

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

GAYLE LEWANDOWSKI, JANET AGARDY,  
and MARISA MARTINEZ, individually and on  
behalf of all others similarly situated,

Plaintiffs,

v.

FAMILY DOLLAR STORES, INC., FAMILY  
DOLLAR, INC., AND DOLLAR TREE  
STORES, INC.,

Defendants.

Case No. 2:19-CV-00858-MJH

**FIRST AMENDED NATIONWIDE CLASS ACTION COMPLAINT**

Plaintiffs Gayle Lewandowski, Marisa Martinez, and Janet Agardy (collectively, “Plaintiffs”), individually and on behalf of all others similarly situated, bring this class action against Family Dollar Stores, Inc., Family Dollar, Inc., and Dollar Tree Stores, Inc. (collectively, “Defendants”), alleging violations of Title III of the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*, and its implementing regulations (the “ADA”), for declaratory and injunctive relief, attorneys’ fees, and expenses.

**INTRODUCTION**

1. This is a case about putting profit ahead of the rights of people with disabilities.
2. Defendants position a host of obstructions, including but not limited to, merchandise, merchandise displays, stocking carts and/or other items positioned so that they block or narrow the aisle pathways of their stores.
3. For years, Defendants’ stores have had a reputation for messy, cluttered aisles that are difficult to navigate, and yet Defendants have done nothing to remedy the problem. *See, e.g.*,

*Family Dollar's Biggest Problem in 3 Photos and a Vine*, HuffPost, (June 11, 2014) (“Family Dollar stores have way too much merchandise on the floor. So much, in fact, that you can’t even comfortably walk down some aisles.”);<sup>1</sup> *A Nasty Look Filth, Clutter Define Local Family Dollar Store*, The Spirit, (Feb. 20 2019) (“[A]isles are blocked by items and trash that make it impossible to navigate”).<sup>2</sup>

4. Upon information and belief, this practice is intentional, and driven by a calculated judgment that impeding interior paths of travel increases sales revenue and profits. *See, e.g., Stuff Piled in the Aisle? It's There to Get You to Spend More*, The New York Times, (April 7, 2011);<sup>3</sup> *see also, Why a Messy, Cluttered Store is Good for Business*, Time Magazine, (April 8, 2011).<sup>4</sup>

5. Although this practice may increase profits, 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.

6. Each Plaintiff, at all times relevant hereto, has suffered from a legal mobility disability as defined by the ADA, 42 U.S.C. § 12102(2). Each Plaintiff is therefore a member of the protected class under the ADA and the regulations implementing the ADA set forth at 28 C.F.R. § 36.101 *et. seq.*

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<sup>1</sup> Available at [https://www.huffpost.com/entry/family-dollars-biggest-problem-photos\\_n\\_5479837](https://www.huffpost.com/entry/family-dollars-biggest-problem-photos_n_5479837) as of October 26, 2021.

<sup>2</sup> Available at <http://chesterspirit.com/2019/02/a-nasty-look-filth-clutter-define-local-family-dollar-store/> as of October 26, 2021.

<sup>3</sup> Available at <https://www.nytimes.com/2011/04/08/business/08clutter.html> as of October 26, 2021.

<sup>4</sup> Available at <http://business.time.com/2011/04/08/why-a-messy-cluttered-store-is-good-for-business/> as of October 26, 2021.

7. Plaintiffs have regularly visited Defendants' stores and have been repeatedly denied full and equal access to the stores as a result of accessibility barriers existing in interior paths of travel. These access barriers include but are not limited to: merchandise, merchandise displays, stocking carts, boxes, and/or other items, positioned so that they impermissibly block or narrow the aisle pathways. These conditions violate the ADA and deny Plaintiffs' equal access to the goods and services offered at Defendants' stores.

8. The access barriers described herein are not temporary and isolated. They are systemic, recurring, and reflective of Defendants' marketing and store 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.

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.

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

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

- a) Defendants remediate all interior path of travel access barriers at Defendants' stores, consistent with the ADA;
- b) Defendants change their policies and practices so that the interior path of travel access barriers at Defendants' stores do not reoccur; and

- c) Plaintiffs' representatives shall monitor Defendants' stores to ensure that the injunctive relief ordered pursuant to this Complaint has been implemented and will remain in place.

12. 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 plaintiffs seek injunctive relief for their 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'S CLEAR AND COMPREHENSIVE MANDATE**

13. The ADA was enacted over a quarter century ago and was intended to "provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(1).

14. The ADA is the central civil rights law protecting people with disabilities, a group of Americans who are too often overlooked and undervalued. Like other civil rights laws, the purpose of the ADA is clear: the eradication of discrimination. As one legal scholar explained: "A single step in front of a store may not immediately call to mind images of Lester Maddox standing in the door of his restaurant to keep blacks out. But in a crucial respect they are the same, for a step can exclude a person who uses a wheelchair just as surely as a no-blacks-allowed rule can exclude a class of people." Samuel Bagenstos, *The Perversity of Limited Civil Rights Remedies: The Case of "Abusive" ADA Litigation*, 54 UCLA L. Rev. 1, 23 (2006).

15. The Supplementary Information to 28 C.F.R. § 36 explains, among other things: “Some of the most frequently cited qualitative benefits of increased access are the increase in one’s personal sense of dignity that arises from increased access and the decrease in possibly humiliating incidents due to accessibility barriers. Struggling [to use a non-accessible facility] negatively affect[s] a person’s sense of independence and can lead to humiliating accidents, derisive comments, or embarrassment. These humiliations, together with feelings of being stigmatized as different or inferior from being relegated to use other, less comfortable or pleasant elements of a facility . . . all have a negative impact on persons with disabilities.”

16. Title III of the ADA 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, leases (or leases to), or operates a place of public accommodation.” 42 U.S.C. § 12182(a). It prohibits places of public accommodation, either directly or through contractual, licensing, or other arrangements, from outright denying individuals with disabilities the opportunity to participate in the goods or services offered by a place of public accommodation, 42 U.S.C. § 12182(b)(1)(A)(i), or denying individuals with disabilities the opportunity to fully and equally participate in a place of public accommodation, 42 U.S.C. § 12182(b)(1)(A)(ii).

Discrimination on the basis of disability can occur, generally, through a denial of the opportunity to participate in or benefit from goods, services, facilities, or accommodations (42 U.S.C. § 12182(b)(1)(A)(i)); or from affording goods, services, facilities, or accommodations that are not equal to those afforded to other individuals (42 U.S.C. § 12182(b)(1)(A)(ii)); or from providing goods, services, facilities, or accommodations that are separate from those provided to other individuals (42 U.S.C. § 12182(b)(1)(A)(iii)). **THE ADA AND THE RIGHT OF NON-**

**DISCRIMINATORY**  
**ACCESS TO GOODS**

17. 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

18. 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.

19. To be “readily accessible” under Title III of the ADA, merchandise on fixed aisle shelving in a retail store such as Family Dollar Stores 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”).

20. 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.”). 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>.

21. 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).

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

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

24. 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).

25. The obligation to remove access barriers applies equally to non-fixed obstructions, such as boxes and stocking carts, and the Department of Justice has specifically and repeatedly emphasized this obligation to public accommodations in ADA guidance documents:

A common problem observed by the Department is that covered facilities do not maintain accessible routes. For example, the accessible routes in offices or stores are commonly obstructed by boxes, potted plants, display racks, or other items so that the routes are inaccessible to people who use wheelchairs. Under the ADA, the accessible route must be maintained and, therefore, these items are required to be removed.

Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, 73 Fed. Reg. 34508-01, 34523 (June 17, 2008).

26. 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).

27. 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).

28. 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.

29. 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**



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

31. At least one of the Plaintiffs' claims asserted herein arose in this judicial district, and Defendant does substantial business in this judicial district.

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

### **PARTIES**

33. Plaintiff Gayle Lewandowski is, and at all times relevant hereto was, a resident of Allegheny County, Pennsylvania and requires the use of a wheelchair due to a mobility disability. Ms. Lewandowski resides 0.5 miles from Defendants' location in her town and frequently attempts to shop there.

34. Plaintiff Marisa Martinez is, and at all times relevant hereto was, a resident of Whittier, California. Ms. Martinez suffered an injury approximately thirty-two years ago that resulted in T-12 paralysis. Ms. Martinez frequently visits Defendants' location in her town to attempt to shop there.

35. Plaintiff Janet Agardy is, and at all times hereto was, a resident of Dove Creek, Colorado and requires the use of a wheelchair due to a mobility disability. Ms. Agardy resides 0.4 miles from Defendants' location in her town and often attempts to shop there.

36. Each Plaintiff has a mobility disability and uses a wheelchair for mobility. They are therefore members 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. Plaintiffs are testers in this litigation and regular customers of Defendants' stores who desires equal access to Defendants' goods and services. *See, e.g., Nanni v. Aberdeen*

*Marketplace, Inc.*, 878 F.3d 447, 457 (4<sup>th</sup> Cir. 2017); *Civil Rights Educ. & Enf't Ctr. v. Hosp. Props. Tr.*, 867 F.3d 1093, 1102 (9<sup>th</sup> Cir. 2017); *Colo. Cross Disability Coal. v. Abercrombie & Fitch Co.*, 765 F.3d 1205, 1211-12 (10<sup>th</sup> Cir. 2014); *Houston v. Marod Supermarkets, Inc.*, 733 F.3d 1323, 1334 (11<sup>th</sup> Cir. 2013); *see also Havens Realty Corp. v. Coleman*, 455 U.S. 363, 372-74 (1982).

38. Defendant Family Dollar Stores, Inc. is a Delaware corporation, and is headquartered at 10401 Monroe Road, Matthews, North Carolina 28105-5349.

39. Defendant Family Dollar, Inc. is a North Carolina corporation with 500 Volvo Parkway, Chesapeake, VA 23320.

40. Defendant Dollar Tree Stores, Inc. is a Virginia corporation and is located at 500 Volvo Parkway, Chesapeake, VA 23320.

41. Defendants' stores are places of public accommodation pursuant to 42 U.S.C. §12181(7).

### **FACTUAL ALLEGATIONS AND PLAINTIFFS' EXPERIENCES**

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

42. Plaintiffs all reside within two miles of a location owned and operated by Defendants.

43. Plaintiffs have often shopped at Defendants' locations, including within the past year. During their visits to Defendants' stores, they have repeatedly encountered interior access barriers within the store, including but not limited to merchandise, merchandise displays, boxes, and stocking carts, which have precluded Plaintiffs' equal access to Defendants' goods and services in violation of the ADA's equal access mandate, generally, and the requirements of the

2010 Standards Section 403.5.1. Plaintiffs would shop at Defendants' stores more often, and with less difficulty, if the interior access barriers are removed.

44. Plaintiffs repeatedly attempted to alert management of Defendants' stores to the barriers they were encountering but were rebuffed each time. When Plaintiff Lewandowski last visited the store near her home in December of 2018, she attempted to inform a manager that barriers were impeding her ability to navigate the store. In response, the manager asked Plaintiff Lewandowski to leave the store and was told not to return.

45. Plaintiffs' Investigator also separately examined Defendants' stores and encountered the same types of access barriers that Plaintiffs have repeatedly encountered, as depicted in the following images:



*Figure 1 – Family Dollar, 607 Lincoln Ave, Bellevue, Pennsylvania 15202*



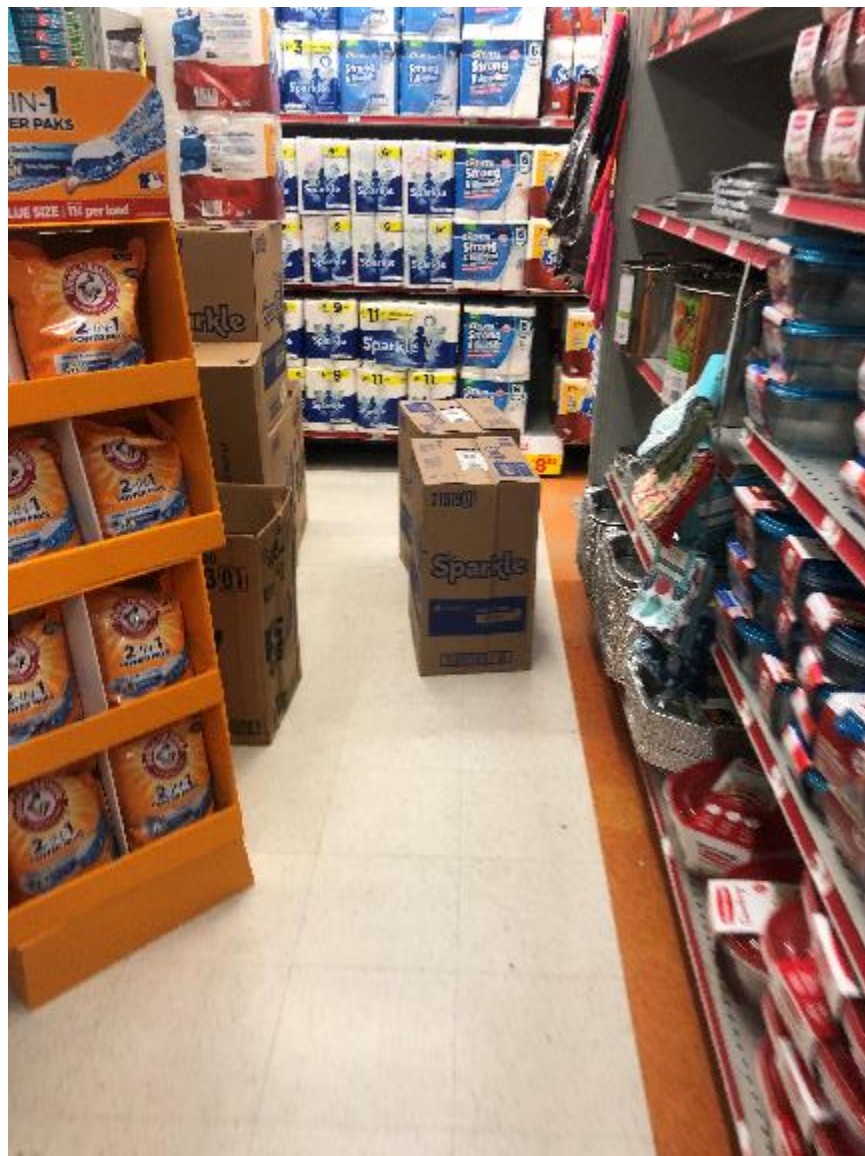
*Figure 2 – Family Dollar, 607 Lincoln Ave, Bellevue, Pennsylvania 15202*



*Figure 3 – Family Dollar, 607 Lincoln Ave, Bellevue, Pennsylvania 15202*

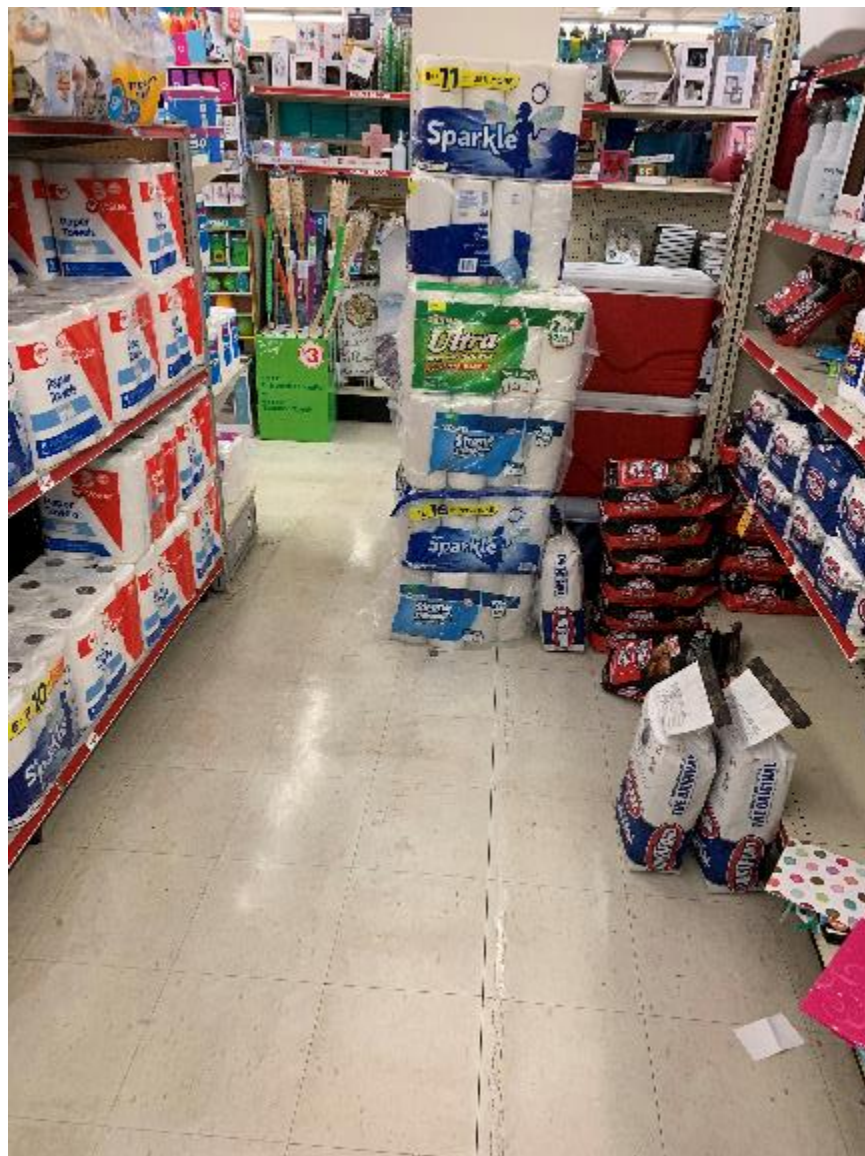


*Figure 4 – Family Dollar, 607 Lincoln Ave, Bellevue, Pennsylvania 15202*



*Figure 5 – Family Dollar, 101 E. Wylie Ave, Washington, Pennsylvania 15301*

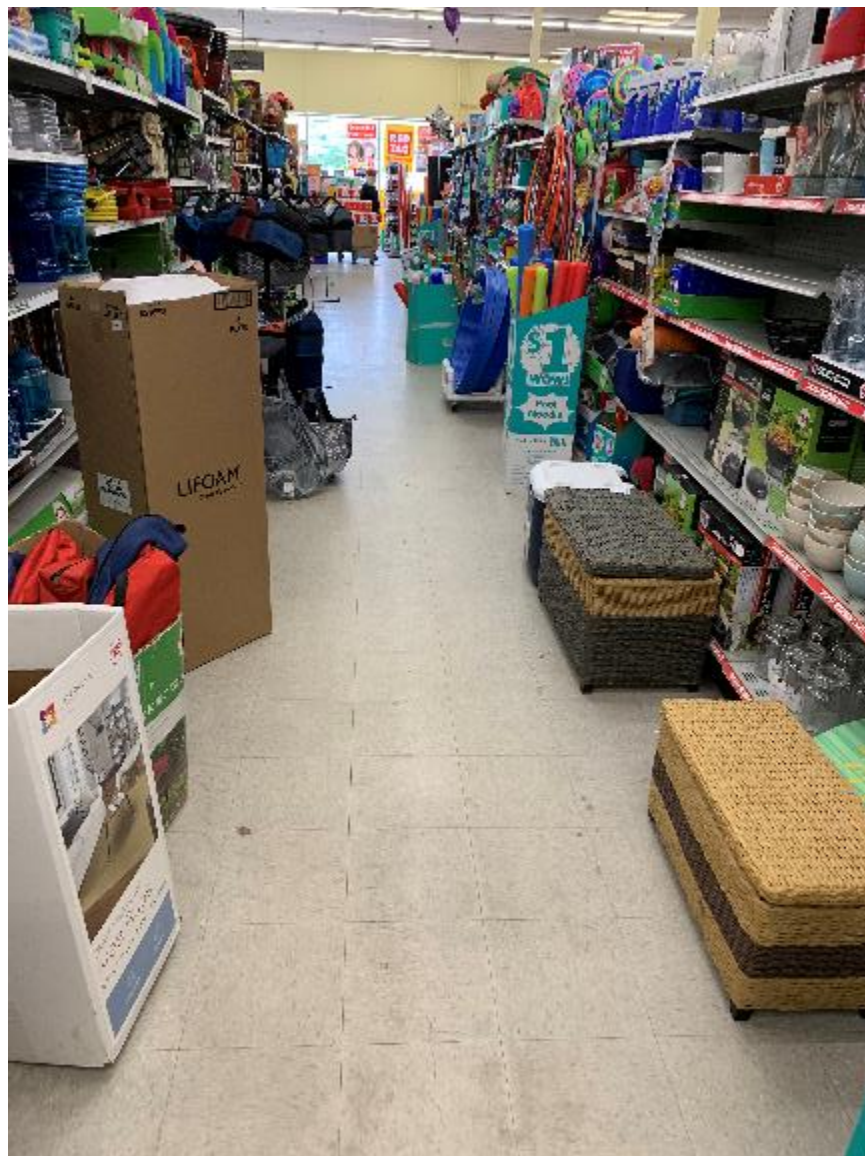




*Figure 6 – Family Dollar, 130 Lysle Blvd, McKeesport, Pennsylvania*



*Figure 7 – Family Dollar, 222 Water St, East Brady, Pennsylvania 16028*



*Figure 8 – Family Dollar, 100 S. Jefferson St., New Castle, Pennsylvania 16101*



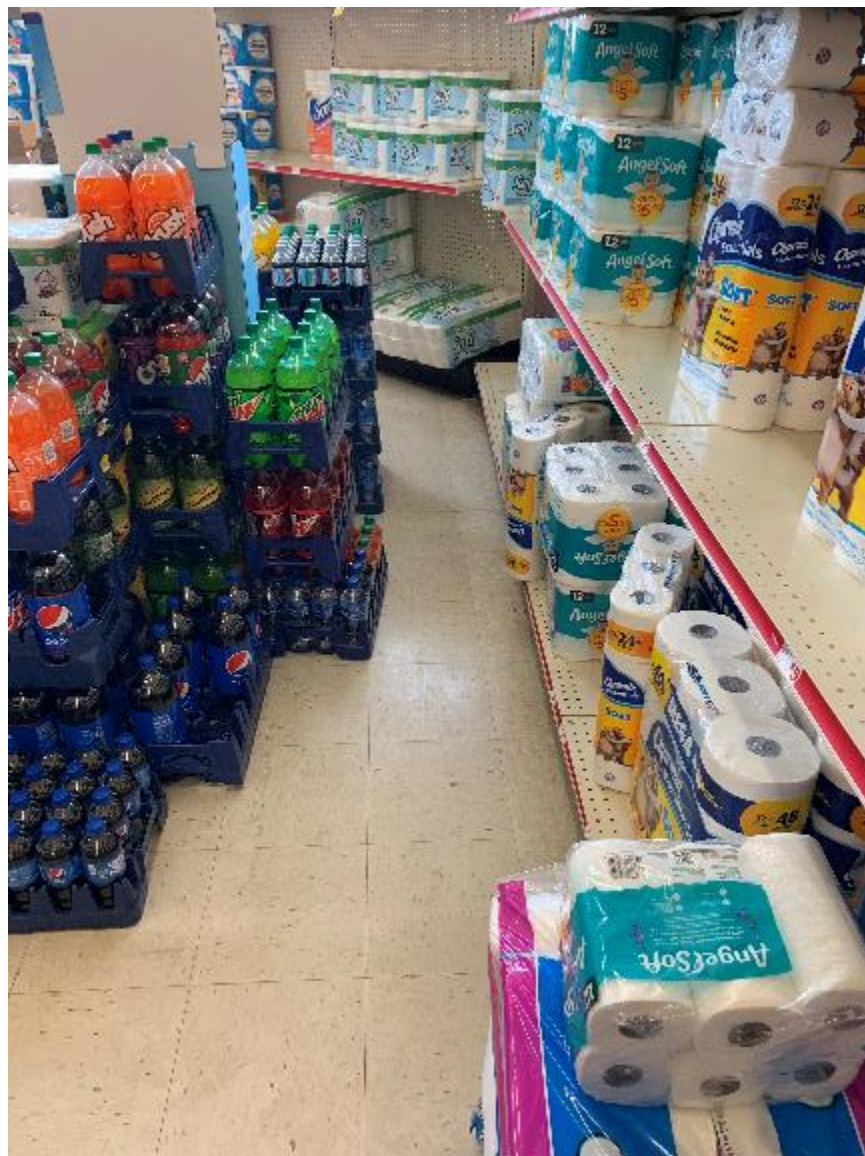
*Figure 9 – Family Dollar, 300 Broadway St, Carnegie, Pennsylvania 15106*



*Figure 10 – Family Dollar, 355 Lincoln Hwy, N. Versailles, Pennsylvania 15137*



*Figure 11 – Family Dollar, 400 E. Pittsburgh St, Greensburg, Pennsylvania 15601*



*Figure 12 – Family Dollar, 421-27 Freeport St, New Kensington, Pennsylvania 15068*

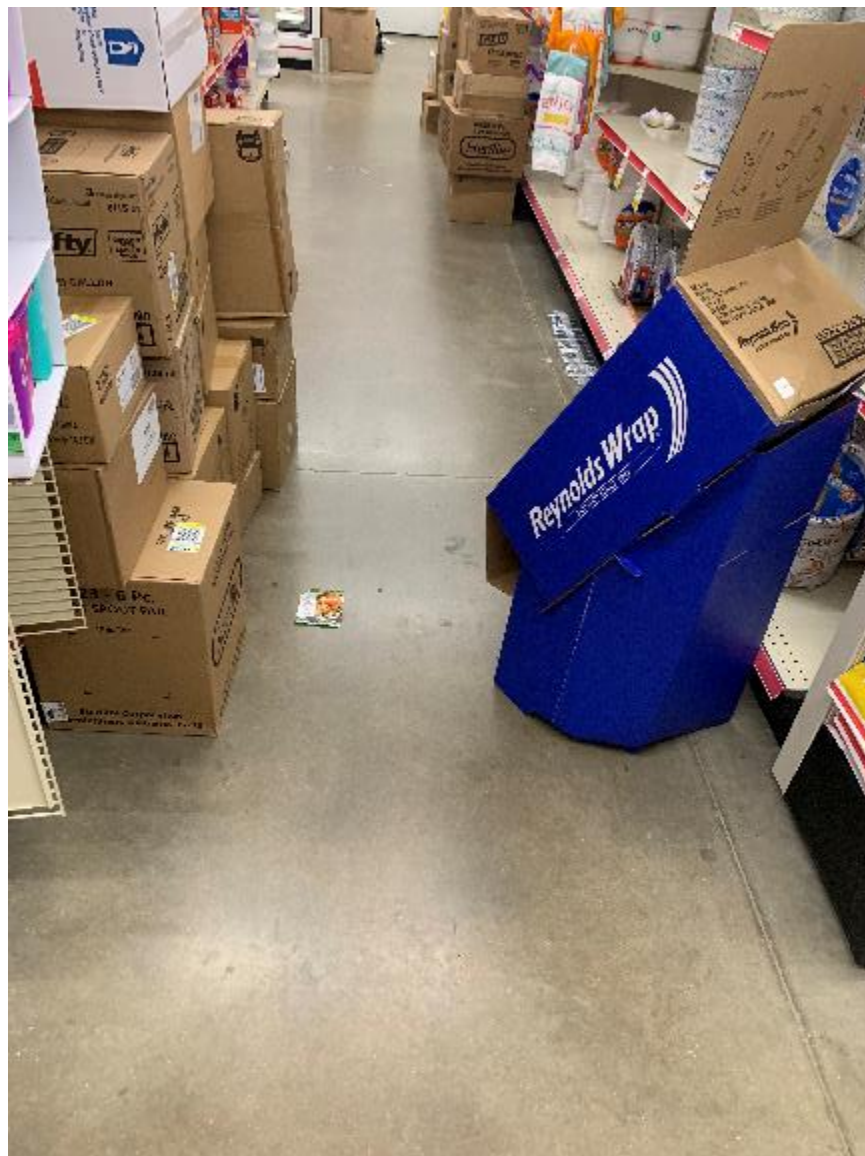


*Figure 13 – Family Dollar, 450 56th St, Pittsburgh, Pennsylvania 15201*





*Figure 14 – Family Dollar, 909 Main St, Sharpsburg, Pennsylvania 15215*



*Figure 15 – Family Dollar, 1111 Lincoln Ave, Pittsburgh, Pennsylvania 15206*



*Figure 16 – Family Dollar, 1122 Milltown Unity Rd, Verona, Pennsylvania 15147*



Figure 17 – Family Dollar, 1200 E. Swissvale Ave, Pittsburgh, Pennsylvania 15221



*Figure 18 – Family Dollar, 1702 Wilmington Rd, New Castle, Pennsylvania 16105*



*Figure 19 – Family Dollar, 868 Homeville Rd, West Mifflin, Pennsylvania 15122*



*Figure 20 – Family Dollar, 2347 5th Ave, McKeesport, Pennsylvania 15132*



*Figure 21 – Family Dollar, 3215 Versailles Ave, McKeesport, Pennsylvania 15132*





*Figure 22 – Family Dollar, 5160 Penn Ave, Pittsburgh, Pennsylvania 15224*



*Figure 23 – Family Dollar, 6320 Shakespeare St, Pittsburgh, Pennsylvania 15206*



*Figure 24 – Family Dollar, 8184 Frankstown Ave, Pittsburgh, Pennsylvania 15221*



*Figure 25 – Family Dollar, 9010 Frankstown Rd, Pittsburgh, Pennsylvania 15235*

46. The barriers depicted above illustrate some, but not all, of the types of interior access barriers at Defendants' stores. Collectively, these barriers impeded Plaintiffs' access to goods and services at Defendants' stores.

47. As a result of Defendants' non-compliance with the ADA, Plaintiffs' rights to full and equal, non-discriminatory, and safe access to Defendants' goods and facilities has been denied.

48. Plaintiffs will be deterred from returning to and fully and safely accessing Defendants' facilities so long as Defendants' facilities 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' facilities.

49. Nonetheless, Plaintiffs would like to continue to visit Defendants' stores that are close to their home, both to attempt to access goods and services in those stores and to survey the stores for compliance with the ADA.

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

51. As a group of individuals with mobility disabilities who are dependent upon a wheelchair, Plaintiffs are directly interested in whether public accommodations, like Defendants' facilities, 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.**

52. Defendants are engaged in the ownership, management, operation, and development of retail stores throughout the United States, including, upon information and belief, approximately 8,236 stores across the United States.

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

54. However, as set forth herein, 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.

55. As evidenced by the widespread inaccessibility of Defendants' stores visited by Plaintiffs and Plaintiffs' Investigator, 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.

56. 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**

57. Plaintiffs bring this action pursuant to Fed. R. Civ. P. 23(a) and (b)(2), individually and on behalf of the following class:

All persons with qualified mobility disabilities who have attempted, or will attempt, to access the interior of any store owned or operated by Defendants within the United States and have, or will have, experienced access barriers in interior paths of travel.

58. 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.

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

60. 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.

61. Adequacy of Representation: Plaintiffs are an adequate representative 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 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.

62. 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.

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

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

64. 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; Section 403.5.1 of the 2010 Standards.

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

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

67. 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 invoke their statutory rights to declaratory and injunctive relief, as well as costs and attorneys' fees.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs, individually and on behalf of 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, scooters or other mobility devices; (ii) directs Defendants to change their 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: October 26, 2021

Respectfully submitted,

/s/ R. Bruce Carlson  
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