

# ACCESSIBILITY OR EXPLOITATION?: A MULTIPERSPECTIVE EXAMINATION OF ADA TITLE III SERIAL LITIGATION IN NEW YORK CITY'S CHINATOWN

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## INTRODUCTION

At a time when anti-Asian violence continues to shake the United States,<sup>1</sup> a quieter battle is being waged on the streets of New York City's Chinatown. Asian-owned small businesses are being sued relentlessly by plaintiffs with disabilities alleging that these businesses violate accessibility regulations set forth by the Americans with Disabilities Act<sup>2</sup> (ADA). The ADA codified the legal rights of people with disabilities but did not ensure that all small businesses—especially those owned by immigrants in historic neighborhoods like Chinatown—would have the resources to comply with the statute. This Essay argues that despite Congress's good intentions to ensure equal access for people with disabilities, Asian-owned businesses in Chinatown are especially vulnerable to serial ADA lawsuits because of the neighborhood's unique cultural and architectural history. It then proposes ways to help these businesses better navigate ADA lawsuits and reduce serial ADA litigation, while also improving ADA compliance in the long term.

## I. THE INTERSECTION OF DISABILITY LAW AND ASIAN AMERICAN HISTORY

This Essay aims to provide a nuanced understanding of the complex intersection of disability rights, accessibility, and Asian American history.

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1. See generally Denny Chin & Kathy Hirata Chin, "*Kung Flu*": *A History of Hostility and Violence Against Asian Americans*, 90 FORDHAM L. REV. 1889 (2022).

2. Pub. L. No. 101-336, 104 Stat. 327 (1990) (codified as amended in scattered sections of 42 and 47 U.S.C.).

Part I.A introduces the ADA and the rights that it gives to individuals with disabilities. Part I.B. provides a brief history of Manhattan's Chinatown.

*A. The Impact of the Americans with Disabilities Act*

“Access is foundational for disability rights, both conceptually and practically.”<sup>3</sup> As of 2022, the Center for Disease Control and Prevention reports that up to one in four adults in the United States live with some type of disability, with the most common type being a mobility disability.<sup>4</sup> Enacted in 1990, the ADA was “an omnibus antidiscrimination statute, modeled after the Civil Rights Act of 1964.”<sup>5</sup> The ADA marked a cultural shift towards recognizing lack of accessibility as discrimination, rather than the “inevitable consequences of the physical or mental limitations imposed by the disability itself.”<sup>6</sup>

The ADA defines disability as a physical or mental impairment that substantially limits a major life activity, such as walking, seeing, hearing, learning, breathing, caring for oneself, or working.<sup>7</sup> Title III of the ADA covers public accommodations and prohibits discrimination based on disability in any public business or service operated by private entities.<sup>8</sup> Places of public accommodation include stores, restaurants, offices, banks, theaters, museums, stadiums, hotels and motels, as well as any sites that are operated privately but open to the public, such as schools, day-care or senior-citizen centers, and recreational establishments.<sup>9</sup> If “readily achievable,” architectural and communications barriers must be removed from existing structures.<sup>10</sup> “Readily achievable” is defined as “easily accomplishable and able to be carried out without much difficulty or expense.”<sup>11</sup> Factors to be considered include the nature and cost of the structural modification, as well as the size, financial means, and type of business.<sup>12</sup>

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3. Doron Dorfman & Mariela Yabo, *The Professionalization of Urban Accessibility*, 47 FORDHAM URB. L.J. 1213, 1217 (2020).

4. *Disability Impacts All of Us*, CTRS. FOR DISEASE CONTROL & PREVENTION (Jan. 5, 2023), <https://www.cdc.gov/ncbddd/disabilityandhealth/infographic-disability-impacts-all.html> [<https://perma.cc/4LGZ-9S53>] (describing a mobility disability as having “serious difficulty walking or climbing stairs”).

5. Dorfman & Yabo, *supra* note 3, at 1223.

6. Arlene Mayerson, *The History of the Americans with Disabilities Act*, DISABILITY RTS. EDUC. & DEF. FUND, <https://dredf.org/about-us/publications/the-history-of-the-ada/> [<https://perma.cc/22CW-3MUG>] (last visited May 1, 2023).

7. 42 U.S.C. § 12102(1)(A)–(C).

8. 42 U.S.C. § 12182; *see also* DORIS ZAMES FLEISCHER & FRIEDA ZAMES, *THE DISABILITY RIGHTS MOVEMENT: FROM CHARITY TO CONFRONTATION* 95–98 (2011).

9. 28 C.F.R. § 36.104 (2021).

10. 42 U.S.C. § 12182(b)(2)(A)(iv).

11. 28 C.F.R. § 36.104.

12. *See id.* The U.S. Court of Appeals for the Second Circuit has held that, when evaluating whether the removal of a barrier is readily achievable, a plaintiff is required to “articulate a plausible proposal for barrier removal, ‘the costs of which, facially, do not clearly exceed its benefits.’ Neither the estimates nor the proposal are required to be exact or detailed . . . either party may include . . . both monetary and non-monetary considerations.”

The most updated Title III regulations can be found in the 2010 ADA Standards for Accessible Design, a comprehensive guide detailing the minimum requirements for government facilities, public accommodations, and commercial facilities to be deemed readily accessible to individuals with disabilities.<sup>13</sup> This guide contains hundreds of requirements, ranging from the height of bar counters and placement of toilet paper in the bathroom, to the maximum height of permissible door handles and minimum width of aisles.<sup>14</sup>

The ADA authorizes a private right of action and a right of action by the Attorney General.<sup>15</sup> In practice, the Department of Justice (DOJ) employs just a “small cadre of lawyers” for ADA enforcement, rendering private litigation necessary for people with disabilities to claim the rights promised by the ADA.<sup>16</sup> Private plaintiffs initiating successful civil actions are entitled to injunctive relief to remedy the ADA violation, as well as attorneys’ fees and costs.<sup>17</sup> Liability may attach to “any person or entity who owns, leases (or leases to), or operates a place of public accommodation.”<sup>18</sup> Enforcement of Title III is “done almost exclusively through private litigation, and only after the construction of the” building is complete rather than at the design stage.<sup>19</sup>

### B. *A Brief History of Manhattan’s Chinatown*

Chinatowns across the United States largely began as “products of extreme forms of racial segregation,” in response to laws and social practices aimed at excluding Asian people from American life.<sup>20</sup> In the 1800s, anti-Chinese

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Roberts v. Royal Atl. Corp., 542 F.3d 363, 373 (2d Cir. 2008) (quoting Borkowski v. Valley Cent. Sch. Dist., 63 F.3d 131, 138 (2d Cir. 1995)).

13. See 2010 ADA Standards for Accessible Design, DEP’T OF JUST. (Sept. 15, 2010), <https://www.ada.gov/regs2010/2010ADASTandards/2010ADASTandards.htm> [<https://perma.cc/WR67-L5A2>].

14. See *id.*

15. 42 U.S.C. § 12188(b). Under Title III, the DOJ must investigate claims and periodically review compliance of covered entities. See *id.* § 12188(b)(1)(A)(i). However, the DOJ generally declines to investigate alleged violations unless there is a pattern of repeat violations. See Helia Garrido Hull, *Vexatious Litigants and the ADA: Strategies to Fairly Address the Need to Improve Access for Individuals with Disabilities*, 26 CORNELL J.L. & PUB. POL’Y 71, 76 (2016).

16. Samuel R. Bagenstos, *The Perversity of Limited Civil Rights Remedies: The Case of “Abusive” ADA Litigation*, 54 UCLA L. REV. 1, 9 (2006).

17. See *id.* The inability of plaintiffs to recover monetary compensation is due to a compromise Congress made at the time of the ADA’s enactment, establishing limited remedies in exchange for an expansive list of commercial entities covered as places of public accommodation. See Doron Dorfman, *Afterword: The ADA’s Imagined Future*, 71 SYRACUSE L. REV. 933, 946 (2021).

18. 42 U.S.C. § 12182(a).

19. Dorfman, *supra* note 17, at 945.

20. Braden Goyette, *How Racism Created America’s Chinatowns*, HUFFPOST (May 22, 2019), [https://www.huffpost.com/entry/american-chinatowns-history\\_n\\_6090692](https://www.huffpost.com/entry/american-chinatowns-history_n_6090692) [<https://perma.cc/UJ86-BW7W>] (noting that in Manhattan’s Chinatown during the late nineteenth century, some Italian immigrants sold buildings to the Chinese when it was difficult to find landlords who would sell to them on other parts of the island).

sentiment spurred Chinese migration from the West Coast to New York City.<sup>21</sup> Manhattan's Chinatown emerged in the 1860s and was comprised mainly of single male Chinese migrants from the Gold Rush in California.<sup>22</sup> Marginalized by society, the Chinese turned to each other for safety and built their own community in the area bounded by Mott, Park, and Doyer Streets in lower Manhattan.<sup>23</sup> By the 1880s, New York City chapters of Chinese family associations and fraternal organizations were rapidly developing.<sup>24</sup> The neighborhood began as a place where low-income Chinese immigrants who did not speak English could stay in overcrowded dormitories and work in restaurants and garment factories.<sup>25</sup> Mott Street was the center of Chinatown and home to boarding houses, family association lodges, grocery stores, herbalists, and restaurants.<sup>26</sup>

Nowadays, anyone who visits Chinatown can see the hustle and bustle of its crowded and narrow streets. The rapid expansion of the New York City Chinese population in the late twentieth century led to more storefronts being split into multiple businesses or mini-malls, resulting in the cramped layout of Chinatown today.<sup>27</sup> Chinatown's spatial concentration allowed newcomers to quickly join ethnic networks, improving job prospects and fostering ethnic solidarity.<sup>28</sup> At the same time, crowded streets and extreme population density stoked racial prejudice and contributed to the stereotype of Chinatown as a "crowded, unsanitary ghetto."<sup>29</sup> Today, Chinatown is home to the densest population of Chinese people in the Western Hemisphere, with more than 150,000 residents living within a two-square-mile area of downtown Manhattan.<sup>30</sup>

Unlike Chinatowns in other major U.S. cities, nearly all of Manhattan's Chinatown is filled with mixed-use buildings rather than separate residential and commercial sections.<sup>31</sup> 94 percent of Chinatown's commercial space consists of small businesses;<sup>32</sup> these commercial spaces populate the

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21. See DANIEL OSTROW & DAVID OSTROW, *MANHATTAN'S CHINATOWN* 9 (2008).

22. See John Mangin, *Ethnic Enclaves and the Zoning Game*, 36 *YALE L. & POL'Y REV.* 419, 448–49 (2018).

23. See *id.*

24. See OSTROW & OSTROW, *supra* note 21, at 9.

25. See Mangin, *supra* note 22, at 449.

26. ERIKA LEE, *THE MAKING OF ASIAN AMERICA: A HISTORY* 79 (2015).

27. See KARMEN CHEUNG, *NEW DEVELOPMENT: FRIEND OR FOE TO CHINATOWN SMALL BUSINESSES?* 61 (2017).

28. See Kartik Naram, *No Place Like Home: Racial Capitalism, Gentrification, and the Identity of Chinatown*, *ASIAN AM. POL'Y REV.* (June 29, 2017), <https://aapr.hkspublications.org/2017/06/29/gentrification/> [<https://perma.cc/GB8E-HNJE>].

29. *Id.*

30. CAAAV ORGANIZING ASIAN CMTYS. & THE CMTY. DEV. PROJECT OF THE URB. JUST. CTR., *CONVERTING CHINATOWN: A SNAPSHOT OF A NEIGHBORHOOD BECOMING UNAFFORDABLE AND UNLIVABLE* 4 (2008).

31. See CHEUNG, *supra* note 27, at 61.

32. See BETHANY Y. LI, ANDREW LEONG, DOMENIC VITIELLO & ARTHUR ACOCA, *CHINATOWN THEN AND NOW: GENTRIFICATION IN BOSTON, NEW YORK, AND PHILADELPHIA* 23 (2013). The predominant commercial use in New York's Chinatown is restaurants. See *id.* at 24.

ground-floor level of many former tenement houses.<sup>33</sup> Chinatown businesses are vulnerable to displacement because they often have little to no control over the space in which they are located—only 7 percent of Chinatown business owners surveyed in 2006 owned their property<sup>34</sup> and the rate is likely even lower now with increasing property values. Many immigrant small business owners have limited English proficiency, making the availability of translated resources vital for reaching the Chinatown small business community.<sup>35</sup>

## II. SERIAL ADA LAWSUITS AGAINST CHINATOWN SMALL BUSINESSES

Although Congress laudably intended to ensure equal access for people with disabilities by enacting the ADA, in reality the DOJ puts very little manpower behind ADA enforcement. As a result, people with disabilities rely on private litigation to increase accessibility, resulting in serial ADA lawsuits. This part explains the anatomy of an ADA lawsuit and uses Chinatown as an example of how many businesses can be impacted by a single serial plaintiff.

### A. Serial Litigation Under ADA Title III

In 2021, there were at least 11,452 ADA Title III lawsuits filed in federal court, a 320 percent increase since 2013.<sup>36</sup> Lawsuits alleging ADA violations tend to be brought by serial plaintiffs and counsel.<sup>37</sup> These lawsuits usually feature the same language in each action, with the only major change being the parties' names, making it a minimal investment of time and resources for plaintiff firms.<sup>38</sup> In addition to ADA violations, plaintiffs often also allege violations of relevant state, county, or city accessibility regulations and ordinances, creating a “great constructional and monetary burden for businesses to negotiate.”<sup>39</sup>

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33. See CHEUNG, *supra* note 27, at 61.

34. See LI ET AL., *supra* note 32, at 4.

35. AHYOUNG KIM, RIMSHA KHAN & HOWARD SHIH, SMALL BUSINESS, BIG LOSSES: THE IMPACT OF THE COVID CRISIS ON ASIAN SMALL BUSINESS IN NEW YORK CITY 11–13 (2021) (finding that 41 percent of Asian small business owners cited lack of translated information as a major obstacle to applying for economic assistance).

36. See Minh Vu, Kristina Launey & Susan Ryan, *ADA Title III Federal Lawsuit Filings Hit an All Time High*, SEYFARTH (Feb. 17, 2022), <https://www.adatitleiii.com/2022/02/ada-title-iii-federal-lawsuit-filings-hit-an-all-time-high/> [<https://perma.cc/72TH-XJ5Q>]. There are also numerous lawsuits asserting ADA Title III violations for website accessibility, but an in-depth analysis of website accessibility claims is beyond the scope of this Essay.

37. See Evelyn Clark, Note, *Enforcement of the Americans with Disabilities Act: Remediating “Abusive” Litigation While Strengthening Disability Rights*, 26 WASH. & LEE J. CIV. RTS. & SOC. JUST. 689, 702–03 (2020) (listing anecdotal examples of ADA litigation brought by repeat attorneys or law firms).

38. See Sarah E. Zehentner, Note, *The Rise of ADA Title III: How Congress and the Department of Justice Can Solve Predatory Litigation*, 86 BROOK. L. REV. 701, 708–09 (2021).

39. Joseph Chandlee, *ADA Regulatory Compliance: How the Americans with Disabilities Act Affects Small Businesses*, 7 J. LAND & DEV. 37, 42 (2017). In New York, ADA lawsuits often also allege violations of the New York City Human Rights Law, New York State Human

Repeat filers emphasize that litigation is the only way to get business owners to take accessibility seriously.<sup>40</sup> Plaintiffs argue that the large number of ADA lawsuits is due to the gap between the scale of discrimination experienced by people with disabilities and the narrowness of the relief offered by the ADA's enforcement mechanisms.<sup>41</sup> The existence of enough violations to support serial litigation—thirty years after the ADA was enacted—signals that compliance with the ADA has not been as widespread as Congress might have expected.<sup>42</sup>

Critics of serial ADA litigation emphasize that the provision allowing attorney's fees for a prevailing plaintiff to be shifted to the defendant<sup>43</sup> encourages more lawsuits because plaintiffs' attorneys then earn a greater aggregate fee.<sup>44</sup> Because of the factual similarity of many ADA claims, drafting a complaint is a relatively straightforward process, allowing plaintiffs' attorneys to efficiently file many lawsuits in a short time.<sup>45</sup> For example, attorney Bradley Weitz has filed dozens of ADA accessibility lawsuits against Chinatown businesses on behalf of one serial plaintiff, Lin Kwok Keung, since 2017.<sup>46</sup>

Furthermore, lawyers filing ADA Title III claims rarely provide pre-suit notice to defendants because doing so would allow alleged violators to “remedy the violation[s], render the case moot, and avoid having to pay attorneys' fees and costs.”<sup>47</sup> The fee structure of the statute and the relative ease with which attorneys can file complaints have led to prolific litigation under Title III of the ADA. According to Wellington Chen, Executive Director of the Chinatown Business Improvement District (BID), uncovering the exact number of Chinatown businesses being sued is difficult “because

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Rights Law, and the Administrative Code of the City of New York, but claims under these laws are beyond the scope of this Essay. *See, e.g.,* *Bebry v. ALJAC LLC*, 954 F. Supp. 2d 173, 175 (E.D.N.Y. 2013) (alleging claims under Title III of the ADA, New York State Civil Rights Law, and New York State Human Rights Law); *Thomas v. Ariel West*, 242 F. Supp. 3d 293, 295 (S.D.N.Y. 2017) (alleging claims under Title III of the ADA, New York State Executive Law § 296, New York State Civil Rights Law § 40, and Administrative Code of the City of New York § 8-107).

40. *See, e.g.,* Lauren Markham, *The Man Who Filed More Than 180 Disability Lawsuits*, N.Y. TIMES MAG. (Aug. 29, 2021), <https://www.nytimes.com/2021/07/21/magazine/americans-with-disabilities-act.html> [<https://perma.cc/9FMV-ZUD6>] (interviewing one plaintiff who filed more than 180 accessibility lawsuits in California who insisted that “asking doesn't work . . . [I] tried again and again, only to go back to a business and see the same barriers in place”).

41. *See* Bailey Howard, Note, *Enforcement, Compliance, and Waiting Periods in Litigation Under the Americans with Disabilities Act*, 17 FLA. ST. U. BUS. REV. 25, 38 (2018).

42. *See id.* “The large number of ADA accessibility cases in the federal courts ultimately reflects the large number of statutory violations and the limited remedies available.” Bagenstos, *supra* note 16, at 25.

43. *See* 42 U.S.C. § 12205.

44. *See* Howard, *supra* note 41, at 41.

45. *See id.* at 42.

46. *See infra* Part II.B.

47. Hull, *supra* note 15, at 78.

owners are usually pressured to sign non-disclosure agreements upon settling.”<sup>48</sup>

Some critics of serial ADA litigation have called these lawsuits “vexatious.”<sup>49</sup> A vexatious lawsuit is one “instituted maliciously and without good grounds, meant to create trouble and expense for the party being sued.”<sup>50</sup> The U.S. Court of Appeals for the Second Circuit considers five factors in determining whether to restrict a vexatious litigant’s access to the judicial system, including “the litigant’s history of litigation and . . . the litigant’s motive in pursuing the litigation, e.g., does the litigant have an objective good faith expectation of prevailing?”<sup>51</sup> For ADA accessibility cases, the issue of whether the plaintiff is vexatious is complex because the lawsuits often involve properties that are genuinely noncompliant.<sup>52</sup> Thus, it is difficult to argue that the plaintiff is vexatious when the underlying claims are likely meritorious.<sup>53</sup> In fact, courts have recognized that individually, the fact that a plaintiff has filed numerous complaints or that the complaints are factually similar does not necessarily warrant designating a litigant as vexatious.<sup>54</sup>

To establish an ADA claim in federal court in New York, the plaintiff must prove that they are disabled according to the definition provided in the ADA; that the defendants own, lease, or operate a place of public accommodation; and that the defendants discriminated against the plaintiff by denying them a full and equal opportunity to enjoy the services that they provide.<sup>55</sup> In the Second Circuit, “[p]laintiffs can establish discrimination by showing violations of the accessibility guidelines set forth in the ADA [Accessibility Guidelines].”<sup>56</sup> Because an ADA claim has only a few elements, defendants would theoretically have a difficult time dismissing the complaint, as plaintiffs can easily allege “sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’”<sup>57</sup>

Given these challenges, the small business defendants must ask themselves a key question: what is a win for them? Any defendant immediately wants to know how much the case is going to cost; for ADA lawsuits specifically,

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48. Sydney Pereira, *Lawsuits Target Chinatown Biz Owners Confused by Disability Rules*, PATCH (Jul. 30, 2019, 1:20 PM), <https://patch.com/new-york/lower-east-side-chinatown/making-businesses-accessible-starts-education-groups-say> [<https://perma.cc/C2VW-75MF>].

49. *See, e.g.*, Hull, *supra* note 15, at 86.

50. *Vexatious Suit*, BLACK’S LAW DICTIONARY (11th ed. 2019).

51. *Iwachiw v. N.Y.S. Dep’t of Motor Vehicles*, 396 F.3d 525, 528 (2d Cir. 2005).

52. *See* Leslie Lee, Note, *Giving Disabled Testers Access to Federal Courts: Why Standing Doctrine Is Not the Right Solution to Abusive ADA Litigation*, 19 VA. J. SOC. POL’Y & L. 319, 344 (2011).

53. *See* Hull, *supra* note 15, at 95.

54. *See id.* at 78.

55. *Camarillo v. Carrols Corp.*, 518 F.3d 153, 156 (2d Cir. 2008).

56. *Cox v. Anjin LLC*, No. 19 Civ. 4315, 2020 WL 5027864, at \*6 (S.D.N.Y. July 24, 2020) (citing *Rosa v. 600 Broadway Partners, LLC*, 175 F. Supp. 3d 191, 199 (S.D.N.Y. 2016)), *report and recommendation adopted*, 2020 WL 5018255 (S.D.N.Y. Aug. 25, 2020).

57. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

the defendant will likely be responsible for the plaintiff's attorneys' fees and costs as well, because the architectural barrier is certain in most cases.<sup>58</sup> Accordingly, even if victory is likely, should they risk incurring substantial costs to defend the lawsuit? A successful defendant still must pay their attorney; such costs can be substantial if an initial motion to dismiss fails and the case proceeds to discovery. On the other hand, settling a case or admitting an allegation may have long-term consequences by opening the door to similar allegations in the future.<sup>59</sup>

*B. Lin Kwok Keung, a Chinatown Case Study*

Lin Kwok Keung<sup>60</sup> lives on Roosevelt Island, New York, “suffer[s] from what constitutes a ‘qualified disability’ under the Americans With Disability Act of 1990, and uses a wheelchair for mobility.”<sup>61</sup> Since 2015, he has filed fifty-two lawsuits against small businesses in New York City, most of them in Chinatown.<sup>62</sup>

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58. See Matthew Dietz, *How Can the State of Florida Improve Accessibility for Persons with Disabilities and Benefit the Business Community?*, 15 FLA. COASTAL L. REV. 277, 305 (2014).

59. See Howard, *supra* note 41, at 48–49 (noting that yielding to what defendants view as extortion may only expose them to future litigation, especially if they do not actually fix any of the ADA violations).

60. Lin Kwok Keung's identity has been particularly difficult for this author to verify. The civil cover sheets in his ADA lawsuits list his name and address (4 River Road, Apt. 5F, Roosevelt Island, NY 10044). However, a search for his name or his address both turn up zero results in PeopleLooker, a public-record search engine. The author also ventured to Roosevelt Island to his apartment, where the security guard was unable to find Lin Kwok Keung in the tenant directory. No one answered the doorbell. A search for Apt. 5F in the tenant directory came up as “undefined,” which “probably means no one lives there,” according to the security guard. An email to Bradley Weitz, Mr. Lin's attorney, a self-proclaimed disability rights lawyer based in Florida, went unanswered. For now, Lin Kwok Keung's whereabouts remain a mystery.

61. Complaint at 2, *Keung v. Lucky Foot Spa Inc.*, No. 21-06687 (S.D.N.Y. Aug. 9, 2021).

62. Mr. Lin's attorney specializes in ADA lawsuits; in fact, Judge Valerie Caproni has noted that he is a “frequent filer in [the U.S. District Court for the Southern District of New York] . . . with a law practice that focuses on high volume, low effort, cookie cutter cases.” *Velasquez v. Eastgate Whitehouse LLC*, No. 21-CV-2949, 2021 WL 4909975, at \*1 (S.D.N.Y. Oct. 20, 2021).



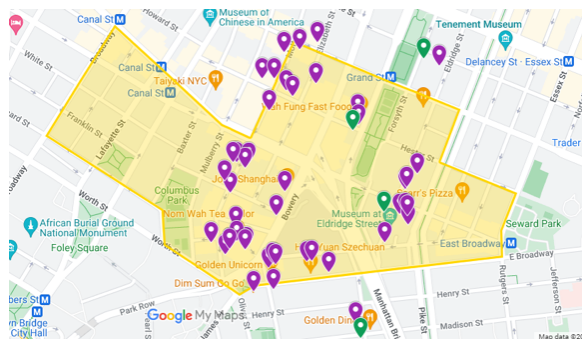


Figure 1. A map showing ADA Title III lawsuits filed by Lin Kwok Keung—purple spots are closed cases; green spots are cases that remain open as of March 23, 2023. The yellow area shows the approximate boundaries of Chinatown.<sup>63</sup>



Figure 2. Lin Kwok Keung sued Big Wong Restaurant in August 2015 and settled the case in October 2017. The complaint alleged ADA violations including a step at the entrance without an ADA compliant ramp or wheelchair lift, a restroom accessible only by stairs on the lower level, and items in the restroom installed at inaccessible heights.<sup>64</sup> As of February 27, 2023, the step preventing wheelchair access to the restaurant remains unchanged.

63. An interactive version of this map can be found here: *Chinatown ADA Lawsuits Interactive Map*, GOOGLE MAPS (Mar. 25, 2023), <https://www.google.com/maps/d/u/0/edit?mid=1DESFrH6TnJSiCuoUoyO-17u7aVXNno18&usp=sharing> [<https://perma.cc/U3N5-9VZL>].

64. See Complaint at 6–8, *Keung v. Big Wong Chinatown Inc.*, No. 15-06158 (S.D.N.Y. May 31, 2016).



Figure 3. Lin Kwok Keung sued ABC Pharmacy in August 2021 and settled the case in October 2022. The complaint alleged ADA violations including multiple steps at the entrance without an ADA compliant ramp or wheelchair lift, and merchandise located at inaccessible heights and reach ranges.<sup>65</sup> As of February 27, 2023, the steps at the entrance and merchandise heights remain unchanged.

The defendants in Lin Kwok Keung's cases are mostly restaurants but also include grocery stores, pharmacies, and spas. William Ng, Immediate Past President of the Asian American Bar Association of New York (AABANY), has spoken to several Chinatown defendants and business owners as part of AABANY's work to help educate Asian-owned small businesses involved in ADA lawsuits.<sup>66</sup> In Mr. Ng's experience, many of these small business owners are unfamiliar with the legal system and have never been sued or involved in any type of lawsuit.<sup>67</sup> Moreover, the small business owners often do not have access to qualified, culturally competent, bilingual attorneys to represent them in these ADA lawsuits.<sup>68</sup> Unfortunately, these small Chinatown business owners—whose businesses barely survived the COVID-19 pandemic—simply lack the financial resources to retain competent representation and defend against these ADA lawsuits.<sup>69</sup> Indeed, even if a defendant wanted to resolve or settle an ADA lawsuit, the monetary and nonmonetary terms are often extremely burdensome for small businesses

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65. *See* Complaint at 6–7, Keung v. ABC Pharmacy Corp., No. 21-06605 (S.D.N.Y. Feb. 4, 2022).

66. *See* Telephone Interview with William Ng, Immediate Past President, Asian Am. Bar Ass'n of N.Y. (Apr. 18, 2022).

67. *See id.*

68. *See id.*

69. *See id.*

because they need to pay for the settlement, their attorney's fees, and the costs to rectify any purported ADA violations.<sup>70</sup>

### III. POTENTIAL SOLUTIONS

Both short-term and long-term problems are vexing the small businesses of Chinatown. First, there is the immediate issue for businesses that have already been sued: how can they navigate the ADA lawsuit and make smart financial decisions to protect their businesses? In the long term, there is the larger question of how to reduce the number of serial ADA lawsuits without sacrificing accessibility compliance moving forward. The following proposals collectively serve to address both issues.

#### *A. Educational and Financial Resources for Small Businesses on ADA Compliance*

There is a clear lack of information on ADA compliance in languages understood by Chinatown small business owners. The Asian American Federation has called for the government to give small business owners equal access to government assistance programs, including mandating that documents be made available in multiple languages and increasing funding for community-based organizations to conduct outreach.<sup>71</sup> In the context of ADA lawsuits, many Chinatown businesses would benefit from translations of the 2010 ADA Standards for Accessible Design into various Asian languages, especially Chinese.

Additionally, business associations like the Chinatown BID can help spread the word about tax breaks available to incentivize small businesses to undertake barrier removal and alterations to improve accessibility. For example, the IRS offers a tax credit to businesses that have total revenues of \$1 million or less in the previous tax year, or thirty or fewer full-time employees, which can cover 50 percent of the eligible access expenditures in a year up to \$10,250.<sup>72</sup> Businesses of any size may take a business expense deduction of up to \$15,000 per year for barrier removal costs in facilities, or for vehicles for elderly customers or customers with disabilities.<sup>73</sup> Together, the Chinatown BID and legal organizations such as the Asian American Legal Defense and Education Fund (AALDEF) and the AABANY are well-equipped to educate Chinatown small businesses on their ADA obligations.<sup>74</sup>

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70. *See id.*

71. *See* KIM ET AL., *supra* note 35, at 20.

72. *See IRS Tax Credits and Dedications*, DEP'T OF JUST., <https://www.ada.gov/taxcred.htm> [<https://perma.cc/9LHB-7EMA>] (last visited May 1, 2023).

73. *See Disabled Access Credit and Additional Tax Deduction for Barrier Removal Costs for the Disabled or Elderly*, NYC BUS., <https://www1.nyc.gov/nycbusiness/description/disabled-access-credit> [<https://perma.cc/T6WJ-D7DJ>] (last visited May 1, 2023).

74. In fact, AABANY has already been working with disability rights advocates and Chinatown small businesses to help defendants navigate ADA lawsuits. *See* Press Release, Asian Am. Bar Ass'n of N.Y., The Asian American Bar Association of New York Announces the Creation of Dedicated Team to Address Lawsuits Under the Americans with Disabilities

### B. Creating an Accessibility Enforcement Agency

A state- or city-level agency should be created to enforce accessibility standards, similar to how the NYC Health Department inspects restaurants to check whether they are complying with food-safety rules. This idea is not completely new within disability law: Professor Doron Dorfman has called for a “more centralized model” involving state commissions that would employ accessibility professionals to ensure compliance and file complaints themselves.<sup>75</sup> For example, Chicago takes an especially active role in enforcing accessibility standards, employing accessibility experts to review every application for new buildings or renovation permits to ensure compliance before any construction begins.<sup>76</sup> A local accessibility enforcement agency would dethrone private litigation as “the primary vehicle for vindicating access rights” and might also “reduce the existing stigma against private litigants.”<sup>77</sup> An accessibility agency could also be tasked with verifying that private actions actually result in changes that increase accessibility once a plaintiff reaches a judgment on the merits, secures a court-ordered consent decree, or comes to a settlement agreement. In New York, such an agency could either work alongside or under the Mayor’s Office for People with Disabilities (MOPD).<sup>78</sup>

### C. Amending the ADA or State-Level Regulations

In 2017, Senator Ted Poe of Texas introduced the ADA Education and Reform Act,<sup>79</sup> which proposed that when people with disabilities are denied access to a place of public accommodation in violation of the ADA, they shall not file a lawsuit unless they first provide “a written notice specific enough to allow [the] owner or operator to identify the barrier.”<sup>80</sup> The written notice must “specify in detail the circumstances under which an individual was actually denied access to a public accommodation, including the address of property, whether a request for assistance . . . was made, and whether the barrier to access was a permanent or temporary barrier.”<sup>81</sup> Supporters of the bill included consistent targets of such lawsuits and their trade associations.<sup>82</sup> Many politicians and disability rights advocates

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Act, Sept. 27, 2021, [https://cdn.ymaws.com/www.aabany.org/resource/resmgr/press\\_releases/2021/PR\\_091721\\_AABANY\\_lrs\\_ADA\\_frm.pdf](https://cdn.ymaws.com/www.aabany.org/resource/resmgr/press_releases/2021/PR_091721_AABANY_lrs_ADA_frm.pdf) [<https://perma.cc/HB73-5QPU>].

75. Dorfman, *supra* note 17, at 948–49.

76. *See* Dorfman & Yabo, *supra* note 3, at 1246. Potential plaintiffs may sue the city in an accessibility claim if the city issued a permit to a noncompliant site. *See id.*

77. Dorfman, *supra* note 17, at 949.

78. *See What We Do*, NYC MAYOR’S OFF. FOR PEOPLE WITH DISABILITIES, <https://www1.nyc.gov/site/mopd/about/about.page> [<https://perma.cc/8CFR-MWR8>] (last visited May 1, 2023). Normally, the NYC MOPD helps other city offices and agencies improve their services for people with disabilities. *See id.*

79. H.R. 620, 115th Cong. (2017).

80. *Id.* § 3.

81. *Id.* § 3(1)(C).

82. *See* R. Cameron Saenz, Comment, *Enforcing the ADA and Stopping Serial Litigants: How the Commercial Real Estate Industry Can Play This Key Role*, 6 TEX. A&M J. PROP. L.

protested the bill, arguing that it would force individuals with disabilities to bear the burden of identifying accessibility barriers, a task that should belong to business owners.<sup>83</sup>

Although such an amendment to the ADA might provide some relief to defendants, Chinatown small business owners cannot count on Congress to change the law and should instead pressure their local legislators to amend state- or city-level law. Some scholars have called for ADA compliance to be implemented at the time commercial properties are developed or transacted.<sup>84</sup> For example, California recently amended its landlord-tenant law for commercial properties, requiring a lessor to provide the tenant with notice of whether the commercial property has been inspected by a state-certified ADA expert.<sup>85</sup> Currently, New York City does not actively enforce accessibility standards for private projects during approval or design stages, but does invite developers and architects to consult the city's accessibility professionals on their plans.<sup>86</sup>

#### CONCLUSION

Chinatown is one of the last neighborhoods in lower Manhattan that has not fully succumbed to gentrification and still has “the spirit of old New York, . . . [a] port culture of people coming on, coming off ships, and intermingling with people of different backgrounds.”<sup>87</sup> Chinatown has thrived as a community despite numerous challenges, from mob violence in the 1800s, to the aftermath of 9/11, to the current COVID-19 pandemic. Small businesses are the lifeblood of the Chinatown community, but we must also recognize that people with disabilities, including serial plaintiffs, are not the enemy. Even though serial ADA plaintiffs are stigmatized in the media, the reality is they have brought positive changes to the neighborhood: for example, Nom Wah Tea Parlor settled its ADA lawsuit in 2019 and now has a bell at its entrance for patrons needing wheelchair assistance. The ADA's private right of action is not perfect, but with the right solutions, it can help both Asian-owned small businesses and the community of people with disabilities.

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171, 183–84 (2020) (noting support of the bill from the International Council of Shopping Centers, National Retail Federation, and National Grocers Association).

83. See Lorrie Rendle, Comment, *Opposing Additional Barriers to a Barrier-Free World: The Case Against Pre-Litigation Notification Under Title III of the Americans with Disabilities Act*, 50 U. TOL. L. REV. 135, 137–38 (2018).

84. See Saenz, *supra* note 82, at 191 (proposing that real estate buyers and sellers should be required to go through an ADA compliance check of the property, which would theoretically lead to noncompliance decreasing over time and supplement property owners' understanding of their ADA responsibilities).

85. See *id.* at 192.

86. See *id.*

87. Nick Tabor, *How Has Chinatown Stayed Chinatown?*, N.Y. MAG. (Sept. 24, 2015), <https://nymag.com/intelligencer/2015/09/how-has-chinatown-stayed-chinatown.html> [<https://perma.cc/Z8WM-NEG4>] (quoting Jack Tchen, co-founder of the Museum of Chinese in America, on Chinatown's unwavering resemblance to nineteenth-century New York).



Figures 4 and 5. Nom Wah Tea Parlor settled its ADA lawsuit in 2019. Even though the step remains at its entrance, there is now a bell that patrons can ring for wheelchair assistance.