

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into between plaintiffs AXIS Dance Company, Judith Smith and Bonnie Lewkowicz (collectively, "Plaintiffs"), defendant Hotels.com, L.P. ("Hotels.com" or "Defendant"), and Expedia, Inc.

1. RECITALS

1.1. On or about May 22, 2007, Plaintiffs filed an action against Defendant entitled *Judith Smith, Bonnie Lewkowicz and AXIS Dance Company v. Hotels.com L.P.* in the Superior Court for the City and County of Alameda, Case No. RG-07327029 (the "Litigation").

1.2. In the Litigation, Plaintiffs allege that Hotels.com's website, www.hotels.com, does not allow mobility-impaired individuals to search for accessible rooms or make a reservation guaranteeing that an accessible room would be available to them and therefore violates California's Unruh Civil Rights Act (Cal. Civ. Code § 51 et seq.) and Unfair Competition statute (California Business and Professions Code sections 17200 et seq.). Plaintiffs, on behalf of themselves and a purported class of similarly-situated individuals, seek declaratory and injunctive relief and an award of their attorneys' fees.

1.3. On September 24, 2007, Defendant answered the complaint. Defendant denied all allegations and claims and asserted certain affirmative defenses.

1.4. On July 26, 2007, the Parties met to discuss the possibility of resolving the Litigation. On February 6, 2008, the Parties engaged in arms-length mediation conducted by the Hon. Ronald M. Sabraw (Judge of the California Superior Court, retired) at JAMS in San Francisco (the "Mediation"). Thereafter, the parties held an additional settlement meeting and

exchanged written proposals regarding potential settlement terms.

1.5. The Parties have concluded, after due investigation and after carefully considering the relevant circumstances, the Litigation and the applicable law, that it would be in the best interests of the Parties to settle the Litigation on the terms set forth below in order to avoid the expense, inconvenience, and uncertainties of litigation.

1.6. Each of the terms herein set forth was reached through arms-length negotiations, including without limitation the Mediation. It is agreed by and among the undersigned, on behalf of Defendant and Plaintiffs that the Litigation be settled, compromised and dismissed on the merits and with prejudice, subject to the approval of the dismissal by the Court, on the following terms and conditions:

2. DEFINED TERMS

The following shall be defined terms for purpose of this Agreement:

2.1. "Accessibility Features" shall mean the following: accessibility equipment for the deaf, accessible bathroom, accessible paths of travel, Braille or raised signage, handicap parking, in-room accessibility, and roll-in shower.

2.2. "Agreement" or "Settlement Agreement" means this Settlement Agreement, including all exhibits thereto.

2.3. "Defendant" means Hotels.com, L.P.

2.4. "Defendant's Counsel" means the law firm of Wilson Sonsini Goodrich & Rosati.

2.5. "Dismissal Order" means an order of the Court approving dismissal of this Litigation, with prejudice.

2.6. "Date of Dismissal" means the date that a Dismissal Order is entered in the

Litigation.

2.7. "Hotels.com Website" or "Website" means that Internet web site located at www.hotels.com.

2.8. "Hotels.com Released Parties" means Hotels.com and Hotels.com's parent, Expedia, Inc. (DE) and its subsidiary Expedia, Inc. (WA) (together, "Expedia"), past and present officers, directors, agents, attorneys, employees, controlling or principal shareholders, general or limited partners or partnerships, subsidiaries, divisions, insurers, and all successors or predecessors in interest, assigns, or legal representatives.

2.9. "Parties" means Plaintiffs and Defendant, collectively.

2.10. "Released Claims" means the claims released as set forth in Section 4 of this Agreement.

2.11. "Plaintiffs' Counsel" means Disability Rights Advocates, Chavez & Gertler LLP, and Public Justice, P.C.

3. TERMS OF SETTLEMENT

3.1. Within nine months of the Date of Dismissal, Hotels.com shall:

3.1.1. Revise the Hotels.com Website, as set forth in Exhibit A, to include: a filter option for Accessibility Features on the Hotel Search Page (Ex. A, p. 1); a field for Accessibility Features in the "Quick Facts" section of the Property Summary Page for all properties that respond to the survey stating that they offer Accessibility Features (Ex. A, p. 2); a list of available Accessibility Features in the Full Description Page (Ex. A, p. 3); and a drop down menu of Accessibility Features on the Reservations Page (Ex. A, pp. 4-5). Hotels.com shall also supplement its "FAQs" to include (a) a definition and explanation of each of the

Accessibility Features, (b) instructions on how to use the new accessibility search tools, and (c) how customer care representatives will handle requests for accessible rooms. The parties agree to continue to work together on the final wording to be included on the Website. Nothing herein shall prevent Hotels.com from modifying or revising the Hotels.com Website or any page thereof in the ordinary course of its business, provided, however, that information regarding accessibility features and functionally equivalent search capabilities for accessible accommodations continue to be provided.

3.1.2. For those consumers who indicate a preference during the reservations process for one or more of the Accessibility Features on the Reservations Page (“Accessibility Preference”), the consumer’s Accessibility Preference will be reviewed by Hotels.com’s Customer Service personnel after the booking is submitted through the Hotels.com Website. Hotels.com Customer Service personnel will, within 48 hours, contact the requested hotel directly (via telephone or electronic mail) to attempt to reserve a room for the consumer that meets the Accessibility Preference. In addition,

- (a) Hotels.com will provide a customer who reserves a room with a requested Accessibility Preference with an email confirmation reflecting that Hotels.com has successfully contacted the property and received assurances that the property will accommodate the request.
- (b) In the event that Hotels.com Customer Service personnel are unable to reserve a room at the requested property that meets the Accessibility Preference, Hotels.com Customer Service personnel will contact the consumer by telephone or email and attempt to locate a room at an

equivalent hotel and at an equivalent rate that meets the Accessibility Preference. If Hotels.com is unable to locate alternative accommodations that are acceptable to the consumer, then Hotels.com shall refund the consumer's purchase price.

- (c) Hotels.com will include the following language, or language to this effect, on the Reservations Page as part of the drop-down menu described in Section 3.1: "Please select any one or more of the following accessibility features that you may require. A customer care representative will contact you within 48 hours about your request. If you need a room with any of the below-listed accessibility features and your travel plans require you to check into the hotel within the next 72 hours, please contact Customer Care at (800) xxx-xxxx before completing this reservation."
- (d) Hotels.com shall provide reasonable training for its Customer Service personnel to implement the procedures set forth in this provision.
- (e) Hotels.com will inform consumers of the accessibility tools that will be available on the Hotels.com Website and instruct consumers on how to use those tools through the websites' FAQ section and through the Special Requests section of the website booking path.

3.1.3. Distribute a survey form, attached hereto as Exhibit B, along with explanatory materials, to the hotel properties. Hotels.com will encourage its partner properties to respond to the survey and use the results from this survey to produce the information required in Section 3.1.1. Hotels.com is entitled to rely on the accuracy of the information provided to it in

responses to the survey forms and shall not be liable for any inaccuracies on the Hotels.com Website arising from the results of this survey. Hotels.com will make best efforts to update accessibility information and to remove or correct information in response to requests by customers and the hotel properties.

3.1.4. Nothing herein shall be construed as a guarantee by Hotels.com that, by reserving a room that meets the Accessibility Preference, such a room will be made available by the property or that the room that is made available will meet the customer's exact needs. Plaintiffs recognize that hotel rooms and the provision of accessible rooms are controlled by the hotel properties themselves, not Hotels.com. In the event the property fails to honor a reservation made as described herein for any reason, Hotels.com shall not be liable to the consumer for any costs or damages, including the costs of alternative accommodations.

3.2. In the event that Hotels.com requests assistance with respect to marketing efforts to the disabled community, Plaintiffs shall provide reasonable assistance to Hotels.com by identifying various organizations and media that serve the disabled community.

3.3. To the extent that future local, state or federal regulations or legislation may be enacted imposing obligations on travel services like Hotels.com to provide other and different information or accommodations for individuals with disabilities which are more encompassing than, or inconsistent with, the obligations accepted by Hotels.com in this Agreement, those regulations or legislation shall control.

3.4. As further, separate and additional consideration for the settlement herein, Expedia, although not named as a defendant in the Litigation, agrees to undertake a survey of its properties and make substantially similar changes to its on-line travel service website,

www.expedia.com, and its travel services as are set forth in paragraph 3.1 herein. Expedia shall fully implement substantially similar changes within nine months of the Date of Dismissal.

3.5. Subject to approval of the Court pursuant to California Rule of Court 3.770, Plaintiffs will dismiss the Litigation with prejudice.

4. RELEASES

4.1. As of the Date of Dismissal, Plaintiffs and their respective agents, successors, heirs, or assigns, shall be deemed to have, and by operation of the Judgment, shall have fully, finally, and forever irrevocably released, relinquished and discharged with prejudice the Hotels.com Released Parties from any and all liabilities, claims, cross-claims, causes of action, rights, actions, suits, debts, liens, contracts, agreements, damages, restitution, disgorgement, costs, attorneys' fees, losses, expenses, obligations or demands, of any kind whatsoever, whether in arbitration, administrative, or judicial proceedings, whether as individual claims or as claims asserted on a class basis or on behalf of the general public, whether known or unknown, suspected or unsuspected, threatened, asserted or unasserted, actual or contingent, liquidated or unliquidated, whether under federal statutory law, federal common law or federal regulation, or the statutory or common laws or regulations of any and all states or subdivisions, which are or could have been alleged in the Litigation, including but not limited to all claims relating to Hotels.com's and Expedia's practices relating to booking accessible rooms for those with mobility disabilities ("Released Claims"). By operation of the Judgment, Plaintiffs shall be deemed to have waived any and all provisions, rights, and benefits conferred by Section 1542 of the California Civil Code. Section 1542 reads as follows:

Certain Claims Not Affected By General Release: A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

5. PAYMENTS TO PLAINTIFFS' COUNSEL

5.1. Hotels.com agrees that Plaintiffs are entitled to their reasonable attorneys' fees, costs and expenses in the Litigation, and agrees to pay them a total of \$200,000 in full compensation for such fees and expenses. Said amount is deemed to include compensation for any future work performed by Plaintiffs' Counsel in connection with the Litigation. The fees will be paid by check made payable and delivered to Chavez & Gertler LLP within 10 days after the Date of Dismissal. However, in the event that it becomes necessary for Plaintiffs to sue to enforce any provision of this agreement, the prevailing party in said lawsuit shall be entitled to an award of attorneys' fees, costs and expenses incurred in that proceeding.

6. PROCEDURE FOR DISMISSAL

6.1. The Parties will jointly apply for approval of dismissal of the Litigation with prejudice pursuant to California Rule of Court 3.770.

6.2. Plaintiffs, the Defendant, Expedia, Plaintiffs' Counsel and Defendant's Counsel agree to take all reasonable steps and efforts contemplated by this Settlement Agreement and any other reasonable steps and efforts that may be necessary or appropriate, by order of the Court or otherwise, to carry out the terms of this Settlement Agreement.

7. DENIAL OF WRONGDOING

7.1. Defendant and Expedia deny all liability with respect to this Litigation, but have concluded after investigation that it is in their best interests to settle the Litigation on the terms

set forth herein. Defendant and Expedia enter into this Agreement without in any way acknowledging any wrongdoing or liability of any kind. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession by Defendant or Expedia of the truth of any of the allegations in this Action.

8. TERMINATION OF AGREEMENT

8.1. In the event the Court for any reason declines to approve this Agreement and the Date of Dismissal never occurs, nothing in this Agreement shall be deemed to prejudice the position of any of the Parties with respect to the Litigation or otherwise, and neither the existence of this Agreement nor its contents shall be admissible in evidence, referred to for any purpose in the Litigation or in any other litigation or proceeding, or be deemed a presumption, concession or admission by Hotels.com of any fault, liability or wrongdoing, or of the existence of a certifiable class. Notwithstanding the foregoing, the parties retain any and all rights to assert a breach of this Agreement and to use this Agreement in connection with such a claim.

9. ADDITIONAL PROVISIONS

9.1. This Agreement contains the entire agreement among the Parties and supersedes any prior agreements or understandings between them. All terms of this Agreement are contractual and not mere recitals. The terms are and shall be binding upon each of the Parties, their agents, attorneys, employees, successors, and assigns, and upon all other persons claiming any interest in the subject matter hereto through any of the Parties.

9.2. This Agreement may be amended or modified only by a written instrument signed by counsel for all Parties.

Redacted

Dated: January 6, 2009

By: _____
Judith Smith

Dated: January __, 2009

By: _____
Bonnie Lewkowicz

Dated: January __, 2009

HOTELS.COM, INC.

By: _____
Its: _____

Dated: January __, 2009

EXPEDIA, INC

By: _____
Its: _____

Approved as to form:

DISABILITY RIGHTS ADVOCATES
CHAVEZ & GERTLER LLP
PUBLIC JUSTICE, PC

Dated: January __, 2009

By: _____
Sid Wolinsky
Attorneys for Plaintiffs
AXIS DANCE COMPANY, JUDITH
SMITH and BONNIE LEWKOWICZ

Dated: January __, 2009

By: _____
Judith Smith

Dated: January 12, 2009

Redacted
By: _____
Bonnie Lewkowicz

Dated: January __, 2009

HOTELS.COM, INC.

By: _____

Its: _____

Dated: January __, 2009

EXPEDIA, INC

By: _____

Its: _____

Approved as to form:

DISABILITY RIGHTS ADVOCATES
CHAVEZ & GERTLER LLP
PUBLIC JUSTICE, PC

Dated: January __, 2009

By: _____
Sid Wolinsky
Attorneys for Plaintiffs
AXIS DANCE COMPANY, JUDITH
SMITH and BONNIE LEWKOWICZ

Dated: January __, 2009

By: _____
Judith Smith

Dated: January __, 2009

By: _____
Bonnie Lewkowicz

Dated: January 7, 2009

HOTELS.COM, ~~INC.~~ L.P.

By: **Redacted**
Its: Executive Vice President, General Counsel and Secretary

Dated: January 7, 2009

EXPEDIA, INC

By: **Redacted**
Its: Executive Vice President, General Counsel and Secretary

Approved as to form:

DISABILITY RIGHTS ADVOCATES
CHAVEZ & GERTLER LLP
PUBLIC JUSTICE, PC

Dated: January __, 2009

By: _____
Sid Wolinsky
Attorneys for Plaintiffs
AXIS DANCE COMPANY, JUDITH
SMITH and BONNIE LEWKOWICZ

Dated: January __, 2009

By: _____
Judith Smith

Dated: January __, 2009

By: _____
Bonnie Lewkowicz

Dated: January __, 2009

HOTELS.COM, INC.

By: _____

Its: _____

Dated: January __, 2009

EXPEDIA, INC

By: _____

Its: _____

Approved as to form:

DISABILITY RIGHTS ADVOCATES
CHAVEZ & GERTLER LLP
PUBLIC JUSTICE, PC

Dated: January 5, 2009

Redacted

By: _____
Sid Wolinsky
Attorneys for Plaintiffs
AXIS DANCE COMPANY, JUDITH
SMITH and BONNIE LEWKOWICZ

WILSON SONSINI GOODRICH & ROSATI

Redacted

Dated: January 8, 2009

By: 

Rodney G. Strickland, Jr.
Attorneys for Defendant
HOTELS.COM L.P. and
EXPEDIA, INC.