

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

Civil Action No. 1:15-cv-00236-REB-MEH

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, SAGE OXFORD, INC., WALTER ISENBERG and JOHN DOES 1-5,

Defendants.

FIRST AMENDED 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 Defendants Sage Hospitality Resources LLC (“Sage Hospitality”), Sage Oxford, Inc. (“Sage Oxford”) and Walter Isenberg (collectively “Sage”

or “Defendants”) – which own, lease (or lease to) or operate more than 75 hotels spread among numerous states – have repeatedly failed to provide wheelchair-accessible transportation in hotels that provide transportation to nondisabled guests.

3. As a result, while Defendants’ 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 Defendants’ current and future 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 Defendants have engaged in violations of the ADA, and requiring Defendants to comply with this statute by providing wheelchair-accessible transportation services that are equivalent to the transportation services provided to nondisabled guests at hotels that Defendants currently, or in the future, own, lease (or lease to) or operate.

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 Hospitality 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.

11. On information and belief, Sage Hospitality owns, leases (or leases to) and/or operates numerous hotels in numerous states, including The Oxford Hotel and the TownePlace Suites by Marriott Boulder Broomfield.

12. According to its website, Sage Hospitality owns and/or operates more than 75 hotels throughout the United States, including approximately 22 hotels in the State of Colorado.

13. According to its website: “Sage Hospitality is a dynamic Denver-based hotel management company that strives to exceed guest expectations on all levels while supporting the Front Range communities in which we work and live. Sage manages 18 hotels in the Denver Metro area, giving one-stop shopping with a distinctive mix of hotel brands and types to satisfy any needs and budget.”¹ Among the 18 Denver hotels that Sage Hospitality claims to manage are The Oxford Hotel and the TownePlace Suites by Marriott Boulder Broomfield.

14. According to an affidavit signed by Defendant Walter Isenberg and filed with the U.S. District Court for the Northern District of Illinois Sage Hospitality is “generally in the business of managing hotels for others.”

15. Defendant Sage Oxford is affiliated with Sage Hospitality, is incorporated under the laws of Colorado, and has its principal place of business in Colorado.

16. On information and belief, Sage Oxford, Inc. owns, leases (or leases to) and/or operates numerous hotels in numerous states, including The Oxford Hotel.

17. According to Exhibit 2 of Sage Hospitality’s motion to dismiss, Sage Oxford manages The Oxford Hotel in Denver, Colorado.

¹ Sage Hospitality, Team Denver, <http://www.sagehospitality.com/teamdenver> (accessed Apr. 3, 2015).

18. According to a document filed with the Securities and Exchange Commission, Sage Oxford owns and/or manages at least 44 hotels in at least 19 states.

19. On information and belief, Sage Oxford is the sole and exclusive manager to supervise and direct the operations of the hotels it manages, as well as their ancillary facilities.²

20. On information and belief, Defendant Isenberg owns, leases (or leases to) and/or operates numerous hotels in numerous states.

21. For example, Defendant Isenberg is the Co-Founder, President and Chief Executive Officer of Sage Hospitality, the entity that purports to manage The Oxford and the Towneplace Suites Boulder Broomfield.

22. According to Sage Hospitality's website, Defendant Isenberg "directs all company operations, including property management, development and finance."³

23. Further, Defendant Isenberg is the President and Director of Sage Oxford, which as set forth above, owns and/or manages at least 44 hotels in at least 19 states, including The Oxford.

24. According to Denver property records, The Oxford is owned by Oxford 2005 LLLP, and according to documents filed with the Securities and Exchange Commission, Defendant Isenberg is one of two people who "control" Oxford 2005 LLLP.

² See Exhibit 2 to Defendant's Motion to Dismiss.

³ Sage Hospitality, Walter Isenberg, <http://www.sagehospitality.com/leadership/walter-isenberg> (accessed Apr. 3, 2015).

25. According to documents filed with the Colorado Secretary of State, Defendant Isenberg is the vice president, secretary, treasurer and director of Sage Management Services, Inc., which in turn manages a number of entities that operate hotels in various states, including the TownePlace Suites by Marriott Boulder Broomfield.

26. John Does 1-5 are additional owners, lessors, lessees and/or operators of The Oxford and/or the TownePlace Suites by Marriott Boulder Broomfield. Plaintiffs will name these defendants once they have had an opportunity to conduct relevant discovery to identify them.

IV. FACTS APPLICABLE TO ALL CLAIMS

27. Defendants own, lease (or lease to) or operate 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.

28. 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.

29. 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.

30. 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. She is currently deterred from doing so by the hotel's lack of wheelchair-accessible shuttle services.

31. Plaintiff Denny will continue to test this TownePlace Suites and other hotels covered by the putative class in this case by calling to see if wheelchair-accessible shuttle services are available several times per year.

32. Defendants own, lease (or lease to) or operate 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.

33. 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.

34. 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.

35. 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. She is currently deterred from doing so by the hotel's lack of wheelchair accessible shuttle services.

36. Plaintiff Denny will continue to test The Oxford Hotel and other hotels covered by the putative class in this case by calling to see if wheelchair accessible shuttle services are available several times per year.

37. On information and belief, Defendants own, lease (or lease to) and/or operate 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.

38. For example, prior to the initiation of this lawsuit, Ms. Corbett O'Toole, a member of CREEC who uses a wheelchair for mobility, called the following hotels, all of which purport to offer transportation to their guests. During the calls, Ms. O'Toole confirmed that each hotel offered transportation services to its guests and asked if the hotel provided accessible transportation services, and none of them did:

- A. Fairfield Inn & Suites Indianapolis Airport, 5220 W Southern Ave., Indianapolis, IN
- B. Courtyard Grand Rapids Airport, 4741 28th St. SE, Grand Rapids, MI
- C. Minneapolis Marriott Southwest, 5801 Opus Pkwy., Minnetonka, MN
- D. Courtyard Charlotte Airport, 2700 Little Rock Rd., Charlotte, NC
- E. Element Ewing Princeton, 1000 Sam Weinroth Rd. E, Ewing, NJ
- F. Fairfield Inn Las Vegas Airport, 3850 S. Paradise Rd., Las Vegas, NV
- G. Hampton Inn Long Island – Brookhaven, 2000 N Ocean Ave., Farmingville, NY
- H. Courtyard Cleveland Beachwood, 3695 Orange Pl., Beachwood, OH

I. Courtyard Dallas Addison/Midway, 4165 Proton Dr., Addison, TX

39. Ms. O'Toole also called the Homewood Suites by Hilton San Francisco Airport - North, 2000 Shoreline Ct., Brisbane, CA. This hotel provides transportation services to its guests without any advance notice requirement. When Ms. O'Toole asked if the hotel provided accessible transportation services, she was told that guests requiring accessible transportation would need to notify the hotel 24 hours in advance of the time that the guest needed the accessible transportation.

40. On information and belief, after August 25, 1990, Defendants have purchased or leased vehicles for use on fixed-route and/or demand-responsive transportation systems in place at their hotels.

41. 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 Defendants' 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.

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

V. CLASS ACTION ALLEGATIONS

43. 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 that Defendants, currently or in the future, own, lease (or lease to) or operate because of the lack of equivalent accessible transportation services at those hotels.

44. 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.

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

- A. Whether Defendants are “private entities . . . not primarily engaged in the business of transporting people”;
- B. Whether hotels owned and/or operated by Defendants provide fixed-route and/or demand-responsive transportation systems;
- C. Whether Defendants have 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 Defendants' transportation vehicles, where required to be so, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs; and

E. Whether Defendants have 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.

46. 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 Defendants, are based on the same alleged violations of the same statutes and regulations, and seek the same relief.

47. 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.

48. Finally, certification under Rule 23(b)(2) is proper here because Defendants have 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.*

49. Plaintiffs incorporate by reference each and every allegation herein.

50. 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).

51. 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.

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

53. Defendants own, lease (or lease to) or operate “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.

54. Defendants have engaged in illegal disability discrimination, as defined by Title III, including without limitation, by failing to ensure that transportation vehicles in use at their hotels are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, by failing to ensure that their 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.

55. Defendants' 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 Defendants' 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 Defendants to comply with the ADA in hotels that they currently, or in the future, own, lease (or lease to) or operate;
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 14th day of April, 2015.

Respectfully Submitted,

/s/ Timothy P. Fox

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