

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

REBECCA NOCERA, TRACY MICHEL,
JENNIFER ROSSMAN, ANGELA RENEAU,
FELICIA SAMMARCO, JOHN J. NOTTO,
STEVEN WILLNER and HEATHER SHARP,
individually and on behalf of all others similarly
situated,

Case No. 2:18-cv-01222

Plaintiffs,

v.

DOLLAR GENERAL CORPORATION d/b/a
DOLLAR GENERAL, DOLGENCORP, LLC
d/b/A DOLLAR GENERAL, DOLGEN NEW
YORK, LLC, DG RETAIL, LLC, and DOLGEN
CALIFORNIA, LLC,

Defendants.

SECOND AMENDED CONSOLIDATED CLASS ACTION COMPLAINT

COMES NOW, Plaintiffs Rebecca Nocera, Tracy Michel, Jennifer Rossman, Angela Reneau, Felicia Sammarco, John J. Notto, Steven Willner and Heather Sharp, (collectively, “Plaintiffs”), on behalf of themselves and all others similarly situated and alleges as follows:

INTRODUCTION

1. Plaintiffs bring this action individually and on behalf of all other similarly situated individuals with mobility disabilities against Dollar General Corporation d/b/a Dollar General and Dolgencorp, LLC d/b/a Dollar General (“Defendants”), alleging violations of Title III of the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*, (the “ADA”) and its implementing regulations, in connection with access barriers in pathways of travel at stores owned, operated, controlled and/or leased by Defendants.

2. Plaintiffs have qualified disabilities under the ADA and are limited in the major life activity of walking, which has caused them to rely on wheelchairs for mobility.

3. Plaintiffs have frequently visited Defendants' stores and have been denied full and equal access to the stores as a result of accessibility barriers existing in pathways of travel. These access barriers include but are not limited to: merchandise, merchandise displays, stocking carts, dollies, and ladders positioned so that they block or narrow the ingress, egress, aisle and other pathways. These conditions violate the ADA and severely impede Plaintiffs' ability to access the goods and services offered at Defendants' stores.

4. The access barriers described above are not temporary and isolated. They are systemic, recurring, and reflective of Defendants' inadequate policies and practices. Plaintiffs have encountered the same barriers on multiple occasions and have been repeatedly deterred from accessing Defendants' goods and services as a result.

5. This practice is intentional and is driven by a calculated judgment that impeding pathways of travel increases sales revenue and profits. *Stuff Piled in the Aisle? It's There to Get You to Spend More*, The New York Times, (April 7, 2011) (quoting Dollar General spokeswoman Mary Winn Gordon that Dollar General deliberately positions "merchandise in the aisles or at the entrance, or stacks of related items – like piles of bananas alongside boxes of vanilla wafers" in an effort to "capture [its] customers" attention). *See also Why a Messy, Cluttered Store is Good for Business*, Time Magazine, (April 8, 2011).

6. Although this practice may indeed increase profits for Defendants, it does so at the expense of basic civil rights guaranteed to people with disabilities by the ADA because it results in unlawful access barriers.

7. These access barriers have been repeatedly encountered by other disabled consumers at Defendants' stores nationwide.

8. Plaintiffs' experiences are not isolated—Defendants have systematically discriminated against individuals with mobility disabilities by having inadequate policies and practices that cause Defendants to consistently violate the ADA's accessibility requirements. These inadequate policies and practices have resulted in access barriers within Defendants' stores nationwide.

9. Counsel for Plaintiffs have overseen an investigation into Defendants' stores which has confirmed the widespread existence of interior access barriers that are the same as, or similar to, the barriers directly experienced by Plaintiffs at Defendants' stores nationwide.

10. Defendants have recently been subjected to legal actions regarding the same civil rights violations that are being challenged by Plaintiff in this Second Amended Consolidated Complaint nationwide. For example, Defendants recently entered into a Settlement Agreement with the United States Department of Justice regarding access barriers in and around their stores in the State of Alabama. *See* DJ# 202-3-41.

11. Unless Defendants are required to remove the access barriers described below, and required to change their policies and practices so that these access barriers do not reoccur at Defendants' stores nationwide, Plaintiffs and the proposed Class will continue to be denied full and equal access to the stores and will be deterred from fully accessing and using Defendants' stores.

12. The ADA expressly contemplates injunctive relief calculated to modify policies or practices. In relevant part, the ADA states:

[i]n the case of violations of...this title, injunctive relief shall include an order to alter facilities to make such facilities readily accessible to and usable by individuals

with disabilities....Where appropriate, injunctive relief shall also include requiring the...modification of a policy....

42 U.S.C. § 12188(a)(2).

13. Consistent with 42 U.S.C. § 12188(a)(2), Plaintiffs seek a permanent injunction requiring that:

- a) Defendants remediate all pathways of travel access barriers at Defendants' stores nationwide, consistent with the ADA;
- b) Defendants change their policies and practices so that the barriers to access pathways of travel at Defendants' stores do not reoccur;
- c) Defendants change their policies and practices so that Defendants refrain from placing merchandise in a manner that blocks Plaintiffs' use of the emergency exits, water fountains, entrances and exits, and bathrooms; and
- d) Plaintiffs' representatives shall monitor Defendants' stores to ensure that the injunctive relief ordered pursuant to this Second Amended Consolidated Complaint has been implemented and will remain in place.

14. Plaintiffs' claims for permanent injunctive relief are asserted as class claims pursuant to Fed. R. Civ. P. 23(b)(2). Rule 23(b)(2) was specifically intended to be utilized in civil rights cases where the plaintiff seeks injunctive relief for his or her own benefit and the benefit of a class of similarly situated individuals. To that end, the note to the 1996 amendment to Rule 23 states:

Subdivision(b)(2). This subdivision is intended to reach situations where a party has taken action or refused to take action with respect to a class, and final relief of an injunctive nature or a corresponding declaratory nature, settling the legality of the behavior with respect to the class as a whole, is appropriate.... Illustrative are various actions in the civil rights field where a party is charged with discriminating unlawfully against a class, usually one whose members are incapable of specific enumeration.

**THE ADA AND THE RIGHT OF NON-DISCRIMINATORY
ACCESS TO GOODS AND SERVICES**

15. The ADA specifically prioritizes “measures to provide access to those areas where goods and services are made available to the public. These measures include, for example, adjusting the layout of display racks, rearranging tables ...” 28 C.F.R. § 36.304

16. The ADA and its implementing regulations define prohibited discrimination to include the following: A) the failure to remove architectural barriers when such removal is readily achievable for places of public accommodation that existed prior to January 26, 1992, 28 C.F.R. § 36.304(a) and 42 U.S.C. § 12182(b)(2)(A)(iv); B) the failure to design and construct places of public accommodation for first occupancy after January 26, 1993, that are readily accessible to and usable by individuals with disabilities, 28 C.F.R. § 36.401 and 42 U.S.C. § 12183(a)(1); C) for alterations to public accommodations made after January 26, 1992, the failure to make alterations so that the altered portions of the public accommodation are readily accessible to and usable by individuals with disabilities, 28 C.F.R. § 36.402 and 42 U.S.C. § 12183(a)(2); and D) the failure to maintain those features of public accommodations that are required to be readily accessible to and usable by persons with disabilities, 28 C.F.R. § 36.211.

17. To be “readily accessible” under Title III of the ADA, merchandise on fixed aisle shelving in a retail store such as Dollar General must be located on an accessible route. The Department of Justice, pursuant to 42 U.S.C. § 12186(b), has promulgated the ADA Accessibility Guidelines (“ADAAG”) in implementing Title III of the ADA. There are two active ADAAGs that set forth the technical structural requirements that a public accommodation must meet in order to be “readily accessible”: the 1991 ADAAG Standards, 28 C.F.R. § pt. 36, App. D (“1991 Standards”), and the 2010 ADAAG Standards, 36 C.F.R. § pt. 1191, App. D (“2010 Standards”).

18. The applicable “accessible route” standards are set forth in the 2010 Standards at Section 403.5.1. *See also*, ADA Guide for Small Businesses, June 1999, available at

<https://www.ada.gov/smbustxt.htm> (noting that “when sales items are displayed or stored on shelves for selection by customers, the store must provide an accessible route to fixed shelves and displays, if doing so is readily achievable.”)

19. ADA Figure 403.5.1 explains that an accessible route must be a minimum of 36 inches, but can be reduced to 32 inches for a length of no more than 24 inches, such as at doors, so long as the 32 inch segments are at least 48 inches apart. *See* ADA Figure 403.5.1 available at <https://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-ada-standards/ada-standards/chapter-4-accessible-routes> (*last accessed* on October 9, 2018).

20. The ADA requires places of public accommodations to design and construct facilities to be independently usable by individuals with disabilities. 42 U.S.C. § 12183(a)(1).

21. The ADA further prohibits places of public accommodation from utilizing methods of administration that have the effect of discriminating on the basis of a disability. 42 U.S.C. § 12182(b)(1)(D).

22. The ADA further requires Defendants to provide individuals who use wheelchairs or scooters full and equal enjoyment of its facilities. 42 U.S.C. § 12182(a).

23. When discriminatory architectural conditions exist within a public accommodation’s facility, the ADA directs that a “public accommodation *shall* remove architectural barriers in existing facilities . . . where such removal is readily achievable, i.e., easily accomplishable and able to be carried out without much difficulty or expense.” 28 C.F.R. § 36.304(b) (*emphasis added*); *See also* 42 U.S.C. § 12182(b)(2)(A)(iv) (the failure to remove architectural barriers, where such removal is readily achievable, constitutes discrimination).

24. In addition to tangible barrier removal requirements as well as physical design, construction, and alteration requirements, the ADA requires reasonable modifications in policies,

practices, or procedures when necessary to afford goods, services, facilities, or accommodations to individuals with disabilities, unless the public accommodation can demonstrate that making such modifications would fundamentally alter their nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

25. The remedies and procedures set forth at 42 U.S.C. § 2000a-3(a) are provided to any person who is being subjected to discrimination on the basis of disability or who has reasonable grounds for believing that such person is about to be subjected to discrimination in violation of 42 U.S.C. § 12183. 42 U.S.C. 12188(a)(1).

26. The access barriers described herein demonstrate that Defendants' facilities are not altered, designed, or constructed in a manner that causes them to be readily accessible to and usable by individuals who use wheelchairs or scooters and/or that Defendants' facilities are not maintained so as to ensure that they remained accessible to and usable by individuals who use wheelchairs or scooters.

27. Defendants' repeated and systemic practices herein described constitute unlawful discrimination on the basis of a disability in violation of Title III of the ADA.

JURISDICTION AND VENUE

28. This Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331 and 42 U.S.C. § 12188.

29. Plaintiffs' claims asserted herein arose in this judicial district, and Defendants do substantial business in this judicial district.

30. Venue in this judicial district is proper under 28 U.S.C. § 1391(b)(2) in that this is the judicial district in which a substantial part of the events and/or omissions at issue occurred.

PARTIES

31. Plaintiff Rebecca Nocera is, and at all time relevant hereto was, a resident of Lawrence County, Pennsylvania. As described above, as a result of her disability, Plaintiff Nocera relies upon a wheelchair for mobility. She is therefore a member of a protected class under the ADA, 42 U.S.C. § 12102(2), and the regulations implementing the ADA set forth at 28 C.F.R. §§ 36.101 *et seq.*

32. Plaintiff Tracy Michel is, and at all times relevant hereto was, a resident of Westmoreland County, Pennsylvania. As described above, as a result of her disability, Plaintiff uses a wheelchair for mobility. She is therefore a member of a protected class under the ADA, 42 U.S.C. § 12102(2), and the regulations implementing the ADA set forth at 28 C.F.R. §§ 36.101 *et seq.*

33. Plaintiff Jennifer Rossman is, and at all time relevant hereto was, a resident of Oneonta, New York and Binghamton, New York. As described above, as a result of her disability, Plaintiff Rossman relies upon a wheelchair for mobility. She is therefore a member of a protected class under the ADA, 42 U.S.C. § 12102(2), and the regulations implementing the ADA set forth at 28 C.F.R. §§ 36.101 *et seq.*

34. Plaintiff Angela Reneau is, and at all times relevant hereto was, a resident of Chicago, Illinois. Plaintiff Reneau is a person with a double leg amputation that substantially limits her ability to ambulate, and who uses a wheelchair for mobility. She is therefore a member of a protected class under the ADA, 42 U.S.C. § 12102(2), and the regulations implementing the ADA set forth at 28 C.F.R. §§ 36.101 *et seq.*

35. Plaintiff Felicia Sammarco is, and at all times relevant hereto was, a resident of McHenry, Illinois. Plaintiff Sammarco is a person with a leg amputation that substantially limits her ability to ambulate, and who uses a wheelchair for mobility. She is therefore a member of a

protected class under the ADA, 42 U.S.C. § 12102(2), and the regulations implementing the ADA set forth at 28 C.F.R. §§ 36.101 *et seq.*

36. Plaintiff John J. Notto is, and at all times relevant hereto was, a resident of Lincoln, Illinois. Plaintiff Notto is a person with a leg amputation that substantially limits his ability to ambulate, and who uses a wheelchair for mobility. He is therefore a member of a protected class under the ADA, 42 U.S.C. § 12102(2), and the regulations implementing the ADA set forth at 28 C.F.R. §§ 36.101 *et seq.*

37. Plaintiff Steven Willner is, and at all time relevant hereto was, a resident of St. Petersburg, Florida. As a result of a stroke, Plaintiff Willner relies upon a wheelchair for mobility. He is therefore a member of a protected class under the ADA, 42 U.S.C. § 12102(2), and the regulations implementing the ADA set forth at 28 C.F.R. §§ 36.101 *et seq.*

38. Plaintiff Heather Sharp is, and at all times relevant hereto was, a resident of San Jacinto, California. Plaintiff suffered an injury approximately five years ago that severely limited her ability to ambulate, and consequently, Plaintiff uses a wheelchair for mobility. She is therefore a member of a protected class under the ADA, 42 U.S.C. § 12102(2), and the regulations implementing the ADA set forth at 28 C.F.R. §§ 36.101 *et seq.*

39. Defendant Dolgencorp, LLC is a foreign limited liability company headquartered at 100 Mission Ridge, Goodlettsville, TN.

40. Defendant Dollar General Corporation is a foreign corporation headquartered at 100 Mission Ridge, Goodlettsville, TN.

41. Defendant Dolgen New York, LLC is a foreign limited liability company headquartered at 100 Mission Ridge, Goodlettsville, TN.

42. Defendant DG Retail, LLC is a foreign limited liability company headquartered at 100 Mission Ridge, Goodlettsville, TN.

43. Defendant Dolgen California, LLC is a foreign limited liability company headquartered at 100 Mission Ridge, Goodlettsville, TN.

44. Defendants are a public accommodation pursuant to 42 U.S.C. §12181(7).

FACTUAL ALLEGATIONS

I. Plaintiffs Have Been Denied Full and Equal Access to Defendants' Facilities.

45. Plaintiffs have regularly visited Defendants stores and suffered violations of their civil rights in the form of the ADA accessibility barriers they encountered.

46. Plaintiff Michel has visited Defendants' store located at 6858 Route 711 Ste 8, Seward, PA 15954 (Store # 8412) (the "Seward Store") within the relevant limitations period. This store is located close to Plaintiff Michel's home. Plaintiff Michel visited and shopped inside the Seward Store on a regular basis until approximately 2014, at which time Plaintiff Michel's qualified disability caused her to begin using a walker. In 2016, Plaintiff Michel's disability worsened such that she began using a wheelchair.

47. Plaintiff Michel continued to visit the Seward Store after 2014, however, she was deterred from entering the Seward Store because the interior access barriers at the Seward Store rendered it sufficiently difficult for Plaintiff Michel to navigate the paths of travel with her mobility devices. Due to this, she relied primarily on her fiancé to enter the store to shop on her behalf while she waited outside in the car.

48. Recently, within the month prior to the filing of the original Complaint in this matter, Plaintiff Michel revisited the Seward Store with the hope that the previously existent access barriers described above had been eliminated. However, unlawful and discriminatory interior

access barriers remain in place, including, but not necessarily limited to, merchandise, merchandise displays, bins, boxes, dollies, and ladders positioned so that they block or narrow the aisle pathways in violation of the requirements of the 2010 Standards Section 403.5.1. Plaintiff Michel would shop at Defendants' stores more often, and with less difficulty, if the interior access barriers are removed.

49. When Plaintiff Michel attempted to photograph some of the barriers, a woman who identified herself as the store manager confronted her, told Plaintiff Michel that taking any photographs inside the store was prohibited, and asked Plaintiff Michel to leave the store.

50. Plaintiff Michel informed Defendants' employees at the Seward Store about the existence of access barriers within the store which have rendered it difficult for Plaintiff Michel to shop at the store and deterred her from coming into the store. Notwithstanding this fact, Defendants' employees have not made any material changes to eliminate the existence of access barriers within the Seward Store.

51. On or around late December 2018 or early January 2019, Plaintiff Michel returned to the Seward Store with her fiancé. Plaintiff Michel did not enter the Seward Store, as before, because she felt deterred from entering a public accommodation that is not accessible. Specifically, Plaintiff Michel was concerned with the lack of an accessible entrance and accessible interior paths within the Seward Store. During Plaintiff's visit, of the two automatic sliding doors present at the Seward Store's entrance, one door was locked, narrowing the width of the entrance such that Plaintiff Michel's wheelchair could not fit. Additionally, Plaintiff Michel's fiancé entered the Seward Store and observed the same access barriers Plaintiff Michel previously encountered, including but not limited to merchandise displays, stocking carts, dollies, and ladders positioned

so that they block or narrow the aisle pathways, and he immediately relayed his observations to Plaintiff Michel.

52. Plaintiffs' Investigator also separately examined the Seward Store in February 2019 and encountered the same types of access barriers that Plaintiff Michel has repeatedly encountered, as depicted in the following photographs:

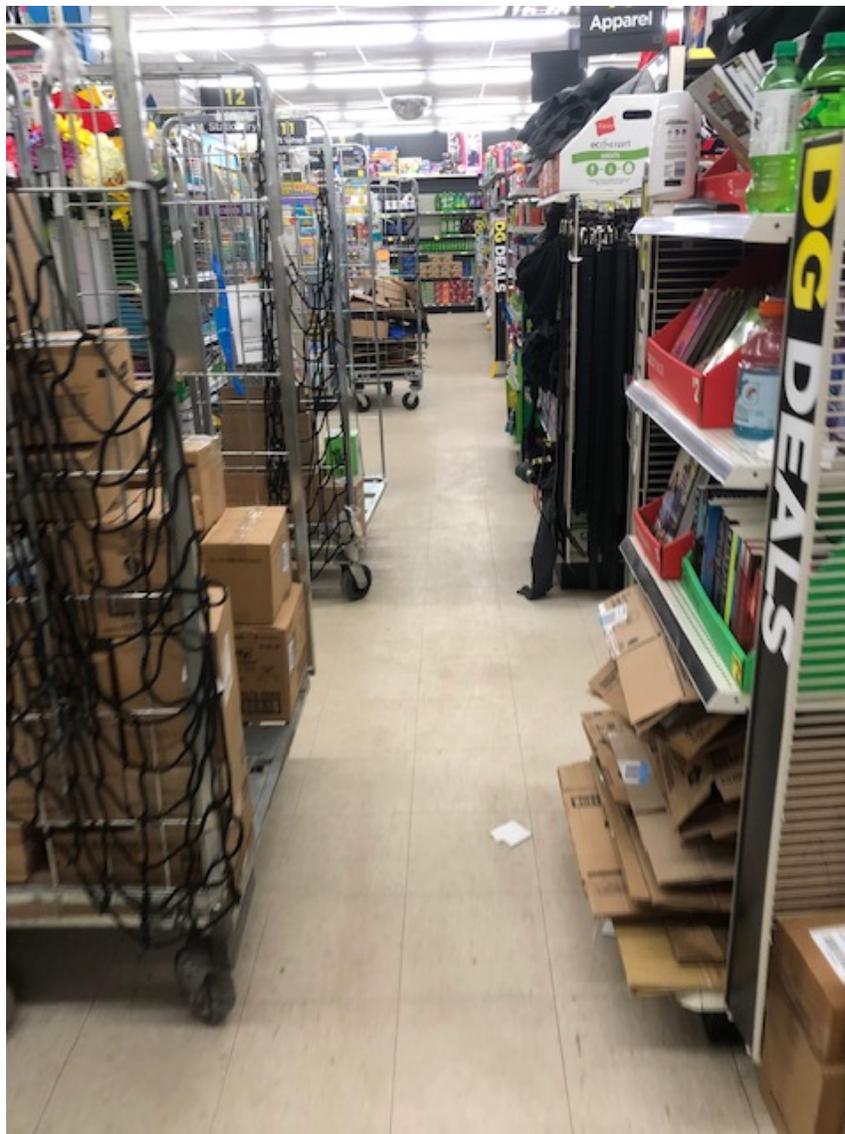


Figure 1 – Dollar General, 6858 Route 711 Ste 8, Seward, PA 15954



Figure 2 – Dollar General, 6858 Route 711 Ste 8, Seward, PA 15954



Figure 3 – Dollar General, 6858 Route 711 Ste 8, Seward, PA 15954



Figure 4 – Dollar General, 6858 Route 711 Ste 8, Seward, PA 15954

53. Plaintiff Nocera regularly visits Defendants’ store located at 2400 Wilmington Road, New Castle, PA 16105 (Store # 6186) (the “New Castle Store”) with her mother, Lynn Nocera, and encountered unlawful and discriminatory interior access barriers including, but not necessarily limited to, merchandise, merchandise displays, bins, boxes, dollies, and ladders positioned so that they block or narrow the aisle pathways in violation of the requirements of the 2010 Standards Section 403.5.1. Plaintiff Nocera would shop at Defendants’ stores more often, and with less difficulty, if the interior access barriers are removed.

54. Plaintiff Nocera's visits to the New Castle Store occur on a weekly basis. The New Castle Store is located close to Plaintiff Nocera's home. Plaintiff Nocera has attempted to shop at the New Castle Store within the relevant limitations period. However, interior access barriers render it sufficiently difficult for Plaintiff Nocera to navigate the paths of travel in the New Castle Store with her wheelchair such that she is deterred from shopping there. As a result, Plaintiff Nocera now typically remains in the car outside the New Castle Store while her mother shops.

55. Plaintiff Nocera's mother has repeatedly informed Defendants' employees at the New Castle Store about the existence of access barriers within the store which have made it difficult for Plaintiff Nocera to shop at New Castle Store and deterred her from entering. Notwithstanding this fact, Defendants' employees have not made any material changes to eliminate the existence of access barriers within the New Castle Store.

56. Plaintiff Rossman visited Dollar General Store #10652, ("Store #10652") located at 76 Chestnut Street, Oneonta, New York, on or about June 3, 2017.

57. Plaintiff Rossman could not navigate in her wheelchair around Store #10652 due to the presence of physical impediments and obstacles, including but not limited to merchandise stacked on the floor and in aisles, large stocking carts placed at the ends of aisles blocking or narrowing the aisle pathway, cardboard merchandise displays blocking or narrowing the aisle pathway, and items arranged outside the store which blocked the curb ramp from the parking lot to the entrance.

58. The impediments and obstacles listed above prevented Plaintiff Rossman from navigating portions of Store #10652 in her wheelchair.

59. Disability Rights New York ("DRNY") sent a letter on behalf of Plaintiff Rossman to Defendants on July 18, 2017 advising them of accessibility barriers at Store #10652.

60. On August 8, 2017, Defendants sent a letter to DRNY which said that “each aisle in the store [would be] both clear and accessible” and that the store manager will review “Dollar General’s internal policies concerning store accessibility” at Store #10652.

61. Further, the August 8th letter stated that “[s]tore employees were reminded to follow these internal stocking guidelines, which require that employees do not allow aisles to become blocked or obstructed during stocking and do no leave stocking carts unattended on the sales floor during operation hours.”

62. Defendants also advised DRNY that they would remove stocking carts kept in front of the store to improve curb cut accessibility.

63. Plaintiff Rossman went to Store #10652 again on or about October 13, 2017.

64. During the October 2017 visit, Plaintiff Rossman could not navigate her wheelchair around Store #10652.

65. During her October 2017 visit to Store #10652, Plaintiff Rossman again encountered physical impediments and obstacles.

66. Defendants’ Store #10652 continues to be inaccessible to Plaintiff Rossman.

67. Plaintiff Rossman intends to patronize Defendants’ Store #10652 if it becomes accessible.

68. Defendants’ Store #10652 was the closest store to Plaintiff Rossman’s residence in Oneonta that sold basic necessities, and is the only store of its kind that client could travel to independently, without relying on transportation.

69. Since relocating to Binghamton, New York, Plaintiff Rossman has attempted to patronize Defendants’ Store #9951, located at 357 Court Street, Binghamton, New York.

70. Plaintiff attempted to patronize Defendants’ Store #9951 on April 16, 2019.

71. During that visit, Plaintiff Rossman faced numerous obstacles in the aisles of Store #9951, which were of a similar nature to the barriers she observed at Store #10652. Plaintiff Rossman observed merchandise in the aisles narrowing the accessible path, and stocking carts placed in aisles, blocking her from independently navigating Store #9951.

72. Plaintiffs Reneau, Sammarco and Notto regularly frequent businesses in their respective home towns and the surrounding areas, including Dollar General stores – and have done so for years. The ability to independently patronize businesses is important to Plaintiffs Reneau, Sammarco and Notto and their quality of life; it enables them to obtain necessary goods and services and allows them to interact with the community.

73. Plaintiff Reneau has regularly visited Defendants' stores located at 5255 N. Milwaukee Ave, Chicago, IL 60630, within the relevant limitations period, and encountered unlawful and discriminatory interior access barriers including, but not necessarily limited to, merchandise displays, boxes, and ladders positioned so that they block or narrow the aisle pathways in violation of the requirements of the 2010 Standards Section 403.5.1. Plaintiff Reneau would shop at Defendants' stores more often, and with less difficulty, if the interior access barriers are removed.

74. Plaintiff Sammarco has regularly visited Defendants' stores located at 327 Irving Ave, Woodstock, IL 60098 and 4400 W. Elm Street, McHenry, IL 60050, within the relevant limitations period, and encountered unlawful and discriminatory interior access barriers including, but not necessarily limited to, merchandise displays, boxes, and ladders positioned so that they block or narrow the aisle pathways in violation of the requirements of the 2010 Standards Section 403.5.1. Plaintiff Sammarco would shop at Defendants' stores more often, and with less difficulty, if the interior access barriers are removed.

75. Plaintiff Notto has regularly visited Defendants' stores located at 1210 Woodlawn Rd, Lincoln, IL 62656 and 415 Limit Street, Lincoln, IL 62656, within the relevant limitations period, and encountered unlawful and discriminatory interior access barriers including, but not necessarily limited to, merchandise displays, boxes, and ladders positioned so that they block or narrow the aisle pathways in violation of the requirements of the 2010 Standards Section 403.5.1. Plaintiff Notto would shop at Defendants' stores more often, and with less difficulty, if the interior access barriers are removed.

76. Plaintiff Notto regularly frequents Defendants' stores for goods and services. The ability to independently patronize businesses is important to Plaintiff and his quality of life; it enables him to obtain necessary goods and services and allows him to interact with the community, which is a critical social outlet for him.

77. Plaintiff Willner regularly frequents businesses in St. Petersburg, Florida, and the surrounding areas, including Defendants' stores, and has done so for years. The ability to independently patronize businesses is important to Plaintiff and his quality of life; it enables him to obtain necessary goods and services, and allows him to interact with the community, which is a critical social outlet for him.

78. Plaintiff Willner has regularly visited Defendants' store located at 10354 Roosevelt Blvd. N, St. Petersburg, FL 33716 (the "St. Petersburg Store"), which is located next door to his residence. Upon his visits to the St. Petersburg Store, he consistently encountered and encounters unlawful and discriminatory access barriers including, but not necessarily limited to, merchandise displays, boxes, pillars, and ladders positioned so that they block or narrow the aisle pathways in violation of the requirements of the 2010 Standards Section 403.5.1.

79. Plaintiff Sharp has regularly visited Defendants' store located at 700 S San Jacinto Ave, San Jacinto, CA 92583 (the "San Jacinto Store"), and encountered unlawful and discriminatory interior access barriers including, but not necessarily limited to, merchandise displays, boxes, and ladders positioned so that they block or narrow the aisle pathways in violation of the requirements of the 2010 Standards Section 403.5.1.

80. Plaintiff Sharp shops at the San Jacinto Store in particular because it is near her home. The San Jacinto Store is approximately 2.2 miles from Plaintiff's residence. Plaintiff visits the San Jacinto Store at least a dozen times per year, and would shop there more frequently if she could actually navigate the aisles.

81. As a result of Defendants' non-compliance with the ADA, Plaintiffs' ability to access and safely use Defendants' facilities has been significantly impeded.

82. Plaintiffs are and will be deterred from returning to and fully and safely accessing Defendants' stores, however, so long as Defendants' stores remain non-compliant, and so long as Defendants continue to employ the same policies and practices that have led, and in the future will lead, to inaccessibility at Defendants' stores.

83. Without injunctive relief, Plaintiffs will continue to be unable to fully and safely access Defendants' stores in violation of their rights under the ADA.

84. As each Plaintiff is an individual with a mobility disability who uses a wheelchair for mobility, Plaintiffs are directly interested in whether public accommodations, like Defendants' stores, have access barriers that impede full accessibility to those accommodations by individuals with mobility-related disabilities.

II. Defendants Deny Individuals With Disabilities Full and Equal Access to Their Facilities.

85. Defendants are engaged in the ownership, management, operation, and development of over 16,300 retail stores throughout the United States.

86. As the owner and manager of their properties, Defendants employ centralized policies, practices, and procedures with regard to the design, construction, alteration, maintenance, and operation of its facilities.

87. These policies, practices, and procedures are inadequate in that Defendants' facilities are operated and maintained in violation of the accessibility requirements of Title III of the ADA.

88. On Plaintiffs' behalf, Investigators examined multiple locations owned, controlled, and/or operated by Defendants throughout Pennsylvania, Minnesota, and California, and found the following additional locations containing the same problematic access barriers as the Seward Store and the New Castle Store and lacking fully accessible interior paths of travel:

- a) 425 Perry Hwy, West View, PA 15229;
- b) 491 Lincoln Ave, Bellevue, PA 15202;
- c) 1811 Main St, Sharpsburg, PA 15215;
- d) 2412 Ferguson Rd, Allison Park, PA 15101;
- e) 120 Three Degree Rd, Pittsburgh, PA 15237;
- f) 926 5th Ave, Coraopolis, PA 15108;
- g) 700 E Warrington Ave, Pittsburgh, PA 15210;
- h) 10730 Frankstown Rd, Pittsburgh, PA 15235;
- i) 123 N Sheridan Ave, East Liberty, PA 15206;
- j) 1215 Brighton Rd, Pittsburgh, PA 15233;
- k) 131 Bradford Ave, Pittsburgh, PA 15205;

- l) 4725 Centre Ave, Pittsburgh, PA 15213;
- m) 494 Springdale Street, Pittsburgh, PA 15144;
- n) 5000 Library Rd, Bethel Park, PA 15102;
- o) 351 Hoffman Blvd, Duquesne, PA 15110;
- p) 2610 S Braddock Ave, Pittsburgh, PA 15218;
- q) 7402 Church St, Pittsburgh, PA 15218;
- r) 1714 Laketon Rd, Pittsburgh, PA 15221;
- s) 430 US-22, Delmont, PA 15626;
- t) 315 Cochran Rd, Pittsburgh, PA 15228;
- u) 6858 Route 771, Seward, PA 15954;
- v) 700 S. San Jacinto Ave, San Jacinto, CA 92582;
- w) 525 W 4th St, Perris, CA 92570
- x) 2980 N Perris Blvd, Perris, CA 92571;
- y) 1055 Payne Ave, St. Paul, MN 55143
- z) 1433 E Franklin Ave, Minneapolis, MN, 55404
- aa) 1990 Suburban Ave, St. Paul, MN, 55106
- bb) 1546 White Bear Ave, St. Paul, MN, 55106
- cc) 2573 Mounds View Blvd, Mounds View, MN 55112
- dd) 865 45th Ave NE, Hilltop, MN, 55421

89. On Plaintiff Rossman's behalf, DRNY visited and documented physical impediments and obstacles at 83 Dollar General stores across New York State between November 2017 and January 2018 and found the following with regard to the over 325 Dollar General stores in New York State:

- a) At least 75 of Defendants' stores have aisles with overflow merchandise or merchandise displays placed on the floor blocking the aisle pathway.
- b) At least 61 of Defendants' stores have aisles narrower than the minimum accessibility standards set forth in the ADA and its implementing regulations.
- c) At least 31 of Defendants' stores have level changes, including,
 - i. level changes greater than half an inch,
 - ii. no curb ramps or bevels, and
 - iii. inaccessible sloped entrance ramps.
- d) At least nine of Defendants' stores have designated accessible parking that either,
 - i. does not connect to an exterior accessible route, or,
 - ii. impermissibly utilizes the vehicular way in lieu of an exterior accessible route, or
 - iii. does not connect to an exterior accessible route and utilizes the vehicular way in lieu of an exterior accessible route.
- e) In at least 29 of Defendants' stores, the drinking fountain is blocked for one or more of the following reasons,
 - i. merchandise is stacked in front of or on top of the drinking fountain,
 - ii. the route to the drinking fountain is blocked by merchandise, or
 - iii. the drinking fountain itself is installed in an inaccessible location.
- f) At least 28 of Defendants' stores have merchandise or other materials blocking the restroom, making the bathroom inaccessible to users of wheelchairs or other mobility devices.

- g) At least seven of Defendants' stores have emergency egresses which have at least one of the following inaccessible features,
 - i. steps,
 - ii. sliding bolts greater than five feet from the floor securing the egress door, or
 - iii. egress doors obstructed or blocked by merchandise.
- h) At least six of Defendants' stores have doors with one or more inaccessible feature, including but not limited to,
 - i. too heavy,
 - ii. require an inaccessible amount of force to open,
 - iii. close too hard, or
 - iv. close too fast.

90. As evidenced by the widespread inaccessibility of Defendants' stores nationwide, absent a change in Defendants' corporate policies and practices, access barriers are likely to reoccur in Defendants' facilities even after they have been remediated in the first instance.

91. Accordingly, Plaintiffs seek an injunction to remove the barriers currently present at Defendants' facilities and an injunction to modify the policies and practices that have created or allowed, and will create or allow, access barriers in Defendants' stores.

CLASS ALLEGATIONS

92. Plaintiffs bring this class action pursuant to Fed. R. Civ. P. 23(a) and 23(b)(2) on behalf of themselves and the following class: all persons with qualified mobility disabilities who have attempted, or will attempt, to access any store owned or operated by Defendants and have, or will have, experienced access barriers in pathways of travel.

93. Numerosity: The class described above is so numerous that joinder of all individual members in one action would be impracticable. The disposition of the individual claims of the respective class members through this class action will benefit both the parties and this Court, and will facilitate judicial economy.

94. Typicality: Plaintiffs' claims are typical of the claims of the members of the class. The claims of Plaintiffs and members of the class are based on the same legal theories and arise from the same unlawful conduct.

95. Common Questions of Fact and Law: There is a well-defined community of interest and common questions of fact and law affecting members of the class in that they all have been and/or are being denied their civil rights to full and equal access to, and use and enjoyment of, Defendants' facilities and/or services due to Defendants' failure to make their facilities fully accessible and independently usable as above described. The questions of law and fact that are common to the class include:

- a. Whether Defendants operate places of public accommodation and are subject to Title III of the ADA and its implementing regulations;
- b. Whether storing merchandise in interior aisles of the stores makes the stores inaccessible to Plaintiffs and putative class members; and,
- c. Whether Defendants' storage, stocking and setup policies and practices discriminate against Plaintiffs and putative class members in violation of Title III of the ADA and its implementing regulations.

96. Adequacy of Representation: Plaintiffs are adequate representatives of the class because their interests do not conflict with the interests of the members of the class. Plaintiffs will fairly, adequately, and vigorously represent and protect the interests of the members of the class,

and they have no interests antagonistic to the members of the class. Plaintiffs have retained counsel who are competent and experienced in the prosecution of class action litigation, generally, and who possess specific expertise in the context of class litigation under the ADA.

97. Class certification is appropriate pursuant to Fed. R. Civ. P. 23(b)(2) because Defendants have acted or refused to act on grounds generally applicable to the class, making appropriate both declaratory and injunctive relief with respect to Plaintiffs and the class as a whole.

SUBSTANTIVE VIOLATION

98. The allegations contained in the previous paragraphs are incorporated by reference.

99. Defendants' facilities were altered, designed, or constructed after the effective date of the ADA.

100. Defendants' facilities are required to be altered, designed, and constructed so that they are readily accessible to and usable by individuals who use wheelchairs or scooters. 42 U.S.C. § 12183(a).

101. Further, the accessible features of Defendants' facilities, which include all pathways of travel, are required to be maintained so that they are readily accessible to and usable by individuals with mobility disabilities. 28 C.F.R. § 36.211.

102. The access barriers described above demonstrate that Defendants' facilities are not altered, designed, or constructed in a manner that causes them to be readily accessible to and usable by individuals who use wheelchairs or scooters and/or that Defendants' facilities are not maintained so as to ensure that they remained accessible to and usable by individuals who use wheelchairs or scooters.

103. Defendants' repeated and systemic failures to design, construct, and alter facilities so that they are readily accessible and usable, to remove access barriers, and to maintain the

accessible features of their facilities constitutes unlawful discrimination on the basis of a disability in violation of Title III of the ADA.

104. Defendants' facilities are required to comply with the Department of Justice's 2010 Standards for Accessible Design, or in some cases the 1991 Standards. 42 U.S.C. § 12183(a)(1); 28 C.F.R. § 36.406; 28 C.F.R., pt. 36, app. A.

105. Defendants are required to provide individuals who use wheelchairs or scooters full and equal enjoyment of its facilities. 42 U.S.C. § 12182(a).

106. Defendants have failed, and continue to fail, to provide individuals who use wheelchairs or scooters with full and equal enjoyment of its facilities.

107. Defendants have discriminated against Plaintiffs and the class in that Defendants have failed to make Defendants' facilities fully accessible to, and independently usable by, individuals who use wheelchairs or scooters in violation of 42 U.S.C. § 12182(a) as described above.

108. Defendants' conduct is ongoing and continuous, and Plaintiffs have been harmed by Defendants' conduct.

109. Unless Defendants are restrained from continuing its ongoing and continuous course of conduct, Defendants will continue to violate the ADA and will continue to inflict injury upon Plaintiffs and the class.

110. Given that Defendants have not complied with the ADA's requirements to make Defendants' facilities fully accessible to, and independently usable by, individuals who use wheelchairs or scooters, Plaintiffs invokes their statutory rights to declaratory and injunctive relief, as well as costs and attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and the members of the class, pray for:

- a. A declaratory judgment that Defendants are in violation of the specific requirements of Title III of the ADA, and the relevant implementing regulations of the ADA, in that Defendants' facilities are not fully accessible to and independently usable by individuals who use wheelchairs or scooters;
- b. A permanent injunction pursuant to 42 U.S.C. § 12188(a)(2) and 28 C.F.R. § 36.501(b) that: (i) directs Defendants to take all steps necessary to remove the access barriers described above and to bring their facilities into full compliance with the requirements set forth in the ADA, and its implementing regulations, so that the facilities are fully accessible to, and independently usable by, individuals who use wheelchairs or scooters; (ii) directs Defendants to change its policies and practices to prevent the reoccurrence of access barriers post-remediation; and (iii) directs that Plaintiffs shall monitor Defendants' facilities to ensure that the injunctive relief ordered above remains in place.
- c. An Order certifying the class proposed by Plaintiffs, naming Plaintiffs as class representatives, and appointing Plaintiffs' counsel as class counsel;
- d. Payment of costs of suit;
- e. Payment of reasonable attorneys' fees, pursuant to 42 U.S.C. § 12205 and 28 C.F.R. § 36.505; and,
- f. The provision of whatever other relief the Court deems just, equitable, and appropriate.

Dated: July 20, 2020

Respectfully Submitted,

By: /s/ R. Bruce Carlson

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