

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. _____

THE CIVIL RIGHTS EDUCATION AND ENFORCEMENT CENTER, on behalf of its members, and MARGARET DENNY, on behalf of herself and a proposed class of similarly situated persons defined below,

Plaintiffs,

v.

SAGE HOSPITALITY RESOURCES LLC,

Defendant.

CLASS ACTION COMPLAINT

Plaintiffs, the Civil Rights Education and Enforcement Center (“CREEC”), on behalf of its members, and Margaret Denny, on behalf of herself and a proposed class defined below, by and through undersigned counsel, file their Class Action Complaint for Declaratory and Injunctive Relief and respectfully allege as follows:

I. INTRODUCTION

1. For more than 20 years, the Americans with Disabilities Act has required hotels that provide transportation services to their guests to provide equivalent accessible transportation services to guests who use wheelchairs or scooters.

2. Nevertheless Defendant Sage Hospitality (“Sage”) – which owns and/or operates approximately 68 hotels spread among 19 states – has repeatedly failed to provide wheelchair-accessible transportation in hotels that provide transportation to nondisabled guests.

3. As a result, while Sage's nondisabled guests staying at these hotels can take advantage of airport shuttle services and transportation services to areas near the hotel, guests who use wheelchairs or scooters are denied these services. This action is limited to challenging Sage's violations of federal requirements governing accessible transportation, including for example purchase and lease of accessible vehicles and provision of accessible transportation.

4. Plaintiffs seek declaratory and injunctive relief establishing that Sage has engaged in violations of the ADA, and requiring Sage to comply with this statute by providing wheelchair-accessible transportation services that are equivalent to the transportation services provided to nondisabled guests at Sage's hotels.

II. JURISDICTION AND VENUE

5. Plaintiffs' claims arise under Title III of the Americans with Disabilities Act, 42 U.S.C. § 12181, et seq. ("ADA").

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343. This Court has jurisdiction over Plaintiffs' claims for declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202.

7. Venue is proper within this District pursuant to 28 U.S.C. § 1391(b).

III. PARTIES

8. Plaintiff the Civil Rights Education and Enforcement Center ("CREEC") is a nationwide civil rights membership organization based in Denver, Colorado whose mission includes, among other purposes, ensuring that persons with disabilities participate in our nation's

civic life without discrimination, including in the opportunity to benefit from the services provided by hotels.

9. Plaintiff Margaret Denny is a member of CREEC and is and has been at all relevant times a resident of the State of Colorado. Among other impairments, Plaintiff Denny has chronic pain and uses a motorized wheelchair for mobility. She has a disability within the meaning of the ADA, 42 U.S.C. § 12102. Because Ms. Denny requires a wheelchair-accessible vehicle in order to utilize transportation services offered by hotels, she has a personal interest in ensuring that hotels comply with federal requirements governing provision of accessible transportation services to hotel guests. She is also a tester in this litigation.

10. Defendant Sage is a hotel management, investment, and development company incorporated in Delaware, with its principal place of business at 1575 Welton Street, Suite 300, Denver, Colorado. Sage owns and/or operates hotels throughout the United States, including approximately 22 hotels in the State of Colorado.

IV. FACTS APPLICABLE TO ALL CLAIMS

11. Defendant Sage owns and/or operates the TownePlace Suites by Marriott Boulder Broomfield located in Broomfield, CO, a hotel that provides its guests with a local shuttle service within a five-mile radius of the hotel.

12. On or about October 16, 2014, Plaintiff Denny telephoned the TownePlace Suites by Marriott Boulder Broomfield and asked if it provided wheelchair-accessible shuttle services. She was informed that the hotel does not offer wheelchair-accessible shuttle services.

13. Had Plaintiff Denny been informed that the hotel did provide wheelchair-accessible shuttle services, she intended to stay at the hotel and to use those services. She was deterred from doing so by the hotel's lack of wheelchair-accessible shuttle services.

14. Plaintiff Denny would like to stay at the TownePlace Suites by Marriott Boulder Broomfield hotel in the future and use the hotel's transportation services, and will do so if she is informed that such accessible services exist.

15. Defendant Sage owns and/or operates The Oxford Hotel located in Denver, CO, a hotel that provides its guests with a local shuttle service within a two-mile radius of the hotel.

16. On or about October 16, 2014, Plaintiff Denny telephoned The Oxford Hotel and asked if it provided wheelchair-accessible shuttle services. She was informed that the hotel does not offer wheelchair-accessible shuttle services.

17. Had Plaintiff Denny been informed that the hotel did provide wheelchair-accessible shuttle services, she intended to stay at the hotel and to use those services. She was deterred from doing so by the hotel's lack of wheelchair-accessible shuttle services.

18. Plaintiff Denny would like to stay at The Oxford Hotel in the future and use the hotel's transportation services, and will do so if she is informed that such accessible services exist.

19. On information and belief, Sage owns and/or operates a number of other hotels in the United States that offer transportation services to their guests but do not offer equivalent transportation services to guests who use wheelchairs or scooters. These hotels include, without limitation:

- A. Homewood Suites by Hilton San Francisco Airport - North, 2000 Shoreline Ct.,
Brisbane, CA
- B. Fairfield Inn & Suites Indianapolis Airport, 5220 W Southern Ave., Indianapolis, IN
- C. Courtyard Grand Rapids Airport, 4741 28th St. SE, Grand Rapids, MI
- D. Minneapolis Marriott Southwest, 5801 Opus Pkwy., Minnetonka, MN
- E. Courtyard Charlotte Airport, 2700 Little Rock Rd., Charlotte, NC
- F. Element Ewing Princeton, 1000 Sam Weinroth Rd. E, Ewing, NJ
- G. Fairfield Inn Las Vegas Airport, 3850 S, Paradise Rd., Las Vegas, NV
- H. Hampton Inn Long Island – Brookhaven, 2000 N Ocean Ave., Farmingville, NY
- I. Courtyard Cleveland Beachwood, 3695 Orange Pl., Beachwood, OH
- J. Courtyard Dallas Addison/Midway, 4165 Proton Dr., Addison, TX

20. On information and belief, after August 25, 1990, Sage has purchased or leased vehicles for use on fixed-route and/or demand-responsive transportation systems in place at its hotels.

21. CREEC brings this action based on associational standing on behalf of its members. CREEC's members – including Ms. Denny – include persons with disabilities who use wheelchairs or scooters for mobility, who would like to stay at Sage hotels and use their transportation services, but have been deterred and prevented from doing so by the failure of those hotels to provide equivalent, wheelchair-accessible transportation services. Because CREEC seeks only declaratory and injunctive relief, individual participation of CREEC members is not required.

22. Prior to filing this litigation, attorneys from CREEC wrote to Sage, explaining that many of its hotels are in violation of the transportation provisions of the ADA, and requesting that it bring its hotels into compliance. Sage did not respond to this letter.

V. CLASS ACTION ALLEGATIONS

23. Plaintiff Denny brings this action on behalf of herself and on behalf of a class defined as follows: individuals who use wheelchairs or scooters for mobility who have been, or in the future will be, denied the full and equal enjoyment of transportation services offered to guests at hotels owned and/or operated by Sage because of the lack of equivalent accessible transportation services at those hotels.

24. Joinder of all members of the proposed class would be impracticable because, without limitation, the class consists of numerous individuals who are geographically diverse, these individuals are very difficult to identify and they are unlikely to be able to bring individual suits.

25. There are numerous common questions of law and fact, including but not limited to:

- A. Whether Defendant Sage is a “private entity[y] . . . not primarily engaged in the business of transporting people”;
- B. Whether hotels owned and/or operated by Defendant Sage provide fixed-route and/or demand-responsive transportation systems;

- C. Whether Defendant Sage has purchased or leased any vehicles after August 25, 1990 for use on fixed-route or demand-responsive systems, and if so, the seating capacity of those vehicles;
- D. Whether Defendant Sage's transportation vehicles are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs; and
- E. Whether Defendant Sage has ensured that the transportation system in place at each hotel, when viewed in its entirety, meets the equivalent service requirements of 49 C.F.R. part 37.

26. The claims of Plaintiff Denny are typical of the claims of the class because they arise from the same course of conduct engaged in by Defendant Sage, are based on the same alleged violations of the same statutes and regulations, and seek the same relief.

27. Plaintiff Denny will fairly and adequately represent the interests of the class. Plaintiff Denny has no interests adverse to the interests of other members of the class. Further, the attorneys she has retained include counsel who have been appointed as class counsel in, and have successfully litigated, numerous disability rights class actions across the country.

28. Finally, certification under Rule 23(b)(2) is proper here because Defendant Sage has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive or declaratory relief with respect to the class as a whole.

CLAIM FOR RELIEF

Title III of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12181, *et seq.*

- 29. Plaintiffs incorporate by reference each and every allegation herein.

30. Title III requires that “[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns . . . or operates a place of public accommodation.” 42 U.S.C. § 12182(a); 28 C.F.R. § 36.201(a).

31. Hotels that provide fixed-route transportation services to guests must comply with the following requirements:

- A. For all purchases or leases after August 25, 1990, vehicles with a seating capacity over 16 passengers must be wheelchair-accessible;
- B. For all purchases or leases after August 25, 1990, vehicles with a seating capacity of under 16 passengers must be either wheelchair-accessible or equivalent service must be provided.

32. Hotels that provide on-demand transportation services to guests must either provide wheelchair-accessible vehicles or ensure that equivalent service is provided.

33. Defendant Sage owns and/or operates “an inn, hotel, motel, or other place of lodging,” which is a place of public accommodation pursuant to 42 U.S.C. § 12181(7)(A), and is also a “private entit[y] not primarily engaged in the business of transporting people” pursuant to 49 C.F.R. part 37.

34. Defendant Sage has engaged in illegal disability discrimination, as defined by Title III, including without limitation, by failing to ensure that transportation vehicles in use at its hotels are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, by failing to ensure that its hotels provide equivalent accessible

transportation services to such individuals, and/or by failing to ensure that personnel are trained to proficiency with respect to the provision of accessible transportation services.

35. Defendant Sage's ongoing and continuing violations of Title III have caused, and in the absence of an injunction will continue to cause, harm to the plaintiffs and the class.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request judgment as follows:

1. A declaration that Defendant Sage's conduct as alleged here has violated, and continues to violate, Title III of the Americans with Disabilities Act of 1990, as well as its implementing regulations;
2. Issuance of a permanent injunction requiring Defendant Sage to comply with the ADA;
3. Award of Plaintiffs' reasonable attorneys' fees and costs, as provided by law; and
4. Such other additional or alternative relief as the Court finds just and proper.

Dated this 4th day of February, 2015.

Respectfully Submitted,

/s/ Timothy P. Fox

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Attorneys for Plaintiffs and the Proposed
Class

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
 The Civil Rights Education and Enforcement Center; Margaret Denny

(b) County of Residence of First Listed Plaintiff Denver County, CO
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
 (see attachment)

DEFENDANTS
 Sage Hospitality Resources, LLC

County of Residence of First Listed Defendant Denver County, CO
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant

4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Tort Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities Employment <input checked="" type="checkbox"/> 446 Amer. w/Disabilities Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
			LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
			SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	
			TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	
			IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from another district (specify)

6 Multidistrict Litigation

7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 Americans with Disabilities Act, 42 U.S.C. § 12181, et seq.

Brief description of cause: AP Docket

Class action based on violation of federal requirements governing the provision of transportation by hotels

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ _____

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

DATE: February 4, 2015

SIGNATURE OF ATTORNEY OF RECORD: /s/ Timothy P. Fox

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

Civil Cover Sheet Attachment – I.(c) Plaintiffs’ Attorneys

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General Information

Court	United States District Court for the District of Colorado; United States District Court for the District of Colorado
Federal Nature of Suit	Civil Rights - Disabilities - Other[446]
Docket Number	1:15-cv-00236