

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

GAYLE LEWANDOWSKI, individually	)	
and on behalf of all others similarly	)	Civil Action No. 2:19-cv-00858-MJH
situated,	)	
	)	Judge Marilyn J. Horan
Plaintiff,	)	
	)	<i>Electronically Filed</i>
v.	)	
	)	
FAMILY DOLLAR STORES, INC.,	)	
	)	
Defendant.	)	

**ANSWER AND DEFENSES TO PLAINTIFF’S COMPLAINT**

Defendant, Family Dollar Stores, Inc., by and through its undersigned attorneys, files this Answer and Affirmative Defenses to Plaintiff’s Complaint, stating as follows:

**INTRODUCTION**

1. Defendant denies the allegations in Paragraph 1 of the Complaint.
2. Defendant denies the allegations in Paragraph 2 of the Complaint.
3. Defendant denies the allegations in Paragraph 3 of the Complaint.
4. Defendant denies the allegations in Paragraph 4 of the Complaint.
5. Defendant denies the allegations in Paragraph 5 of the Complaint.
6. Defendant is without knowledge or information sufficient to form a belief as to the allegations in Paragraph 6 of the Complaint.
7. Defendant denies the allegations in Paragraph 7 of the Complaint.
8. Defendant denies the allegations in Paragraph 8 of the Complaint.
9. Defendant denies the allegations in Paragraph 9 of the Complaint.
10. Defendant denies the allegations in Paragraph 10 of the Complaint.

11. The allegations in Paragraph 11 of the Complaint are conclusions of law to which no response is required. If a response is deemed necessary, Defendant denies the allegations and respectfully refers the Court to the statute cited therein for its full and accurate content.

12. The allegations in Paragraph 12 of the Complaint are conclusions of law to which no response is required. If a response is deemed necessary, Defendant denies the allegations and respectfully refers the Court to Fed. R. Civ. P. 23(b)(2) for its full and accurate content.

**THE ADA'S CLEAR AND COMPREHENSIVE MANDATE**

13. The allegations in Paragraph 13 of the Complaint are conclusions of law to which no response is required. If a response is deemed necessary, Defendant denies the allegations and respectfully refers the Court to the statute cited therein for its full and accurate content.

14. The allegations in Paragraph 14 of the Complaint are conclusions of law to which no response is required. If a response is deemed necessary, Defendant denies the allegations and respectfully refers the Court to the statute cited therein for its full and accurate content.

15. The allegations in Paragraph 15 of the Complaint are conclusions of law to which no response is required. If a response is deemed necessary, Defendant denies the allegations and respectfully refers the Court to the regulation cited therein for its full and accurate content.

16. The allegations in Paragraph 16 of the Complaint are conclusions of law to which no response is required. If a response is deemed necessary, Defendant denies the allegations and respectfully refers the Court to the statute cited therein for its full and accurate content.

17. The allegations in Paragraph 17 of the Complaint are conclusions of law to which no response is required. If a response is deemed necessary, Defendant denies the allegations and respectfully refers the Court to the statute cited therein for its full and accurate content.

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

18. The allegations in Paragraph 18 of the Complaint are conclusions of law to which no response is required. If a response is deemed necessary, Defendant denies the allegations and respectfully refers the Court to the regulation cited therein for its full and accurate content.

19. The allegations in Paragraph 19 of the Complaint are conclusions of law to which no response is required. If a response is deemed necessary, Defendant denies the allegations and respectfully refers the Court to the regulation cited therein for its full and accurate content.

20. The allegations in Paragraph 20 of the Complaint are conclusions of law to which no response is required, and do not refer to Defendant, but rather “Williams Sonoma.” If a response is deemed necessary, Defendant denies the allegations and respectfully refers the Court to the statute and regulation cited therein for their full and accurate content.

21. The allegations in Paragraph 21 of the Complaint are conclusions of law to which no response is required. If a response is deemed necessary, Defendant denies the allegations.

22. The allegations in Paragraph 22 of the Complaint are conclusions of law to which no response is required. If a response is deemed necessary, Defendant denies the allegations and respectfully refers the Court to the statute cited therein for its full and accurate content.

23. The allegations in Paragraph 23 of the Complaint are conclusions of law to which no response is required. If a response is deemed necessary, Defendant denies the allegations and respectfully refers the Court to the statute cited therein for its full and accurate content.

24. The allegations in Paragraph 24 of the Complaint are conclusions of law to which no response is required. If a response is deemed necessary, Defendant denies the allegations and respectfully refers the Court to the statute cited therein for its full and accurate content.

25. The allegations in Paragraph 25 of the Complaint are conclusions of law to which no response is required. If a response is deemed necessary, Defendant denies the allegations and respectfully refers the Court to the statute cited therein for its full and accurate content.

26. The allegations in Paragraph 26 of the Complaint are conclusions of law to which no response is required. If a response is deemed necessary, Defendant denies the allegations.

27. The allegations in Paragraph 27 of the Complaint are conclusions of law to which no response is required. If a response is deemed necessary, Defendant denies the allegations and respectfully refers the Court to the statute cited therein for its full and accurate content.

28. The allegations in Paragraph 28 of the Complaint are conclusions of law to which no response is required. If a response is deemed necessary, Defendant denies the allegations and respectfully refers the Court to the statute cited therein for its full and accurate content.

29. Defendant denies the allegations in Paragraph 29 of the Complaint.

30. Defendant denies the allegations in Paragraph 30 of the Complaint.

#### **JURISDICTION AND VENUE**

31. Defendant denies the allegations in Paragraph 31 of the Complaint, except admits that Plaintiff purports to proceed as alleged therein.

32. Defendant denies the allegations in Paragraph 32 of the Complaint, except admits that it operates stores in this judicial district.

33. Defendant denies the allegations in Paragraph 33 of the Complaint, except admits that Plaintiff purports to proceed as alleged therein.

#### **PARTIES**

34. Defendant is without knowledge or information sufficient to form a belief as to the allegations in Paragraph 34 of the Complaint.

35. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 35 of the Complaint.

36. Defendant denies the allegations in Paragraph 36 of the Complaint.

37. Defendant denies the allegations in Paragraph 37 of the Complaint, except admits that Defendant is incorporated in Delaware and is headquartered at 500 Volvo Parkway, Chesapeake, Virginia 23320.

38. Defendant admits the allegations in Paragraph 38 of the Complaint.

**FACTUAL ALLEGATIONS AND PLAINTIFFS' EXPERIENCES**

**I. Plaintiff Has Been Denied Full and Equal Access to Defendant's Facilities.**

39. Defendant is without knowledge or information sufficient to form a belief as to the allegations in Paragraph 39 of the Complaint.

40. Defendant denies the allegations in Paragraph 40 of the Complaint.

41. Defendant denies the allegations in Paragraph 41 of the Complaint.

42. Defendant denies the allegations in Paragraph 42 of the Complaint.

43. Defendant denies the allegations in Paragraph 43 of the Complaint.

44. Defendant denies the allegations in Paragraph 44 of the Complaint.

45. Defendant denies the allegations in Paragraph 45 of the Complaint.

46. Defendant denies the allegations in Paragraph 46 of the Complaint.

47. Defendant denies the averments in Paragraph 47 of the Complaint.

48. Defendant denies the allegations in Paragraph 48 of the Complaint.

49. Defendant denies the allegations in Paragraph 49 of the Complaint.

**II. Defendant Denies Individuals With Disabilities Full and Equal Access to its Facilities.**

50. Defendant denies the allegations in Paragraph 50 of the Complaint, except admits that there are approximately 7800 Family Dollar stores in the United States, including approximately 300 stores in Pennsylvania.

51. Defendant denies the allegations in Paragraph 51 of the Complaint.

52. Defendant denies the allegations in Paragraph 52 of the Complaint.

53. Defendant denies the allegations in Paragraph 53 of the Complaint.

54. Defendant denies the allegations in Paragraph 54 of the Complaint.

**CLASS ALLEGATIONS**

55. Defendant denies the allegations in Paragraph 54 of the Complaint, except admits that Plaintiff purports to proceed as alleged therein.

56. Defendant denies the allegations in Paragraph 56 of the Complaint.

57. Defendant denies the allegations in Paragraph 57 of the Complaint.

58. Defendant denies the allegations in Paragraph 58 of the Complaint.

59. Defendant denies the allegations in Paragraph 59 of the Complaint.

60. Defendant denies the allegations in Paragraph 60 of the Complaint.

**CAUSE OF ACTION: VIOLATION OF THE ADA**

61. Defendant denies the allegations in Paragraph 61 of the Complaint.

62. Defendant denies the allegations in Paragraph 62 of the Complaint.

63. Defendant denies the allegations in Paragraph 62 of the Complaint.

64. Defendant denies the allegations in Paragraph 63 of the Complaint.

65. Defendant denies the allegations in Paragraph 64 of the Complaint.

**AS TO “PRAYER FOR RELIEF”**

Defendant denies that Plaintiff is entitled to the relief requested in the WHEREFORE clause following her Prayer for Relief.

\* \* \*

**AFFIRMATIVE DEFENSES**

**FIRST DEFENSE**

The complaint as a whole and each and every purported cause of action alleged therein fails to state facts sufficient to constitute a claim against Defendants.

**SECOND DEFENSE**

The Complaint is barred, in whole or in part, to the extent Defendant relied on the directions and directives of state and local permitting authorities regarding the accessibility of the subject premises.

**THIRD DEFENSE**

The complaint is barred, in whole or in part, to the extent the facilities provide equivalent or greater accessibility to Plaintiffs and persons with disabilities.

**FOURTH DEFENSE**

Defendant is not obligated to make any alterations sought by Plaintiffs that would result in a fundamental alteration in the nature of Defendant’s services, programs, or activities; or in undue financial and administrative burdens; or would require structural changes in existing facilities where other methods are effective to achieve compliance under Title III of the Americans with Disabilities Act and/or applicable state and local public accommodation laws.

**FIFTH DEFENSE**

The removal of any barriers by Defendant is excused to the extent such barrier removal is structurally infeasible and/or not readily achievable.

**SIXTH DEFENSE**

Any work required for accessibility is excused to the extent such work would be disproportionate in cost and scope to any alterations Defendant has undertaken in the place of public accommodation.

**SEVENTH DEFENSE**

Plaintiff's claims are barred by the applicable statute of limitations.

**EIGHTH DEFENSE**

Any changes Plaintiff advocates are barred to the extent they are practically difficult, pose unnecessary hardship and/or are extreme, so that such changes are not required and/or are subject to exception.

**NINTH DEFENSE**

At all times relevant to this action, Defendant acted honestly and in good faith to ensure full compliance with Title III of the ADA and all other applicable state and local public accommodation laws, to the extent readily achievable and/or required by law.

**TENTH DEFENSE**

Any recovery on the Complaint seeking injunctive relief is barred, in whole or in part, because Plaintiff is not entitled to such injunctive relief and has adequate remedies at law.

**ELEVENTH DEFENSE**

Plaintiff is not entitled to any relief because it is, and has been, Defendant's policy to comply with the ADA and related regulations or guidelines.

**TWELFTH DEFENSE**

To the extent Defendant is deemed not to be in compliance with the ADA or related regulations or guidelines, any such noncompliance was caused by third parties who are outside of the direct day to day control of Defendant.



**THIRTEENTH DEFENSE**

Plaintiff lacks standing to bring this action.

**FOURTEENTH DEFENSE**

Plaintiff has failed to state a claim upon which relief can be granted.

**FIFTEENTH DEFENSE**

Plaintiff's claims are predicated on allegations for which there is no private right of action.

**SIXTEENTH DEFENSE**

Plaintiff cannot establish numerosity, typicality, and commonality for her class claims.

Dated: August 8, 2019

Respectfully submitted,

JACKSON LEWIS P.C.

*/s/ Joseph J. Lynett* \_\_\_\_\_

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