

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

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AUDIO EYE, INC.,

Plaintiff,

- against -

ADRIAN ROSELLI,

Defendant.

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Motion Seq. 001

Index No. 803054/2023

**AFFIRMATION OF
IAN HAMILTON
PURSUANT TO
CPLR 2106(b)**

Ian Hamilton, under penalties of perjury and pursuant to CPLR 2106(b), affirms as follows:

1. I affirm this 3rd day of July 2023, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that I am physically located outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law. My signature is below.

2. I am an accessibility specialist working in the videogame industry, with prior 10 years’ experience working in accessibility of websites and mobile applications.

3. I make this affirmation, having heard that Adrian Roselli is being sued by AudioEye for (among other things) saying it “does not work.”

4. The description of AudioEye’s overlay product by Mr. Roselli has been proven to be accurate.

5. AudioEye’s marketing materials (retrieved from ‘download the guide’ link on <https://www.audioeye.com/web-accessibility-lawsuits/> on 3rd July 2023) claim “From day one of

implementation, our customers are protected. We've significantly mitigated legal risk and unlocked digital content for the millions of people previously unable to access it." This is a misrepresentation of how digital accessibility works. No product or service can offer customer protection and significant legal mitigation from day 1. The use of "the millions" rather than "millions" is a clear statement that everyone who was locked out is no longer locked out on day 1, again no product or service can offer this.

6. This falsity of these claims of day 1 protection from lawsuits and day 1 unlocking of "the" millions of locked users is evidenced by the case of Lighthouse For The Blind Vs ADP, a case brought due to ADP's reliance on AudioEye to provide accessibility: <https://web.archive.org/web/20211228103138/https://www.techtimes.com/articles/26980/20211227/audioeyes-customer-sued-by-san-francisco-lighthouse-for-the-blind-for-web-accessibility-failures.htm>. The settlement document stated "*For the purpose of this Agreement, "overlay" solutions such as those currently provided by companies such as AudioEye and AccessiBe will not suffice to achieve Accessibility.*"

7. Furthermore, AudioEye claims in its cease and desist letter to Mr Roselli (<https://adrianroselli.com/2022/04/my-cease-desist-from-audioeye.html>) that "AudioEye's approach pairs automation with human expertise". This is a mischaracterization. As can plainly be seen from the AudioEye website (<https://www.audioeye.com/plans-and-pricing/>) their standard offering contains no human input, this is only available as an expensive premium addition. The standard offering (which from what I understand costs \$50/month, compared to hundreds of dollars per moth for the other packages) is even called "automated".

8. Investigations by Mr Roselli, a well known and well respected expert in this field, have clearly demonstrated the shortcomings not only of their standard entry level automated

overlay solution, but also AudioEye’s premium offering which includes human testing. Details available here: <https://adrianroselli.com/2023/02/audioeye-will-get-you-sued.html>

9. In summary, Mr Roselli’s statement that AudioEye’s primary and entry level offering, its overlay product, doesn’t work, plainly means that it does not fulfil the result that AudioEye claims in its marketing materials. This is factually correct. The claims of day 1 protection, legal mitigation and unlocking of “the” millions are all demonstrably false.

10. And to close, Adrian is not simply representing his own personal professional assessment. His assessment is shared by two overlapping communities; the professional accessibility community and the disability community. Evidence of this can be seen in the list of 785 signatories on this page: <https://overlayfactsheet.com/#statement-from-sponsors-and-signatories-to-this-fact-sheet>. This suit is an attempt to protect business interests at the expense of the communities they claim to serve, through silencing critical voices. This attempted censorship of experts in the field is a precedent that must not be established.

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Dated: 3rd July, 2023
Torquay, United Kingdom

A handwritten signature in black ink, appearing to read "Ian Hamilton". The signature is fluid and cursive, with a large initial "I" and a long horizontal stroke at the end.

Ian Hamilton