



the blind and visually impaired and result in the denial of equal access to athletic competition and recreation.

2. USA Triathlon, The International Triathlon Union (hereafter “ITU”), and 3-D Racing, LLC a Michigan Limited Liability Company (hereafter “3-D Racing”), are discriminating against Plaintiff, and others similarly situated, by enacting, administering, and enforcing rules and regulations for the sport of Triathlon racing which tend to exclude Plaintiff and those similarly situated from equally participating in the sport. The discriminatory acts and omissions include, but are not limited to, the following:
  - a. The Defendants have enforced rules which require blind or visually impaired athletes competing in sanctioned triathlon events to wear “black out glasses” which eliminate any residual vision and result in a legally blind athlete, such as the Plaintiff, losing what vision he has left.
  - b. The Defendants know or should know that requiring a legally blind person to compete totally blind poses substantial danger to not only the competitor but those around them.
  - c. USA Triathlon, in accordance with ITU Rule 17.14(a)(ix) has promulgated Rule P 2.0(f) which states in pertinent part that “competitors shall use approved “black out glasses” during the entire run portion.”
  - d. The ITU has promulgated Rule 17.14(a)(ix) which states in pertinent part that “paratriathletes shall use approved “black out glasses” during the entire run portion.”
  - e. 3-D Racing conducts triathlon events in accordance with ITU and USA Triathlon rules which require the Plaintiff, and those similarly situated, to wear the dangerous "black out glasses.”
3. By ignoring ongoing discrimination and continuing to deny equal access to triathlon competition to Plaintiff and others similarly situated, the Defendants treat Plaintiff as

a second-class citizen, unjustly disregarding his basic rights to equality and dignity, and causes embarrassment, humiliation, harassment, emotional distress and unjustly and unreasonably limit his athletic career opportunities. Therefore, Plaintiff seeks injunctive relief and declaratory relief to redress Defendants' past and continuing violation of his rights under federal law.

#### **JURISDICTION AND VENUE**

4. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, because Plaintiff's claims arise under federal statute, the Americans with Disabilities Act of 1990 as amended. In addition, this Court has jurisdiction over Plaintiff's claims for declaratory relief, pursuant to 28 U.S.C. § 2201-02.
5. Venue is proper in the Eastern District of Michigan, Southern Division, because the jurisdiction for the claim being brought against the Defendants is not founded solely on diversity jurisdiction, and because the events, acts, and omissions giving rise to Plaintiff's claims occurred in this district pursuant to 28 U.S.C. § 1391.

#### **PARTIES**

6. Plaintiff, Aaron Scheidies is a thirty-year-old legally blind world class athlete originally from Metro Detroit who wishes to compete in the athletic events within the Eastern District of Michigan and is a registered participant for an upcoming race sponsored by 3-D Racing in Detroit, Michigan. (**Exhibit A**, Race Registration).
7. Aaron Scheidies has standing to bring the present cause of action.
  - a. Plaintiff is physically disabled according to the definition provided by the ADA, as he is "substantially impaired in the major life activity of seeing."
  - b. Plaintiff wishes to compete in a triathlon event sponsored by 3-D Racing and governed by ITU and USA Triathlon but is unable to safely do so as a result of the policies and rules implemented by the Defendants.

- c. Plaintiff has been, and continues to be, damaged by the policy of the Defendants of requiring that he wear “black out glasses” which poses grave harm to him and those around him during athletic competitions.
  - d. Plaintiff will not be able to participate in triathlon events, free from the danger of Defendants’ misguided policy, unless and until this Court enjoins the Defendants from requiring the use of “black out glasses” by blind and visually impaired athletes.
- 8. USA Triathlon is a private entity within the meaning and definition of the ADA, as it is a private organization which regulates and sanctions the sport of Triathlon, including the race sponsored by 3-D racing and national competitions which are pre-requisites to competing in ITU hosted events.
  - 9. ITU is a private entity within the meaning and definition of the ADA, as it is a private organization which also regulates and sanctions the sport of Triathlon.
  - 10. 3-D Racing is a private entity within the meaning and definition of the ADA, as it is a private organization which administers triathlon competitions including but not limited to the Motor City Triathlon held on Belle Isle.

**FACTUAL ALLEGATIONS**

- 11. Plaintiff incorporates by reference all allegations set forth in paragraphs 1 through 10, inclusive.
- 12. The ITU is the world governing body for the sport of Triathlon and promulgates rules and procedures for the administration of events that the organization sanctions.
- 13. USA Triathlon is an organization which governs the sport of Triathlon in the United States and also promulgates rules and procedures for the administration of triathlon events.
- 14. 3-D Racing is a private entity in the State of Michigan that serves as a “race director” and hosts triathlon events sanctioned by USA Triathlon.

15. An athlete wishing to compete in world-wide events hosted by ITU must first qualify in a race hosted by USA Triathlon. Similarly, an athlete wishing to compete in a national event hosted by USA Triathlon must first qualify in a “sanctioned event” hosted by an accredited race director such as 3-D Racing.
16. Defendants have acted jointly and severally to require Plaintiff who is legally blind to wear “black out glasses” while competing with other disabled race participants in triathlons.
17. Unlike an individual who is totally blind, a person who is visually impaired or legally blind like Plaintiff, uses their residual vision and is not trained or adjusted to engage in physical activities without sight.
18. Wearing “black out glasses” is not a suitable accommodation for Plaintiff as it results in his inability to use what remaining vision he has for balance and coordination and therefore places him, as well as those around him, in grave physical danger.
19. Plaintiff is now no longer able to safely compete in the sport of Triathlon as his participation is conditioned on the use of a device which discriminates against him as a legally blind athlete.
20. Plaintiff requests that his individual needs and circumstances be considered when receiving accommodations to participate in events sponsored or regulated by the Defendants. Despite being legally blind, Plaintiff’s other accomplishments include but are not limited to:
  - a. Plaintiff despite his disability earned a Bachelor’s Degree in Kinesiology from Michigan State University.
  - b. Plaintiff despite his disability earned a Doctorate in Physical Therapy from the University of Washington.
  - c. Plaintiff despite his disability has successfully completed the Ironman Competition which requires a 2.4 mile swim, 112 mile bike ride, and a full 26.2 mile marathon, all done consecutively.

- d. Plaintiff despite his disability is a seven-time triathlon World Champion and eight-time triathlon National Champion.
21. As a direct and proximate result of the Defendants' actions in requiring the use of "black out glasses," the Plaintiff is unable to equally participate in the sport of Triathlon and instead will continue to be damaged by the Defendants' requirement that he put himself in physical danger if he wishes to compete in the sport.
22. The Defendants have seriously injured Plaintiff, and those similarly situated. Plaintiff's injuries include, but are not limited to, emotional distress, time lost from profession, time lost from social interaction, loss of earning capacity, loss of camaraderie, and pain and suffering.
23. On information and belief, Plaintiff alleges that the Defendants, through their agents and employees, have acted intentionally, willfully, in bad faith, and / or with reckless disregard and indifference for the federal legal rights of Plaintiff, and others with disabilities, in committing the acts and omissions stated here.
24. Defendants continue to discriminate against Plaintiff and others based on their disabilities, by denying Plaintiff and others with access to athletic competitions and recreation, free from the discriminatory requirement that they subject themselves to additional physical limitations beyond those which already exist as a result of their disability, and which pose an existential threat to them.
25. Plaintiff has also suffered threats and intimidation and has been previously disqualified and threatened with disqualification for refusing to wear the discriminatory "black out glasses."
26. Plaintiff has no adequate remedy at law. While Plaintiff reserves the right to seek monetary relief, Plaintiff is not expressly doing so through this complaint. Plaintiff seeks equitable relief to rectify Defendants' ongoing acts and omissions, as stated herein, and requests the requirement forcing a visually impaired or legally blind individual to give up what remaining sight they have, be stricken.

27. In short, the Defendants in a misguided attempt to “level the playing field” have adopted policies and procedures which astonishingly seek to “accommodate” persons with disabilities by making them more disabled. The idea that a legally blind athlete must become totally blind in order to participate in a recreational sport is unsafe, unreasonable, and patently discriminatory.

### **Count I**

#### **(Violation of Title III of the Americans with Disabilities Act., specifically, 28 CFR 36.302 et seq and related Against Defendants 3-D Racing, ITU, and USA Triathlon)**

28. Plaintiff incorporates by reference all allegations set forth in paragraphs 1 through 27, inclusive.

29. In enacting the ADA, Congress expressly determined that society tends to isolate and segregate people with disabilities, that people with disabilities continually encounter prejudice and discrimination, including outright exclusion and the failure to eliminate exclusionary criteria; that this nation should assure equality of opportunity for all participation, independent living, and economic self-sufficiency to individuals with disabilities, and that continuing discrimination impedes them from competing on an equal basis and pursuing opportunities available to other citizens. 42 U.S.C. §12101 (a).

30. The express purpose of the ADA is to provide a clear and comprehensive national mandate for eliminating discrimination against individuals with disabilities; to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities, and to ensure that the federal government plays a central role in enforcing standards established in the Act on behalf of individuals with disabilities 42 U.S.C. §12101(b).

31. The Plaintiff is a legally blind man who is a “qualified individual with a disability” under the ADA.

32. The Defendants operate and enforce rules for the administration of triathlon events which take place on race courses which constitute “places of public accommodation” under the ADA.
33. 3-D Racing, ITU, and USA Triathlon are “private entities” as defined by the ADA.
34. Defendants’ acts and omissions are in violation of the equal access and nondiscrimination requirements set forth in Title III of the ADA, and the regulations promulgated thereunder, and have resulted in injury to Plaintiff and others with disabilities.
35. Through the acts and omissions alleged here, Defendants have acted in disregard of Plaintiff’s disability, excluded plaintiff, and those similarly situated from participation in recreation and athletic competition, and subjected them to discrimination, in violation of the ADA.
36. Title III of the Americans with Disabilities Act makes it illegal to discriminate against a qualified person with a disability.
37. The implementing regulations for Title III of the Americans with Disabilities Act state in pertinent part that “A public accommodation **shall make reasonable modifications in policies, practices, or procedures**, when the modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities...” 28 CFR 36.302 (emphasis added).
38. By the ITU creating and enforcing Rule 17.14(a)(ix) and by USA Triathlon creating and enforcing Rule P 2.0(f), which require legally blind triathlon participants to wear “black out glasses,” and by 3-D Racing conducting an event in accordance with these rules, the Defendants are failing to make a reasonable modification to their policies, practices, or procedures and instead are forcing Plaintiff to compete under discriminatory conditions.



39. The discriminatory conditions Plaintiff is forced to compete under include, but are not limited to, the further loss of his sense of sight which results in the lack of coordination, balance, direction and has caused and will continue to cause Plaintiff to suffer physical injury while competing in the sport.
40. Defendants' acts and omissions constitute an ongoing and continuous violation of Title III of the ADA. Unless restrained and enjoined from doing so, Defendant will continue to violate this statute and to inflict irreparable injuries for which Plaintiff has no adequate remedy at law.
41. Upon information and belief, the Defendants have been, and continue to be aware of, the discriminatory effects of their policies and procedures and yet have taken no action to mitigate the effects thereof.
42. As the entities that jointly create, enforce, and execute the policies and procedures for the sport of Triathlon, the Defendants' actions have caused, and will continue to cause, significant injury and irreparable harm to the Plaintiff, and others with disabilities. Plaintiff's injuries include, but are not limited to, emotional distress, time lost from profession, time lost from social interaction, loss of earning capacity, loss of camaraderie, and pain and suffering.
43. As stated above, the Defendants have failed to comply with the non-discrimination requirements of Title III of the Americans with Disabilities Act by requiring that legally blind participants in triathlon events give up what remaining vision they have and subject themselves to grave physical harm.

### **Count II**

#### **(Violation of Title V of the Americans with Disabilities Act specifically, 42 U.S.C.A. § 12203(b) Against Defendants ITU and USA Triathlon)**

44. Plaintiff incorporated by reference all allegations set forth in paragraphs 1 through 43, inclusively.
45. The Plaintiff is a legally blind man who is a "qualified individual with a disability" under the ADA.

46. Through the acts and omissions alleged here, Defendants have acted to coerce, intimidate, threaten or interfere with Plaintiff's exercise or enjoyment of rights granted or protected by the ADA.
47. Title V of the Americans with Disabilities Act states in pertinent part that "It shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this chapter." 42 U.S.C.A. § 12203(b).
48. By the ITU promulgating and enforcing Rule 17.14(a)(ix) and by USA Triathlon promulgating Rule P 2.0(f), these Defendants have "interfere[d]" with the Plaintiff's right to participate in the sport of triathlon, held in a place of public accommodation, free from exclusionary and discriminatory criteria.
49. Rule 17.14(a)(ix) and Rule P 2.0(f), directly discriminates against Plaintiff, and other qualified individuals with disabilities, by mandating that the Plaintiff give up what remaining vision he has as a condition of competing in the sport of Triathlon and needlessly subjects Plaintiff and others similarly situated to grave physical danger.
50. The rules that the Defendants have promulgated require Plaintiff, and those similarly situated, to be discriminated against during participation in the sport of Triathlon racing by requiring them to become more disabled than they already are and face grave physical danger.
51. Plaintiff has been disqualified previously by USA Triathlon for in part refusing to abide by their discriminatory policies and procedures that require him to wear "black out glasses."
52. Defendants' rules "threaten" Plaintiff with future disqualification and sanctions if he refuses to abide by their discriminatory policies and procedures.

53. Upon information and belief, the Defendants have been, and continue to be aware of, the discriminatory effects of their rules and yet have taken no action to mitigate the effects of their policy.
54. As the governing entities responsible for the sport of Triathlon racing in the United States, the Defendants' actions have caused, and will continue to cause, significant injury and irreparable harm to the Plaintiff, and others with disabilities. Plaintiff's injuries include, but are not limited to, emotional distress, time lost from profession, time lost from social interaction, loss of earning capacity, loss of camaraderie, and pain and suffering.
55. Quite simply, the Defendants by requiring the use of "black out glasses," have made it impossible for the Plaintiff, and those similarly situated, to compete in athletic competitions without being forced to endure discriminatory policies and procedures in violation of Title III of the Americans with Disabilities Act.
56. Rules 17.14(a)(ix) and Rule P 2.0(f) governing Triathlons thus "interfere[s]" and "threaten[s]" Plaintiff's rights under the Americans with Disabilities Act, including but not limited to his right to participate in a recreational activity being offered in a place of public accommodation.

WHEREFORE, Plaintiff requests the relief set forth below.

**PRAYER FOR RELIEF**

Plaintiff prays for the following relief:

57. A declaration that the Defendants' acts and omissions unlawfully violate Plaintiff's rights under the Americans with Disabilities Act of 1990 (ADA).
58. An injunction restraining ITU and USA Triathlon from enforcing Rules 17.14(a)(ix) and Rule P 2.0(f) respectively, on Plaintiff and others with disabilities for whom the rules would have a discriminatory effect.
59. A further injunction restraining 3-D Racing from requiring Plaintiff to wear "black out glasses" as a condition of participating in their events.

60. A further injunction requiring the Defendants to provide individuals with disabilities with full and equal access to the programs and services they offer, and restraining the Defendants from discriminating against individuals with disabilities who wish to participate in Triathlon events.
61. Although Plaintiff seeks no compensatory damages at this time, Plaintiff wishes to reserve the right to amend and request compensatory damages should it become necessary to encourage the Defendants to comply with federal law.
62. Although Plaintiff seeks no actual attorney's fees or costs, Plaintiff wishes to reserve the right to amend and request attorney's fees and costs should it become necessary to encourage the Defendants to comply with federal law.
63. All other relief that this Court deems just and proper.

Respectfully submitted,

By \_\_\_\_\_  
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Dated: April 25, 2012

I hereby certify that on April 25, 2012, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system, which will send notice of such filing to all counsel of record.

/s/ Richard H. Bernstein (P58551)  
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