

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

NATIONAL ASSOCIATION OF THE
DEAF on behalf of itself and its members,
REBECCA ALEXANDER, JAZMINE
JONES, AMBER MARTIN, JAMES
MUNRO, and MEI NISHIMOTO,

Plaintiffs,

-against-

SIRIUSXM HOLDINGS INC., STITCHER
MEDIA INC., and PANDORA MEDIA
LLC,

Defendants.

No. 1:21-cv-10542-JPO

ANSWER OF DEFENDANTS

SIRIUS XM HOLDINGS INC., STITCHER MEDIA LLC and PANDORA MEDIA, LLC

Sirius XM Holdings Inc. (“SiriusXM”), Stitcher Media LLC (“Stitcher”) and Pandora Media, LLC (“Pandora”) (together, “Defendants”) answer the Complaint of Plaintiffs National Association of the Deaf (“NAD”), Rebecca Alexander, Jazmine Jones, Amber Martin, James Munro, and Mei Nishimoto (together, “Plaintiffs”) as follows:

PRELIMINARY STATEMENT

The most polite description of Plaintiffs’ filing of their Complaint is unnecessary. Defendants fully support improving the usability of podcasts for all individuals, including of course the deaf and hard of hearing. Plaintiffs know this from their communications with Defendants. Yet Plaintiffs continue this public assault as a cudgel to tarnish responsible companies that are working diligently to address the reasonable accessibility needs of the deaf and hard of hearing as it relates to podcasts, a relatively new and emerging form of audio entertainment.

Plaintiffs' Complaint uses a blunt "one size fits all" approach to podcast accessibility that ignores that Defendants neither own nor control most of the podcasts at issue and that, as a result, Defendants have no responsibility under applicable law for such podcasts. Plaintiffs' grievances are misplaced and completely unreasonable even with respect to the limited podcasts created by Defendants.

For example, Plaintiffs seek to force Defendants to provide transcripts for every one of the podcasts featured on their platforms, even though Defendants create, own and control only a fraction of the podcasts made available on their respective platforms. As to a vast majority of the podcasts featured on their platforms, Defendants merely provide an interactive computer service to facilitate distribution of these third party podcasts to the public. Defendants are not the publisher or speaker of these third party podcasts pursuant to section 302 of the Communications Decency Act of 1996, 47 U.S.C. § 230 ("CDA"), and Plaintiffs' claims with respect to third party podcasts, which seek to hold Defendants liable for the alleged failure to exercise "a publisher's traditional editorial functions — such as deciding whether to publish, withdraw, postpone or alter content — are barred." *Nat'l Ass'n of the Deaf v. Harvard Univ.*, 377 F. Supp. 49, 64 (D. Mass. 2019).

Defendants violated no applicable laws with respect to podcasts created and owned by others. Nonetheless, *as Plaintiffs know because we have told them*, Defendants remain willing to assist the Plaintiffs to improve third party podcast accessibility by, for example, identifying the owners and creators of these podcasts, so that the NAD can notify them of its views regarding podcast accessibility under the applicable provisions of the Americans with Disabilities Act, the New York State Human Rights Law, and the New York City Human Rights Law.

As for the relatively few podcasts Defendants own, control and distribute, *as Plaintiffs know because we have told them*, Defendants have been working diligently to identify and select the technology to implement closed captioning to help the deaf and hard of hearing. There is no case or controversy with respect to these podcasts that are owned, controlled and distributed by Defendants, and the Plaintiffs' persistence in pursuing this action is, simply put, a public relations campaign.

INTRODUCTION

1. Defendants admit that they offer podcast streaming services on their respective platforms on a wide range of subjects. Except as expressly admitted, Defendants deny each and every allegation contained in Paragraph 1.

2. To the extent the allegations in Paragraph 2 purport to summarize or state the contents of a website, podcast or other written material, which will speak for themselves, Defendants deny any characterization of such material inconsistent with its content. Defendants admit that Sirius XM acquired Pandora and the assets that comprise Stitcher, that each company's respective platforms offer podcasts and that such content includes the shows mentioned in this allegation. Except as expressly admitted, Defendants deny each and every allegation in Paragraph 2 of the Complaint.

3. To the extent the allegations in Paragraph 3 purport to summarize or state the contents of a website, podcast or other written material, which will speak for themselves, Defendants deny any characterization of such material inconsistent with its content. Defendant Stitcher admits that Stitcher offers the podcasts mentioned in this allegation. Defendants lack knowledge or information sufficient to form a belief as to the accuracy of reports or podcast

network rankings compiled by Triton Digital or any other third party. Except as expressly admitted, Defendants deny each and every allegation in Paragraph 3 of the Complaint.

4. To the extent the allegations in Paragraph 4 purport to summarize or state the contents of a website, podcast or other written material, which will speak for themselves, Defendants deny any characterization of such material inconsistent with its content. Defendant Pandora admits that it launched its podcast platform in 2018, that as of 2021 its audio streaming service had tens of millions of monthly active users, and that its podcast platform includes those mentioned in this allegation. Except as expressly admitted, Defendants deny each and every allegation in Paragraph 4 of the Complaint.

5. Defendants admit that their podcast platforms provide access to third-party content (including the shows mentioned in this allegation) and, further, aver that Defendants are not the publisher or speaker of these third-party podcasts pursuant to section 302 of the CDA and that Plaintiffs' claims with respect to third-party podcasts are therefore barred. Defendants lack knowledge or information sufficient to form a belief as to the accuracy of Paragraph 5's allegations regarding the number of total downloads or increase in frequency of downloads of such third-party podcasts, which are available across numerous podcast streaming platforms beyond those provided by Defendants. Except as expressly admitted, Defendants deny each and every allegation in Paragraph 5 of the Complaint.

6. Defendants admit that their podcast platforms combine exclusive content, original content, and/or third-party content. Except as expressly admitted, Defendants deny each and every allegation in Paragraph 6 of the Complaint.

7. Defendants deny the allegations in Paragraph 7 of the Complaint.

8. Defendants deny the allegations in Paragraph 8 of the Complaint.

9. Defendants admit that the parties had settlement communications and otherwise deny the allegations in Paragraph 9 of the Complaint.

10. Defendants deny the allegations in Paragraph 10 of the Complaint.

JURISDICTION AND VENUE

11. Defendants aver that the allegations of Paragraph 11 contain argument and legal conclusions that do not require an answer. Unless expressly admitted, Defendants deny each and every allegation in Paragraph 11 of the Complaint.

12. Defendants aver that the allegations of Paragraph 12 contain argument and legal conclusions that do not require an answer. Unless expressly admitted, Defendants deny each and every allegation in Paragraph 12 of the Complaint.

13. Defendants aver that the allegations of Paragraph 13 contain argument and legal conclusions that do not require an answer. Unless expressly admitted, Defendants deny each and every allegation in Paragraph 13 of the Complaint.

14. Defendants lack knowledge or information sufficient to form a belief as to whether a copy of the Complaint was served on the New York City Commission for Human Rights or the Office of the Corporation Counsel of the City of New York. Defendants further aver that Paragraph 14 contains argument and legal conclusions that do not require an answer. Unless expressly admitted, Defendants deny each and every allegation in Paragraph 14 of the Complaint.

15. Defendants admit only that they operate an internet-based audio and streaming business in this District. Defendants aver that the allegations of Paragraph 15 contain argument and legal conclusions that do not require an answer. Unless expressly admitted, Defendants deny each and every allegation in Paragraph 15 of the Complaint.

PARTIES

16. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16 of the Complaint.

17. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 17 of the Complaint.

18. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 18 of the Complaint.

19. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 19 of the Complaint.

20. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 20 of the Complaint.

21. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 21 of the Complaint.

22. Defendant SiriusXM admits the allegations in Paragraph 22 of the Complaint, although it notes that its legal name is Sirius XM Holdings Inc.

23. Defendant Stitcher denies that it has its headquarters in New York, New York, and admits the balance of the allegations in Paragraph 23 of the Complaint, although it notes that its legal name is Stitcher Media LLC.

24. Defendant Pandora admits the allegations in Paragraph 24 of the Complaint, although it notes that its legal name is Pandora Media, LLC.

FACTUAL ALLEGATIONS

I. Answer To Allegations Under “Defendants Each Provide Podcast Streaming Services to Hearing Individuals but Exclude Deaf and Hard-of-Hearing Individuals”

25. Defendants admit that podcasts are a form of audio entertainment that offer consumers access to content on a variety of subjects. Unless expressly admitted, Defendants deny each and every allegation in Paragraph 25 of the Complaint.

26. Defendants deny the allegations in Paragraph 26 of the Complaint.

27. Defendants admit that they offer applications that allow consumers to subscribe and listen to podcasts, as well as to download podcasts for offline use. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in Paragraph 27 of the Complaint.

28. Defendants admit the allegations in Paragraph 28 of the Complaint.

29. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 29 of the Complaint.

30. Defendants deny the allegations in Paragraph 30 of the Complaint.

a. Answer to Allegations Under “Sirius XM”

31. To the extent the allegations in Paragraph 31 purport to summarize or state the contents of a website or other written material, which will speak for themselves, Defendants deny any characterization of such material inconsistent with its content.

32. Defendants admit that users who create an account and become a subscriber to SiriusXM’s service may access podcasts in its library of podcasts via a website or a mobile application. Except as expressly admitted, Defendants deny each and every allegation in Paragraph 32 of the Complaint.

33. Defendants deny each and every allegation in Paragraph 33 of the Complaint.

34. Defendants admit that Sirius XM acquired Pandora, although it notes the acquisition was in 2019, and except as admitted, deny the remaining allegations in Paragraph 34 of the Complaint.

35. Defendants admit the allegations in Paragraph 35 of the Complaint.

36. Defendants admit that Sirius XM acquired Simplecast in June 2020 and, except as admitted, deny the remaining allegations in Paragraph 36 of the Complaint.

37. Defendants admit that SiriusXM's podcast service offers, among other things, podcasts from third-party creators as well as exclusive SiriusXM content not available via other podcast services or applications, including the podcasts named in this allegation. To the extent that Paragraph 37 purports to summarize or state the contents of a website or other written material, which will speak for themselves, Defendants deny any characterization inconsistent with its content. Except as expressly admitted, Defendants deny each and every allegation in Paragraph 37 of the Complaint.

38. Defendant SiriusXM admits that its podcast library includes various podcasts (including those named in this allegation), content compiled from SiriusXM's radio services, and third-party podcast content. Except as expressly admitted, Defendants deny each and every allegation in Paragraph 38 of the Complaint.

39. Defendant SiriusXM admits that it offers users various services. To the extent the allegations in Paragraph 39 purport to summarize or state the contents of a website or other written material, which will speak for themselves, Defendants deny any characterization of such material inconsistent with its content. Except as expressly admitted, Defendants deny each and every allegation in Paragraph 39 of the Complaint.

40. Defendant SiriusXM denies the allegations in Paragraph 40 of the Complaint.

b. Answer to Allegations Under “Stitcher”

41. Defendant Stitcher lacks knowledge or information sufficient to form a belief as to Triton Digital’s rankings of podcast publishers. Defendant Stitcher admits that Stitcher’s podcast library includes those named in this allegation. Except as expressly admitted, Defendants deny each and every allegation in Paragraph 41 of the Complaint.

42. Defendant Stitcher admits that users may access Stitcher’s podcast library by visiting its website or using its mobile application, and that users have the option of obtaining a subscription with Stitcher. Except as expressly admitted, Defendants deny each and every allegation in Paragraph 42 of the Complaint.

43. Defendant Stitcher admits that its podcast library includes original podcast content and third-party podcast content, including the titles mentioned in this allegation. Except as expressly admitted, Defendants deny each and every allegation in Paragraph 43 of the Complaint.

44. Defendant Stitcher admits that it offers users various services, including allowing users to control the play speed of podcasts, rewind podcasts, search for podcasts, and create playlists of podcasts. Except as expressly admitted, Defendants deny each and every allegation in Paragraph 44 of the Complaint.

45. Defendant Stitcher admits that there are transcripts available for some but not all podcasts. Except as expressly admitted, Defendants deny each and every allegation in Paragraph 45 of the Complaint.

c. Answer to Allegations Under “Pandora”

46. To the extent the allegations in Paragraph 46 purport to summarize Pandora’s business or services to users, Defendants deny any such characterization but admit that Pandora is a leading platform for various audio entertainment.

47. Defendant Pandora admits that it offers unique entertainment to its users but otherwise denies the allegations in Paragraph 47.

48. Defendants lack knowledge or information sufficient to form a belief as to the contents of a non-specific reference to a “2020 study” or the truth of any of the statements made therein.

49. Defendant Pandora admits the allegations in Paragraph 49 of the Complaint.

50. Defendant Pandora admits that its podcast library includes original podcast content and third-party podcast content, including the titles mentioned in this allegation. Except as expressly admitted, Defendants deny each and every allegation in Paragraph 50 of the Complaint.

51. Defendant Pandora admits that it offers users various services, including that its podcast streaming service recommends podcasts to users, gives users the ability to “thumbs up” or “thumbs down” a podcast episode, and that users are able to access podcasts from the Pandora podcast library on Alexa-enabled devices. Except as expressly admitted, Defendants deny each and every allegation in Paragraph 51 of the Complaint.

52. Defendants deny the allegations in Paragraph 52 of the Complaint.

II. Answer To Allegations Under “Plaintiffs’ Allegations”

a. Answer to Allegations Under “NAD”

53. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 53 of the Complaint.

54. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 54 of the Complaint.

55. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 55 of the Complaint.

56. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 56 of the Complaint.

57. Defendants lack knowledge or information sufficient to form a belief as to the practices of the organizational and individual plaintiffs in this action. Defendants further aver that Paragraph 57 contains argument and legal conclusions that do not require an answer. Except as expressly admitted, Defendants deny the allegations in Paragraph 57 of the Complaint.

b. Answer to Allegations Under “Rebecca Alexander”

58. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 58 of the Complaint.

59. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 59 of the Complaint.

60. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 60 of the Complaint.

61. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 61 of the Complaint.

62. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 62 of the Complaint.

63. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 63 of the Complaint.

64. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in the first two sentences of Paragraph 64. Defendants deny the remaining allegations in Paragraph 64 of the Complaint.

c. Answer to Allegations Under "Jazmine Jones"

65. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 65 of the Complaint.

66. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 66 of the Complaint.

67. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in the first two sentences of Paragraph 67. Defendants deny the remaining allegations in Paragraph 67 of the Complaint.

d. Answer to Allegations Under "Amber Martin"

68. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 68 of the Complaint.

69. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in the first three sentences of Paragraph 69. Defendants deny the remaining allegations in Paragraph 69 of the Complaint.

70. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 70. Defendants deny the remaining allegations in Paragraph 70 of the Complaint.

71. Defendants deny the allegations in Paragraph 71 of the Complaint.

72. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 72 of the Complaint.

73. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 73 of the Complaint.

74. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations regarding how Dr. Martin would like to manage her podcasts and whether or how independent third-parties *RadioLab* and *This American Life* provide transcripts for their podcasts. Defendants deny the remaining allegations in Paragraph 74 of the Complaint.

e. Answer to Allegations Under "James Munro"

75. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 75 of the Complaint.

76. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 76 of the Complaint.

77. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 77 of the Complaint.

78. Defendants lack knowledge or information sufficient to form a belief as to the whether or how transcripts for *Revisionist History* or *Freakonomics* are available. Defendants deny the remaining allegations in Paragraph 78 of the Complaint.

79. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 79. Defendants deny the remaining allegations in Paragraph 79 of the Complaint.

80. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations regarding Mr. Munro in the first, second, fourth, and fifth sentences of Paragraph 80. Defendants deny the remaining allegations in Paragraph 80 the Complaint.

f. Answer to Allegations Under “Mei Nishimoto”

81. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 81 of the Complaint.

82. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 82 of the Complaint.

83. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 83 of the Complaint.

84. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in the first two sentences of Paragraph 84 and whether or how Slate or NPR provide transcripts for their podcasts. Defendants deny the remaining allegations in Paragraph 84 of the Complaint.

85. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in the first three sentences of Paragraph 85. Defendants deny the remaining allegations in Paragraph 85 of the Complaint.

86. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in the first, second, and fourth sentences of Paragraph 86. Defendants deny the remaining allegations in Paragraph 86 of the Complaint.

III. Answer To Allegations Under “The Technology Exists and Standards Require Defendants to Make Podcasts Accessible to People who are Deaf or Hard of Hearing”

87. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 87 of the Complaint.

88. To the extent that any of the allegations in Paragraph 88 purport to summarize or state the contents of the World Wide Web Consortium’s (“W3C”) Web Content Accessibility Guidelines (“WCAG”) 2.1, which speak for themselves, Defendants deny any characterization of such material inconsistent with its content. Defendants admit that WCAG 2.1 provides a private, non-binding standard for making web content accessible. Unless expressly admitted, Defendants deny each and every allegation contained in Paragraph 88 of the Complaint.

89. To the extent that any of the allegations in Paragraph 89 purport to summarize or state the contents of the WCAG 2.1 Guideline 1.2.2, which speaks for itself, Defendants deny any characterization of such material inconsistent with its content. Unless expressly admitted, Defendants deny each and every allegation contained in Paragraph 89 of the Complaint.

90. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 90 of the Complaint.

91. Defendants deny the allegations in Paragraph 91 of the Complaint.

92. Defendants aver that the allegations in Paragraph 92 contain argument and legal conclusions that require no answer. To the extent any of the allegations in Paragraph 92 purport to summarize or state the contents of any law, case, statute, or regulation, which speak for themselves, Defendants deny any characterization of such material inconsistent with its content. Unless expressly admitted, Defendants deny each and every allegation contained in Paragraph 92 of the Complaint.

93. Defendants aver that the allegations in Paragraph 93 contain argument and legal conclusions that require no answer. To the extent any of the allegations in Paragraph 93 purport to summarize or state the contents of any law, case, statute, or regulation, which speak for themselves, Defendants deny any characterization of such material inconsistent with its content. Unless expressly admitted, Defendants deny each and every allegation contained in Paragraph 93 of the Complaint.

94. Defendants admit that one or more of them received a letter dated on or about August 17, 2021 from Plaintiff NAD. Except as expressly admitted, Defendants deny the allegations contained in Paragraph 94 of the Complaint, and further deny the existence of any “accessibility barriers” as alleged in NAD’s August 17, 2021 letter.

95. Defendants deny the allegations in Paragraph 95 of the Complaint.

ANSWER TO FIRST CLAIM FOR RELIEF
For Alleged Violations of Title III of the Americans with Disabilities Act
(42 U.S.C. § 12182)

96. In response to Paragraph 96, Defendants incorporate by reference their responses to Paragraphs 1 through 95 as though fully set forth herein.

97. Defendants aver that the allegations in Paragraph 97 contain argument and legal conclusions that require no answer. To the extent any of the allegations in Paragraph 97 purport to summarize or state the contents of any law, case, statute, or regulation, which speak for themselves, Defendants deny any characterization of such material inconsistent with its content. Unless expressly admitted, Defendants deny each and every allegation contained in Paragraph 97 of the Complaint.

98. Defendants aver that the allegations in Paragraph 98 contain argument and legal conclusions that require no answer. To the extent any of the allegations in Paragraph 98 purport

to summarize or state the contents of any law, case, statute, or regulation, which speak for themselves, Defendants deny any characterization of such material inconsistent with its content. Unless expressly admitted, Defendants deny each and every allegation contained in Paragraph 98 of the Complaint.

99. Defendants aver that the allegations in Paragraph 99 contain argument and legal conclusions that require no answer. To the extent any of the allegations in Paragraph 99 purport to summarize or state the contents of any law, case, statute, or regulation, which speak for themselves, Defendants deny any characterization of such material inconsistent with its content. Unless expressly admitted, Defendants deny each and every allegation contained in Paragraph 99 of the Complaint.

100. Defendants aver that the allegations in Paragraph 100 contain argument and legal conclusions that require no answer. To the extent any of the allegations in Paragraph 100 purport to summarize or state the contents of any law, case, statute, or regulation, which speak for themselves, Defendants deny any characterization of such material inconsistent with its content. Unless expressly admitted, Defendants deny each and every allegation contained in Paragraph 100 of the Complaint.

101. Defendants aver that the allegations in Paragraph 101 contain argument and legal conclusions that require no answer. To the extent any of the allegations in Paragraph 10 purport to summarize or state the contents of any law, case, statute, or regulation, which speak for themselves, Defendants deny any characterization of such material inconsistent with its content. To the extent that a response is required, Defendants deny each and every allegation contained in Paragraph 101 of the Complaint.

102. Defendants admit that SiriusXM owns <https://www.siriusxm.com/>, that Stitcher owns <https://www.stitcher.com>, and that Pandora owns <https://www.pandora.com>, and that the Defendants maintain mobile applications for Apple and Android devices. Unless expressly admitted, Defendants deny each and every allegation contained in Paragraph 102 of the Complaint.

103. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 103 of the Complaint.

104. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 104 of the Complaint.

105. Defendants deny the allegations in Paragraph 105 of the Complaint.

106. Defendants deny the allegations in Paragraph 106 of the Complaint.

107. Defendants deny the allegations in Paragraph 107 of the Complaint.

108. Defendants deny the allegations in Paragraph 108 of the Complaint.

109. Defendants deny the allegations in Paragraph 109 of the Complaint.

110. Defendants deny the allegations in Paragraph 110 of the Complaint.

111. Defendants deny the allegations in Paragraph 111 of the Complaint.

112. Defendants deny the allegations in Paragraph 112 of the Complaint.

113. Defendants deny the allegations in Paragraph 113 of the Complaint.

114. Defendants deny the allegations in Paragraph 114 of the Complaint.

115. Defendants deny the allegations in Paragraph 115 of the Complaint.

116. Defendants deny the allegations in Paragraph 116 of the Complaint.

ANSWER TO SECOND CLAIM FOR RELIEF
For Alleged Violation of the New York City Human Rights Law
(N.Y.C. ADMIN. CODE § 8-101 ET SEQ.)

117. In response to Paragraph 117, Defendants incorporate by reference their responses to Paragraphs 1 through 116 as though fully set forth herein.

118. Defendants aver that the allegations in Paragraph 118 contain argument and legal conclusions that require no answer. To the extent any of the allegations in Paragraph 118 purport to summarize or state the contents of any law, case, statute, or regulation, which speak for themselves, Defendants deny any characterization of such material inconsistent with its content. Unless expressly admitted, Defendants deny each and every allegation contained in Paragraph 118 of the Complaint.

119. Defendants aver that the allegations in Paragraph 119 contain argument and legal conclusions that require no answer. To the extent any of the allegations in Paragraph 119 purport to summarize or state the contents of any law, case, statute, or regulation, which speak for themselves, Defendants deny any characterization of such material inconsistent with its content. Unless expressly admitted, Defendants deny each and every allegation contained in Paragraph 119 of the Complaint.

120. Defendants aver that the allegations in Paragraph 120 contain argument and legal conclusions that require no answer. To the extent any of the allegations in Paragraph 120 purport to summarize or state the contents of any law, case, statute, or regulation, which speak for themselves, Defendants deny any characterization of such material inconsistent with its content. Unless expressly admitted, Defendants deny each and every allegation contained in Paragraph 120 of the Complaint.

121. Defendants deny the allegations in Paragraph 121 of the Complaint.

122. Defendants deny the allegations in Paragraph 122 of the Complaint.

123. Defendants deny the allegations in Paragraph 123 of the Complaint.

124. Defendants aver that the allegations in Paragraph 124 contain argument and legal conclusions that require no answer. To the extent any of the allegations in Paragraph 124 purport to summarize or state the contents of any law, case, statute, or regulation, which speak for themselves, Defendants deny any characterization of such material inconsistent with its content. Unless expressly admitted, Defendants deny each and every allegation contained in Paragraph 124 of the Complaint.

125. SiriusXM admits that its headquarters are in New York City and that its podcast platform is available in New York City, but avers that it is without knowledge or information sufficient to form a belief as to the truth of Plaintiffs' allegations regarding their locations. Unless expressly admitted, Defendants deny each and every allegation contained in Paragraph 125 of the Complaint.

126. Stitcher denies that its headquarters is in New York City and admits that its podcast platform is available in New York City, but avers that it is without knowledge or information sufficient to form a belief as to the truth of Plaintiffs' allegations regarding their locations. Unless expressly admitted, Defendants deny each and every allegation contained in Paragraph 126 of the Complaint.

127. Pandora admits that its podcast platform is available in New York City, but avers that it is without knowledge or information sufficient to form a belief as to the truth of Plaintiffs' allegations regarding their locations. Unless expressly admitted, Defendants deny each and every allegation contained in Paragraph 127 of the Complaint.

128. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 128.

129. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 129.

130. Defendants deny the allegations in Paragraph 130 of the Complaint.

131. Defendants deny the allegations in Paragraph 131 of the Complaint.

132. Defendants deny the allegations in Paragraph 132 of the Complaint.

133. Defendants aver that the allegations in Paragraph 133 contain argument and legal conclusions that require no answer. To the extent any of the allegations in Paragraph 133 purport to summarize or state the contents of any law, case, statute, or regulation, which speak for themselves, Defendants deny any characterization of such material inconsistent with its content. To the extent that a response is required, Defendants deny each and every allegation contained in Paragraph 133 of the Complaint.

134. Defendants deny the allegations in Paragraph 134 of the Complaint.

135. Defendants deny the allegations in Paragraph 135 of the Complaint.

136. Defendants deny the allegations in Paragraph 136 of the Complaint.

137. Defendants deny the allegations in Paragraph 137 of the Complaint.

138. Defendants deny the allegations in Paragraph 138 of the Complaint.

ANSWER TO THIRD CLAIM FOR RELIEF
For Alleged Violation of the New York State Human Rights Law
(N.Y. EXEC. Law, Article 15 (Executive Law § 292 et seq.))

139. In response to Paragraph 139, Defendants incorporate by reference their responses to Paragraphs 1 through 138 as though fully set forth herein.

140. Defendants aver that the allegations in Paragraph 140 contain argument and legal conclusions that require no answer. To the extent any of the allegations in Paragraph 140 purport to summarize or state the contents of any law, case, statute, or regulation, which speak for themselves, Defendants deny any characterization of such material inconsistent with its content. Unless expressly admitted, Defendants deny each and every allegation contained in Paragraph 140 of the Complaint.

141. Defendants aver that the allegations in Paragraph 141 contain argument and legal conclusions that require no answer. To the extent any of the allegations in Paragraph 141 purport to summarize or state the contents of any law, case, statute, or regulation, which speak for themselves, Defendants deny any characterization of such material inconsistent with its content. Unless expressly admitted, Defendants deny each and every allegation contained in Paragraph 141 of the Complaint.

142. Defendants aver that the allegations in Paragraph 142 contain argument and legal conclusions that require no answer. To the extent any of the allegations in Paragraph 142 purport to summarize or state the contents of any law, case, statute, or regulation, which speak for themselves, Defendants deny any characterization of such material inconsistent with its content. Unless expressly admitted, Defendants deny each and every allegation contained in Paragraph 142 of the Complaint.

143. Defendants aver that the allegations in Paragraph 143 contain argument and legal conclusions that require no answer. To the extent any of the allegations in Paragraph 143 purport to summarize or state the contents of any law, case, statute, or regulation, which speak for themselves, Defendants deny any characterization of such material inconsistent with its

content. To the extent that a response is required, Defendants deny each and every allegation contained in Paragraph 143 of the Complaint.

144. SiriusXM admits that its headquarters are in New York State and that its podcast platform is available in New York State, but avers that it is without knowledge or information sufficient to form a belief as to the truth of Plaintiffs' allegations regarding their locations. Unless expressly admitted, Defendants deny each and every allegation contained in Paragraph 144 of the Complaint.

145. Stitcher denies that its headquarters are in New York State and admits that its podcast platform is available in New York State, but avers that it is without knowledge or information sufficient to form a belief as to the truth of Plaintiffs' allegations regarding their locations. Unless expressly admitted, Defendants deny each and every allegation contained in Paragraph 145 of the Complaint.

146. Pandora admits that its podcast platform is available in New York State, but avers that it is without knowledge or information sufficient to form a belief as to the truth of Plaintiffs' allegations regarding their locations. Unless expressly admitted, Defendants deny each and every allegation contained in Paragraph 146 of the Complaint.

147. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 147 of the Complaint.

148. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 148 of the Complaint.

149. Defendants deny the allegations in Paragraph 149 of the Complaint.

150. Defendants deny the allegations in Paragraph 150 of the Complaint.

151. Defendants deny the allegations in Paragraph 151 of the Complaint.

152. Defendants deny the allegations in Paragraph 152 of the Complaint.

153. Defendants deny the allegations in Paragraph 153 of the Complaint.

154. Defendants deny the allegations in Paragraph 154 of the Complaint.

ANSWER TO “PRAYER FOR RELIEF”

Defendants deny each and every allegation contained in the “Prayer for Relief,” including Paragraphs 1 through 7 therein.

DEFENDANTS’ AFFIRMATIVE DEFENSES

Without alleging or admitting that they carry the applicable burden of proof or persuasion concerning any of these matters, Defendants individually and jointly assert the following further defenses to the Complaint and the purported claims for relief contained therein.

FIRST AFFIRMATIVE DEFENSE

The Complaint, and each purported claim for relief alleged therein, fails to state a claim against Defendants upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

As an affirmative defenses to the Second and Third Claims for Relief in the Complaint, Defendants allege that any application of New York City or New York State law to their websites or mobile applications violates the Commerce Clause of the United States Constitution.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs (together and individually) lack constitutional standing to pursue any claim against Defendants because they are not subscribers to any of Defendants’ podcast platforms, have not used any of Defendants’ services, and therefore have not, and cannot have, suffered a concrete and particularized injury-in-fact resulting from Defendants’ conduct.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs (together and individually) lack statutory standing to pursue any claim against Defendants under the standing requirements of the Americans with Disabilities Act. Plaintiffs are not subscribers to any of Defendants' podcast platforms, have not used any of Defendants' services, and therefore have not, and cannot have, experienced – and have no “actual notice” of – any discrimination resulting from Defendants' services.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs (together and individually) lack statutory standing to pursue any claim against Defendants under the standing requirements of the New York State Human Rights Law. Plaintiffs are not subscribers to any of Defendants' podcast platforms, have not used any of Defendants' services, and therefore have not, and cannot have, experienced an “impact” of any discrimination resulting from Defendants' services in the State of New York.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs (together and individually) lack statutory standing to pursue any claim against Defendants under the standing requirements of the New York City Human Rights Law. Plaintiffs are not subscribers to any of Defendants' podcast platforms, have not used any of Defendants' services, and therefore have not, and cannot have, experienced an “impact” of any discrimination resulting from Defendants' services in the City of New York.

SEVENTH AFFIRMATIVE DEFENSE

As an affirmative defense to each and every claim in the Complaint, Defendants allege that they acted in good faith and/or their conduct was in conformity with all applicable statutes, governmental regulations, and industry standards existing at the time of such conduct.

EIGHTH AFFIRMATIVE DEFENSE

As an affirmative defense to each and every claim in the Complaint, Defendants allege that, to the extent federal, state, or local statutes are applied in this action to mandate the manner in which they must program or design their websites or mobile applications, the statutes are unconstitutionally vague and application of the statutes in this action would therefore violate the Due Process Clause of the United States Constitution.

NINTH AFFIRMATIVE DEFENSE

As an affirmative defense to each and every claim in the Complaint, Defendants allege that the claims for damages are so disproportionate to the injury, if any, suffered as to violate the Due Process Clause of the United States Constitution.

TENTH AFFIRMATIVE DEFENSE

As an affirmative defense to each and every claim in the Complaint, Defendants allege that Plaintiffs' Complaint and each of its claims for relief are barred, and Defendants are immunized from liability, by applicable provisions of the Communication Decency Act of 1996. 47 U.S.C. § 223 et seq.

ELEVENTH AFFIRMATIVE DEFENSE

As an affirmative defense to each and every claim in the Complaint, Defendants allege that to the extent that their websites or mobile applications allegedly do not effectively communicate information regarding goods and services to Plaintiffs, or to any deaf or hard-of-hearing persons, effective communication is provided via reasonable and appropriate alternative means.

TWELFTH AFFIRMATIVE DEFENSE

As an affirmative defense to each and every claim in the Complaint, Defendants allege that they have not denied access to Plaintiffs, or to any deaf or hard-of-hearing person, to a service offered by a place of public accommodation.

THIRTEENTH AFFIRMATIVE DEFENSE

As an affirmative defense to each and every claim in the Complaint, Defendants allege that, insofar as Defendants have not made alterations to their websites or mobile applications that Plaintiffs contend should have been made, those changes were not and are not required under New York City, New York State, or federal law and any requirement to make those changes would impose an undue burden upon Defendants and would not be readily achievable.

FOURTEENTH AFFIRMATIVE DEFENSE

As an affirmative defense to each and every claim in the Complaint, Defendants allege that modifications of their policies, practices, and procedures, or the provision of auxiliary aids or services, would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations, and there is no duty to modify.

FIFTEENTH AFFIRMATIVE DEFENSE

As an affirmative defense to each and every claim in the Complaint, Defendants allege that the claims are barred in whole or in part by the applicable statutes of limitations.

SIXTEENTH AFFIRMATIVE DEFENSE

As an affirmative defense to each and every claim in the Complaint, Defendants allege that Plaintiffs have failed to take reasonable steps to protect themselves from the damage alleged in the Complaint and have failed to mitigate any such alleged damage.

SEVENTEENTH AFFIRMATIVE DEFENSE

As an affirmative defense to each and every claim in the Complaint, Defendants allege that, as a consequence of the conduct of or attributable to the Plaintiffs in connection with the alleged lack of access to Defendants' podcast platforms (including on their websites or mobile applications), Plaintiffs have waived any right to secure relief from Defendants, and are estopped from securing any relief from Defendants.

EIGHTEENTH AFFIRMATIVE DEFENSE

As an affirmative defense to each and every claim in the Complaint, Defendants allege that Plaintiffs' claims are barred to the extent that the relief they request is not mandated by any applicable regulations adopted by the United States Department of Justice, or by the State or City of New York, for privately-owned commercial websites.

NINETEENTH AFFIRMATIVE DEFENSE

As an affirmative defense to each and every claim in the Complaint, Defendants allege that Plaintiffs are not entitled to injunctive or equitable relief to the extent they have adequate legal remedies.

TWENTIETH AFFIRMATIVE DEFENSE

As an affirmative defense to each and every claim in the Complaint, Defendants allege that Plaintiffs are not entitled to injunctive or equitable relief to the extent that they have not suffered, and will not suffer, irreparable harm or injury.

TWENTY-FIRST AFFIRMATIVE DEFENSE

As an affirmative defense to each and every claim in the Complaint, Defendants allege that Plaintiffs (together or individually) are barred by the doctrine of unclean hands from seeking or obtaining any of the relief sought in the Complaint.

TWENTY-SECOND AFFIRMATIVE DEFENSE

As an affirmative defense to each and every claim in the Complaint, Defendants allege that Plaintiffs' claims are barred to the extent that they did not inquire whether Defendants could or would provide auxiliary aids or services to access podcast content.

TWENTY-THIRD AFFIRMATIVE DEFENSE

As an affirmative defense to each and every claim in the Complaint, Plaintiffs' claims are barred by the doctrine of impossibility to the extent that: (a) Defendants do not control, and cannot provide auxiliary aids for, podcasts made available on their respective platforms; and (b) Plaintiffs' demand seeks to obligate Defendants to provide auxiliary aids for millions of podcasts without regard to whether such aids are legally required and could be provided in a timely manner and at a reasonable cost.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

As an affirmative defense to each and every claim in the Complaint, Plaintiffs' claims are barred by the accessible goods exception to the extent Plaintiffs seek to compel Defendants to reconfigure podcasts so that they include accessibility features.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

To the extent that there is a valid claim against any party, which Defendants deny, it would be against the third parties that actually produce the podcast content at issue, but Plaintiffs have failed to join these indispensable parties.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

Plaintiffs are not entitled to recover attorneys' fees because they have failed to satisfy the standards for obtaining such fees.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

Defendants do not presently know all the facts and circumstances respecting Plaintiffs' claims. Defendants reserve the right to amend this Answer should they later discover facts demonstrating the existence of additional affirmative defenses.

DEFENDANTS' PRAYER FOR RELIEF

WHEREFORE, Defendants pray for judgment as follows:

1. That Plaintiffs take nothing for any claim for relief alleged in the Complaint;
2. That judgment on the Complaint, and each and every claim for relief therein, be entered in favor of Defendants and against Plaintiffs;
3. That Defendants be awarded their attorneys' fees and costs incurred herein; and
4. For such other and further relief as the Court deems just and proper.

Dated: August 12, 2022

Respectfully submitted,

/s/ Lee A. Armstrong

Lee A. Armstrong
Allison L. Waks
JONES DAY
250 Vesey Street
New York, New York 10281
Tel. (212) 326-3939
laarmstrong@jonesday.com
awaks@jonesday.com

Robert A. Naeve
(*pro hac vice* application forthcoming)
JONES DAY
3161 Michelson Drive, Suite 800
Irvine, California 92612
Tel. (949) 851-3939
rnaeve@jonesday.com

Attorneys for Defendants

podnews.net

CERTIFICATE OF SERVICE

I, Lee A. Armstrong, hereby certify under penalty of perjury that on August 12, 2022, I caused a true and correct copy of the attached ANSWER to be filed with the Court and served on counsel of record by ECF.

Dated: New York, New York
August 12, 2022

/s/ Lee A. Armstrong
Lee A. Armstrong

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