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*Attorneys for Defendant*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VICTORIANO TAVAREZ, Individually, and on behalf of d all others similarly situated,

Plaintiff,

vs.

EXTRACT LABS INC.,

Defendant.

No. 1:21-cv-09916-JPO

DECLARATION OF GRANT ROGERS

I, Grant Rogers, pursuant to 28 U.S.C §1746, declare as follows:

1. I am over 18 years of age, and I have personal knowledge of the matters stated in this Declaration.

2. I am the Director of Marketing of Extract Labs, Inc. and in addition, I oversee the website development department at Extract Labs, Inc. (hereafter "Extract Labs."). In that capacity, I have personal knowledge of the matters set forth herein.

3. I submit this Declaration in support of Extract Labs' Motion to Dismiss the First Amended Class Action Complaint for Violations of the Americans with Disabilities Act of 1990 and New York City Human Rights Law.

EXHIBIT 2

4. Extract Labs currently maintains and operates the following website: www.extractlabs.com.

5. On December 18, 2021, Extract Labs was served with Plaintiff's Class Action Complaint for Violations of the Americans with Disabilities Act of 1990 and New York City Human Rights Law (the "Complaint"). The Complaint alleges that Extract Labs' website, www.extractlabs.com, is not in compliance with World Wide Web Consortiums (W3C) Web Content Accessibility Guidelines 2.1 Level AA Success Criteria (the "WCAG 2.1 Guidelines").

6. Since receipt of the original Complaint, Extract Labs has made compliance with WCAG 2.1 Guidelines its top priority and Extract Labs has put forth a tremendous effort to make its website accessible to the visually impaired.

7. Extract Labs' CEO has personally overseen the process of making the website compliant and Extract Labs' Website Development Team, the Director of Operations and Extract Labs' Graphic Design Team have all been intricately involved in the process of re-developing Extract Labs' website.

8. I personally reviewed the Complaint and immediately began to determine whether the website required remediation and determined whether there were areas that could be more compliant.

9. I researched WCAG 2.1 Guidelines to determine what it would take to make our website more compliant. While researching online, I discovered the company, accessiBe.

10. I liked that accessiBe offered ongoing services to ensure ongoing website compliance with WCAG 2.1 Guidelines.

11. Extract Labs then made the decision to buy a subscription to the services provided by accessiBe for Extract Labs' website.

12. Extract Labs now has an ongoing monthly subscription to accessiBe so that its website will be compliant with WCAG 2.1 Guidelines on an ongoing basis.

13. It is our understanding that accesiBe continually monitors the World Wide Web Consortium's WCAG to improve website compliance with web accessibility legislation. The company engages in 24-hour automatic maintenance scans of new and updated content to be sure that there are no accessibility issues for persons with disabilities. According to its website, accessiBe monitors for compliance with the Americans with Disabilities Act and other similar laws. This is why Extract Labs engaged accesiBe

14. On May 6, 2022, I received and reviewed Plaintiff's First Amended Class Action Complaint for Violations of the Americans with Disabilities Act of 1990 and New York City Human Rights Law (the "Amended Complaint").

15. In response to the allegations in the Complaint and Amended Complaint, Extract Labs re-built its entire website. While the same domain is being used, www.extractlabs.com, most if not all of the code has been redesigned specifically to meet Extract Labs' desire to comply with the WCAG 2.1 Guidelines and to make the website accessible to the visually impaired.

16. On May 27, 2022, Extract Labs went live with its newly re-built website designed specifically to be 100% complaint with all WCAG 2.1 Guidelines.

17. Extract Labs identified additional issues that needed to be addressed with the newly designed website and determined that hiring an expert in the field of WCAG 2.1 guidelines would be the best route to resolve those issues.

18. On May 31, 2022, Extract Labs hired an independent contractor and expert in WCAG 2.1 guidelines to remedy all outstanding issues with the newly designed website.

19. On June 7, 2022, I submitted www.extractlabs.com to both Wave and Web Accessibility – two separate websites offering WCAG 2.1 guidelines audits that scan and review websites for ADA and WCAG 2.1 compliance.

20. Both Wave and Web Accessibility have confirmed that Extract Labs' website, www.extractlabs.com is compliant. *See* Exhibit A attached to this Declaration. The Wave audit reflects zero "errors" and the Accessibility Checker audit shows www.extractlabs.com is compliant as it passed the automated scan with a score of 95%.

21. Additionally, I personally downloaded the screen reader software program mentioned in the Complaint and Amended Complaint, NonVisual Desktop Access ("NVDA"), which is created and maintained by nvaccess.org. *Complaint,* ¶16, *Amended Complaint,* ¶ 16.

22. I personally used NVDA to confirm that all of the issues identified in the Complaint and Amended Complaint have been remedied.

23. I personally confirmed that.

a. Product descriptions linked to images on our website are capable of being read by screen reader software;

b. Product descriptions are now capable of being read by screen reader software;

c. Our website allows screen reader software to read products available for selection when navigating pages to select products;

d. The webize allows screed reader software to read when an item is added to the "cart" for purchase.

24. Extract Labs' website is now complaint with WCAG 2.1 guidelines. *See, Id.*

25. Therefore, all deficiencies mentioned in the Complaint and Amended Complaint have now been resolved and remedied such that www.extractlabs.com is now compliant with WCAG 2.1 guidelines. *See,* Exhibit A.

EXHIBIT 2

26. Extract Labs will continue to audit its website to ensure it is up to date and fully compliant with all WCAG 2.1 guidelines.

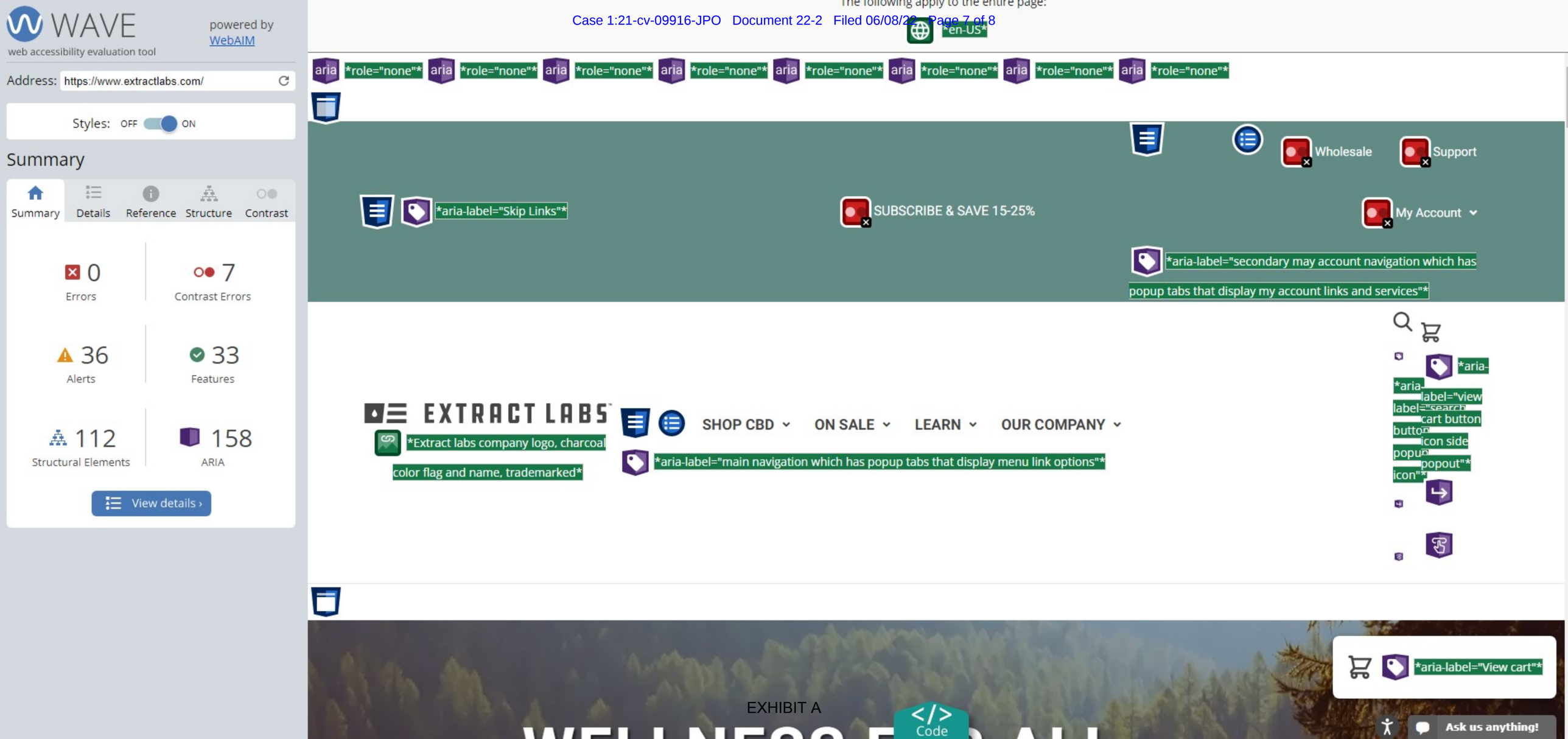
27. Extract Labs intends to continue to use acessiBe as well as Wave and Accessibility Checker on an ongoing basis to remain in compliance with WCAG 2.1 guidelines so that its website will be accessible to all, including the blind and visually-impaired.

28. Now that www.extractlabs.com has been fully re-designed and re-built with the goal of making the website fully compliant with the ADA and WCAG 2.1 guidelines, I have no expectation that the violations will recur as we have, by building a new website, removed the possibility of a future violation.

Executed on 8 day of June, 2022 at Lafayette, CO.

Grant Rogers

# EXHIBIT A


WAVE
web accessibility evaluation tool
powered by WebAIM
Address: https://www.extractlabs.com/
Styles: OFF ON
Summary
Summary Details Reference Structure Contrast
0 Errors
7 Contrast Errors
36 Alerts
33 Features
112 Structural Elements
158 ARIA
View details ›
*en-US*
aria *role="none"* aria *role="none"* aria *role="none"* aria *role="none"* aria *role="none"* aria *role="none"* aria *role="none"* aria *role="none"*
Wholesale
Support
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SUBSCRIBE & SAVE 15-25%
My Account
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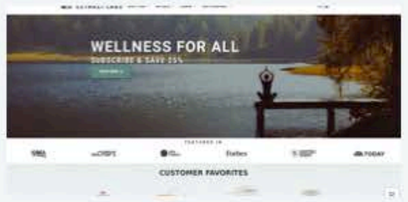
EXTRACT LABS
*Extract labs company logo, charcoal color flag and name, trademarked*
SHOP CBD
ON SALE
LEARN
OUR COMPANY
*aria-label="main navigation which has popup tabs that display menu link options"*
*aria-label="search button"*
*aria-label="view cart button"*
*aria-label="icon side popout"*
*aria-label="View cart"*
Code
Ask us anything!

EXHIBIT A

accessibilitychecker.org

Back to Home




https://www.extractlabs.com

Good job! According to our analysis your website is accessible to everyone!

## Audit results of https://www.extractlabs.com

Download audit

**Status:**

**COMPLIANT!**

Congrats, your website passed the automated scan.

**Score:**

95

Websites with a score lower than 75% are in risk of accessibility lawsuits

**Results:**

| | |
|---|---|
| Critical Issues | 0 items (0%) |
| Passed elements | 35 items (100%) |
| Required Manual Audits | 68 items |

### Critical Issues (0):

**No Critical Issues Were Found**

### Passed audits (35):

Read more

### Required Manual Audits (68):

Read more