lack of standing, holding that "there are not enough facts in Plaintiff's complaint to plausibly suggest that he will be injured by [the defendant's] failure to sell Braille gift cards in [the] future." *Id.* at *4.

The Second Circuit affirmed on standing grounds. *Calcano*, 36 F.4th at 72. Refusing to "ignore the broader context of Plaintiffs' transparent cut-and-paste and fill-in-the-blank pleadings," the court noted that "over 200 essentially carbon-copy complaints" advancing that same theory were filed between October and December 2019—almost half by the four plaintiffs

before the court. *Id.* at 77. The court found that the sheer volume of "Plaintiffs' Mad-Libs-style complaints further confirms the implausibility of their claims of injury." *Id.* Indeed, one plaintiff even "assert[ed] that he would return to a [store] that doesn't exist." *Id.*

b. Attorney Scott Dinin and plaintiff Alexander Johnson are a serial ADA litigation team. *Johnson v. Ocaris Mgmt. Grp. Inc.*, No. 18-cv-24586, 2019 WL 13235834, at *1 n.1 (S.D. Fla. Aug. 23, 2019), *aff'd in part, dismissed in part sub nom. Johnson v. 27th Ave. Caraf, Inc.*, 9 F.4th 1300 (11th Cir. 2021). As of 2019, Dinin had filed over 650 ADA lawsuits, with Johnson as plaintiff in over 130. *Id.* Dinin has pursued a variety of ADA theories in his hundreds of lawsuits. For example, in 2018 and 2019, he and Johnson filed at least 26 identical cases against gas station owners in Miami-Dade and Broward counties for failing to provide closed captioning on pumpside televisions, which Johnson alleged would "allow the hearing-impaired 'to comprehend the television media features embedded within the gasoline pumps.'" *Id.* at *1.

The district court dismissed for lack of standing, finding that "Johnson's core ADA allegations were not credible." *Johnson v. Ocaris Mgmt. Grp. Inc.*, No. 18-cv-24586, 2019 WL 13235462, at *3 (S.D. Fla. May 30, 2019). The court found implausible Johnson's explanation for why he, a Fort Lauderdale resident, was visiting so many Miami-Dade stations. Although "Johnson explained that he travels to the Miami-Dade County Zoo once a month," "none of those stations are even remotely near any conceivable route between his Fort Lauderdale residence and the zoo." *Id.*

The court also imposed sanctions on both Johnson and Dinin. Given the implausible allegations, the

court found that Johnson and Dinn were engaged in "an illicit joint enterprise … to dishonestly line their pockets with attorney's fees from hapless defendants under the sanctimonious guise of serving the interests of the disabled community." *Johnson*, 2019 WL 13235834, at *1. The court further determined that Dinin had "egregiously inflated and misrepresented his billable time" in order to maximize a potential award of attorneys' fees under the ADA. *Id.* at *2. All in all, the court found that Dinin and Johnson "deliberately and knowingly abused the ADA and the legal system solely for their own financial gain, and in total disregard of the hearing-impaired for whom they sanctimoniously but disingenuously professed to have brought these lawsuits. In doing so, they have, unfortunately, undermined the credibility of legitimate ADA cases." *Id.* at *3.

The Eleventh Circuit affirmed. As if to underscore that serial ADA plaintiffs suffer no real injury, attorney Dinin (but not plaintiff Johnson) appealed the dismissal of the ADA claim, prompting the Eleventh Circuit to dismiss for lack of standing. The court explained that "lawyers represent their clients and are not themselves participants in the litigation." *Johnson*, 9 F.4th at 1311. The Eleventh Circuit also affirmed the sanctions imposed in Johnson's separate appeal. *Id.* at 1318. But, although the court held that Johnson's "bad faith conduct" warranted dismissal of his ADA claim (among other sanctions), the court expressly "reject[ed] the District Court's ruling to the extent it also dismissed Johnson's ADA claim for lack of standing"—consistent with that circuit's decision in *Arpan*, one of the decisions in this circuit split. *Id.* at 1315-16 & n.7.

c. ADA litigants have also sued credit unions they had no intention or eligibility to join, alleging that the unions' websites were not accessible for individuals with visual disabilities. The three circuits to consider such cases have all held that those litigants lacked standing. *See Griffin v. Department of Labor Fed. Credit Union*, 912 F.3d 649 (4th Cir. 2019); *Carello v. Aurora Policeman Credit Union*, 930 F.3d 830 (7th Cir. 2019) (Barrett, J.); *Brintley*, 936 F.3d 489.

Judge Sutton emphasized what was at stake. "If we adopted [the plaintiff's] theory of encounter standing," he explained, "we'd deputize her to sue not just these credit unions but many of the some 5,600 others in the United States as well. … And if we credit [her] statistics on visual impairment, we'd permit eight million other Americans to do the same." *Brintley*, 936 F.3d at 494. But the First Circuit and Eleventh Circuit have done just that. By holding that Laufer and similar serial ADA litigants have standing, those courts have deputized plaintiffs with no real injuries—and their lawyers—to enrich themselves by suing businesses anywhere in the country, no matter the merits of the suit or the businesses' willingness to modify their practices.

d. The situation in California underscores the severity of the problem. There, serial litigants have used federal lawsuits to circumvent state laws enacted to deter attorneys from bringing high volumes of meritless disability lawsuits. In response, the District Attorneys of San Francisco and Los Angeles filed a lawsuit earlier this year seeking restitution and civil penalties from Potter Handy LLP, a law firm that has filed thousands of boilerplate lawsuits under the ADA and California's Unruh Civil Rights Act, Cal. Civ.

Code § 51. According to the district attorneys' complaint, Potter Handy added ADA claims to disability lawsuits—without regard for whether the defendant was actually violating the ADA—to file those suits in federal court and avoid the stricter pleading requirements and additional filing fees that apply in California courts for "high-frequency" litigants. Potter Handy Complaint ¶¶ 2-3.

Potter Handy has filed thousands of federal ADA complaints in recent years, including 800 cases with Orlando Garcia, 1,700 with Brian Whitaker, and thousands more with other serial plaintiffs. *Id.* ¶ 9. As the district attorneys' complaint shows, Potter Handy and its plaintiffs do not bring these suits to ensure that California businesses comply with the ADA. Rather, "[t]heir primary, overriding goal is to maximize their own financial gain by filing and settling as many boilerplate lawsuits as possible." *Id.* ¶ 67.

In the district attorneys' view, that conclusion rests on solid evidence. Among other things, the complaint explains that Potter Handy and its serial plaintiffs rarely monitor businesses' compliance with the ADA after settlement or even return to patronize the businesses. *Id.* Indeed, Potter Handy and its serial plaintiffs "demand large cash settlements even if the business quickly fixed all potential violations, will not dismiss cases they know they would lose if litigated to judgment, intentionally run up their attorney's fees so they can make higher settlement demands, and generally refuse to engage in good faith negotiations." *Id.* ¶ 65. They also "appear[] to target businesses in marginalized communities, particularly those that have large populations of immigrants and residents who do not speak English or for whom English is a second language, who may be less familiar with the intricacies of

the American legal system." *Id.* ¶ 55. In the district attorneys' view, Potter Handy's conduct is "a shakedown perpetrated by unethical lawyers who have abused their status as officers of the court." *Id.* ¶ 68.

Despite all that, the trial court dismissed the complaint on the ground that some of Potter Handy's conduct was protected by California's litigation privilege. The district attorneys have appealed. *See* Press Release, S.F. Dist. Att'y, *District Attorney Brooke Jenkins Files Appeal of Court Ruling Granting Legal Immunity to Potter Handy's Scheme to Defraud Small Businesses*, (Oct. 20, 2022), tinyurl.com/35uxp7uu. But that setback only underscores the urgent need for this Court to stem the tide of serial ADA litigation.

B. Serial ADA lawsuits have significant negative effects on businesses, the court system, and Americans with disabilities.

Serial ADA lawsuits burden businesses—who are often willing to comply with the ADA if they are not already—drain the federal courts' limited resources, and ultimately do not advance the interests of people with disabilities. This case gives the Court a critical opportunity to reinforce fundamental standing principles and help ensure that serial ADA litigants like Laufer cannot exploit the ADA for their own financial gain.

1. Serial litigants exploit the ADA to extract settlements—especially from small businesses.

The California district attorneys' suit is again instructive. The complaint "[c]onservatively" estimates that a single law firm has "extracted over $5,000,000 from California's small businesses from the cases filed on behalf of just one of their Serial Filers in just over

two years." Potter Handy Complaint ¶ 68 (emphasis omitted). All told, the district attorneys estimate that "California's small businesses have paid [that law firm] tens of millions of dollars" in settlements since 2018. *Id.* (emphasis omitted). And some of that money comes from businesses owned by immigrants and non-English speakers—whom Potter Handy targets on the notion that they "may be easier to frighten into complying with monetary demands cloaked in the trappings of legal process." *Id.* ¶ 55. News reports confirm the concerns. "Many businesses cannot afford the cost of settling" an ADA lawsuit brought by a serial filer and so instead opt to "fold up shop." Sam Stanton, *Serial ADA filer sets sights on Bay Area merchants, submitting 1,000 complaints in two years*, The Mercury News (June 28, 2021), tinyurl.com/27d8etd4. And those businesses that can afford to settle might face another frivolous ADA suit as soon as they settle the last one.

2. Serial ADA litigants clog federal court dockets with meritless or bad-faith ADA lawsuits.

As discussed, serial ADA litigants have brought a staggering volume of lawsuits. The *Washington Post* recently reported that the number of ADA lawsuits filed in federal court has been consistently increasing over the past decade, reaching an all-time high in 2021, the last full year at the time of reporting, at 11,452—more than *quadruple* the number filed in 2013. *See* Amy Yee, *U.S. Businesses Get Hit With Record Number of Disability Lawsuits*, Bloomberg (Apr. 14, 2022), tinyurl.com/29hur8te. As a district court observed in dismissing one of Laufer's cookie-cutter lawsuits, "it does not serve the interests of justice to continue spending significant Court resources on

these cases if Plaintiff lacks standing, lacks credibility, and is not operating in good faith." *Naranda Hotels, LLC*, 2020 WL 7384726, at *9.

3. As courts and lawmakers have recognized, serial ADA litigants do not advance the interests of people with disabilities.

The key aim of the ADA is to make this country more accessible for Americans with disabilities. *See* 42 U.S.C. § 12101. But lawsuits filed by serial ADA litigants do not advance that goal. Serial ADA litigants' objective is generally not to address accessibility problems, but to secure cash settlements or attorneys' fees. As noted, serial litigants often pursue settlements with little concern for whether the business has fixed the alleged problem or what effect that settlement would have on the business' ability to continue to operate. Forcing businesses to close because of alleged accessibility issues does not help anybody, much less advance the purpose of the ADA. As one district judge put it, "it is clear that these cases, rather than being a legal mechanism for meaningful remediation to benefit the purported beneficiaries, the hearing-impaired community, they are solely about profiting from inflated attorney's fees." *Johnson*, 2019 WL 13235834, at *8.

For these very reasons, as noted, California lawmakers have amended the state's laws to discourage serial disability suits. Cal. Code Civ. P. § 425.55(a)(2). The legislature expressly found that serial litigants "unfairly taint[] the reputation of other innocent disabled consumers who are merely trying to go about their daily lives accessing public accommodations as they are entitled to have full and equal access under

[state law] and the federal Americans with Disability Act of 1990." *Id.*

III. Unless the Court reins in the First Circuit's expansive theory of standing, abusive litigation will continue.

Unless this Court limits their ability to bring these lawsuits, serial litigants like Laufer will keep exploiting the ADA to force settlements from businesses, and clog federal court dockets, with meritless and bad-faith lawsuits. The expansive theory of standing embraced by the First and Eleventh Circuits will likely enable serial litigants to find still more ways to cause harm. After all, serial litigants' lawyers have already relied on a wide range of legal theories to pursue personal gain. For example, besides targeting private small businesses, serial ADA litigants might begin targeting libraries, school districts, or other local governmental entities subject to Title II of the ADA. And, of course, it doesn't matter that the vast majority of such entities might actually comply with the ADA. Serial ADA litigants' lawsuits are often "premised on … meritless argument[s]," *Dominguez*, 2020 WL 1950496, at *1, or are filed "with little regard" to whether the ADA is actually being violated, Potter Handy Complaint ¶ 2, because the goal is to extort settlement cash or collect attorneys' fees. Indeed, allowing ADA serial litigants to continue bringing their lawsuits will open the door for other plaintiffs, and their lawyers, to exploit the same expansive standing rules to pursue other kinds of meritless litigation, too.

By reversing the decision below, this Court can reaffirm well-established and common-sense standing principles, *see supra* pp. 5-8, which will allow litigants

and courts to focus on applying the ADA the way Congress intended and the way most likely to help individuals with disabilities.

CONCLUSION

The Court should reverse.

Respectfully submitted.

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