

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 18-60282-CIV-DIMITROULEAS

JUAN CARLOS GIL,

Plaintiff,

vs.

BROWARD COUNTY, FLORIDA,

Defendant.

ORDER GRANTING DEFENDANT’S MOTION TO DISMISS COMPLAINT

THIS CAUSE is before the Court on Defendant Broward County (“Defendant” or “Broward”)’s Motion to Dismiss With Prejudice Plaintiff’s Complaint [DE 12] (“Motion”), filed herein on March 5, 2018. The Court has carefully reviewed Plaintiff Juan Carlos Gil (“Plaintiff” or “Gil”)’s Complaint [DE 1], the Motion [DE 12], the Response [DE 19], the Reply [DE 23], and is otherwise fully advised in the premises.

I. Background

Plaintiff Juan Carlos Gil is legally blind. ¶ 15.¹ Defendant Broward County is a local government entity, a body corporate and political subdivision of the State of Florida. ¶ 17. Defendant is a public entity which has provided the website URL www.broward.org (“Website”) as an information portal to Broward County government for the general public (to anyone who accesses the Website). ¶ 3. Defendant provides a service through its online portal at <http://www.broward.org/Commission/Meetings/Pages/AgendasAndMinutes.aspx> (“Portal”) where interested persons are able to view the Broward County government’s legislative history and agenda from the year 2008 to the present. ¶ 21.

¹ Citations to the Complaint [DE 1] are styled as ¶.

Plaintiff brought this suit against Defendant for allegedly violating Title II of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12131-33 and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (“Section 504”) by owning and operating a website inaccessible to persons who are visually impaired. Title II makes it unlawful to discriminate against disabled persons in the full and equal enjoyment of public accommodations.

According to Plaintiff, “[m]uch of the content provided in PDF format within Defendant’s Website is not accessible for persons with screen readers.” ¶ 4. Plaintiff alleges that he is interested in visiting and is considering living in Broward County, and “[t]herefore, in May of 2017, Plaintiff visited Defendant’s Website with the intent of educating himself about the quality of life in Broward County, which can be reflected in the governmental functions and (historical) legislative intent of the Board of Commissioners, as well as to find out about services and accommodations available to visitors and residents of Broward County.” ¶¶ 30, 31. The Complaint seeks declaratory and injunctive relief to make the Website accessible to persons with visual impairments.

Defendant now moves to dismiss the Complaint under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted.

III. Standard of Review

Under Federal Rule of Civil Procedure 8(a)(2), a pleading must contain a “short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). This pleading standard “does not require ‘detailed factual allegations,’ but it demands more than an unadorned, the-defendant-unlawfully-harmed me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). A pleading that asserts mere “labels and conclusions” or “a formulaic recitation of the elements of a cause of

action will not do.” *Twombly*, 550 U.S. at 555. And “on the assumption that all the allegations are true (even if doubtful in fact),” the factual allegations pleaded “must be enough to raise a right to relief above the speculative level.” *Id.* “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at 678.

To survive a motion to dismiss under Rule 12(b)(6), “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.* (quoting *Twombly*, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* This plausibility determination is “a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Id.* at 679. “But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not ‘show[n]’—‘that the pleader is entitled to relief.’” *Id.* (brackets in original) (quoting Fed. R. Civ. P. 8(a)(2)). “The Supreme Court has employed a ‘two-pronged approach’ in applying the foregoing principles: first, a reviewing court should eliminate any allegations in the complaint that are merely legal conclusions; and second, where there are well-pleaded factual allegations, ‘assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.’” *Boyd v. Warden, Holman Correctional Facility*, 856 F.3d 853, 864 (11th Cir. 2017) (quoting *Iqbal*, 556 U.S. at 679).

IV. Discussion

A. Count I is Dismissed Without Prejudice

Defendant is a public entity, so it is subject to Title II of the ADA. According to Title II, “[n]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity,

or be subjected to discrimination by any such entity.”42 U.S.C. § 12132. To “show a violation of Title II, the plaintiff must show disability, the denial of a public benefit, and that such ‘denial of benefits, or discrimination was by reason of the plaintiff’s disability.’” *Kornblau v. Dade Cty.*, 86 F.3d 193, 194 (11th Cir. 1996)(citing *Concerned Parents to Save Dreher Park Ctr. v. City of West Palm Beach*, 846 F.Supp. 986, 990 (S.D. Fla. 1994)).

The Court has set forth the standard applicable to Title III website cases, and the Court finds that analysis instructive in this Title II case. *See Gill v. Performing Arts Center Authority*, case no. 17-61463-civ-WPD (S.D. Fla. Jan. 11, 2018) at p. 4. In *Rendon v. Valleycrest Productions, Ltd.*, the Eleventh Circuit found that a telephone selection process that allegedly screened out disabled contestants from aspiring to compete on a game show was covered by Title III. 294 F.3d 1279 (11th Cir. 2002). In reaching this conclusion, *Rendon* reasoned that the ADA’s plain text “reveals that the definition of discrimination provided in Title III covers both tangible barriers, that is, physical and architectural barriers that would prevent a disabled person from entering an accommodation’s facilities and accessing its goods, services and privileges, and intangible barriers, such as eligibility requirements and screening rules or discriminatory policies and procedures that restrict a disabled person’s ability to enjoy the defendant entity’s goods, services and privileges.” *Id.* at 1283 (citations omitted).

Though *Rendon* concluded that Title III extends to non-physical spaces, it does not establish that a virtual space like a website is necessarily covered, especially when the claimed denial of equal access is altogether unmoored from a physical space. And here, Plaintiff does not adequately allege that his inability to access the Website impedes his access to Defendant’s buildings or facilities. Rather, Plaintiff seems to allege that he was simply denied access to information that exists on the website.

As in an analogous case where the Court dismissed a similar claim of unequal access to a website “Plaintiff’s grievance seems to be that Defendant’s website does not provide a blind person with the same online[] experience as non-disabled persons.” *Bang & Olufsen*, 2017 WL 1957182, at *4. But “the ADA does not require places of public accommodations to create full-service websites for disabled persons. In fact, the ADA does not require a place of public accommodation to have a website at all. All the ADA requires is that, if a retailer chooses to have a website, the website cannot impede a disabled person’s full use and enjoyment of the brick-and-mortar [*sic*] store.” *Id.* As the Court has explained in prior website accessibility cases, the Court is not willing to take the leap to say that all websites that provide information – effectively, all websites – must interface with screen readers, as such a ruling would eviscerate the framework established by district courts within the Eleventh Circuit construing *Rendon*. *See, e.g., Gomez v. La Carreta Ent. Inc.*, case no. 17-61195-civ-WPD (S.D. Fla. Dec. 7, 2017) at p. 7.

Accordingly, in the absence of allegations that Plaintiff’s inability to use the Website impedes his access to Defendant’s physical buildings or facilities, Count I must be dismissed.

B. Count II is Dismissed Without Prejudice

Similarly, Count II is subject to dismissal because Plaintiff’s allegations are insufficient to state a claim under Section 504.

The Rehabilitation Act provides that “[n]o otherwise qualified individual with a disability [] shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 29 U.S.C. § 794(a). The defendant’s duty to provide a reasonable accommodation is activated when the plaintiff makes a “specific demand” for an accommodation. *See Gaston v. Bellingrath Gardens & Home, Inc.*, 167 F.3d 1361, 1363 (11th

Cir. 1999); *see also Iacofano v. Sch. Bd. of Broward Cty., Fla.*, No. 16-CV-60963, 2017 WL 564368, at *5 (S.D. Fla. Feb. 13, 2017) (a claim under the Rehabilitation Act for failure to provide reasonable accommodations requires a plaintiff to first request the accommodation) (citations omitted). However, Plaintiff's allegations do not demonstrate that Broward County ever received a "specific demand" for an accommodation from Plaintiff, requiring dismissal of this claim. *See e.g., Magide v. Broward County, et al.*, case no. 11-62742-civ-WPD (S.D. Fla. May 23, 2012) at pp. 8-9.

V. Conclusion

For the reasons stated, it is **ORDERED AND ADJUDGED** as follows:

1. Defendant's Motion to Dismiss With Prejudice Plaintiff's Complaint [DE 12] is **GRANTED IN PART** as set forth in this Order.
2. Plaintiff's Complaint [DE 1] is **DISMISSED** without prejudice.
3. Plaintiff shall have fourteen (14) days to file an amended complaint consistent with this Order.
4. Defendant's Motion to Strike [DE 25] is **DENIED AS MOOT**.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida,
this 7th day of May, 2018.


WILLIAM P. DIMITROULEAS
United States District Judge

Copies furnished to:
Counsel of Record