

JACKIE BLUE,
Plaintiff,

WATERS INVESTMENTS, INC.,
Defendant.

• • • • •

Plaintiff, JACKIE BLUE, on her behalf and on behalf of all other individuals similarly situated, (sometimes referred to as “Plaintiff”), hereby sues the Defendant, WATERS INVESTMENTS, INC., (sometimes referred to as “Defendant”), for Injunctive Relief, and attorney’s fees, litigation expenses, and costs pursuant to the Americans with Disabilities Act, 42 U.S.C. § 12181 et seq. (“ADA”).

1. Defendant's property, Waters Mini City Market, 4510 Capital Boulevard, Raleigh, NC 27604, is located in the County of Wake, herein after "the Property".
2. Venue is properly located in the EASTERN DISTRICT OF NORTH CAROLINA because venue lies in the judicial district of the property situs. The Defendant's property is located in and does business within this judicial district.
3. Pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343, this Court has been given original jurisdiction over actions which arise from the Defendant's violations of Title III of the

Americans with Disabilities Act, 42 U.S.C. § 12181 et seq. See also 28 U.S.C. § 2201 and § 2202.

4. Plaintiff is a North Carolina resident, is sui juris, and qualifies as an individual with disabilities as defined by the ADA. Due to her disability, Plaintiff is substantially impaired in several major life activities and requires a wheelchair for mobility. Plaintiff has visited the Property and plans to return to the Property to avail herself of the goods and services offered to the public at the Property, and to determine whether the Property has been made ADA compliant. The Plaintiff suffered particularized and individualized harm caused by architectural barriers at the Property, which endangered her safety. Ms. Blue needed assistance in exiting her vehicle and traversing the path of travel due to excessive slopes in designated access aisles in the parking lot. (See Exhibit A - Parking Lot Photographs). Ms. Blue was forced to ask for assistance in using a public restroom because of failure to mount the flush valve correctly and failure to install proper grab bars. Additionally, Ms. Blue was exposed to burn hazards due to exposed pipes under the bathroom sink. (See Exhibit B - Bathroom Photographs). The above constitute violations of the ADA, as set forth in more detail below.
5. Plaintiff is a resident of Fayetteville, North Carolina and has been for many years. Ms. Blue suffers from multiple sclerosis and is unable to walk. Ms. Blue most recently visited the Property in March of 2014. Ms. Blue visited the Property while attending an Emergency Preparedness Seminar in the area as a representative for the disabled. Ms. Blue plans to return to the Property to avail herself of the goods and services offered to the public at the Property. Plaintiff plans to return to the area for seminars and other

meetings on a periodic basis. Plaintiff has confirmed reservations to return the area on or about March 18, 2015 (See Exhibit - Future Reservation).

6. Defendant owns, leases, leases to, or operates a place of public accommodation as defined by the ADA and the regulations implementing the ADA, 28 CFR 36.201(a) and 36.104. Defendant is responsible for complying with the obligations of the ADA. The place of public accommodation that the Defendant owns, operates, leases or leases to is known as Waters Mini City Market, 4510 Capital Boulevard, Raleigh, NC 27604.
7. Plaintiff has a realistic, credible, existing and continuing threat of discrimination from the Defendant's non-compliance with the ADA with respect to this property as described but not necessarily limited to the allegations in this Complaint. Plaintiff has reasonable grounds to believe that she will continue to be subjected to discrimination in violation of the ADA by the Defendant. JACKIE BLUE desires to visit Waters Mini City Market not only to avail herself of the goods and services available at the property but to assure herself that this property is in compliance with the ADA so that she and others similarly situated will have full and equal enjoyment of the property without fear of discrimination.
8. The Defendant has discriminated against the Plaintiff by denying her access to, and full and equal enjoyment of, the goods, services, facilities, privileges, advantages and/or accommodations of the buildings, as prohibited by 42 U.S.C. § 12182 et seq.
9. The Defendant has discriminated, and is continuing to discriminate, against the Plaintiff in violation of the ADA by failing to, inter alia, have accessible facilities by January 26, 1992 (or January 26, 1993, if Defendant has 10 or fewer employees and gross receipts of

\$500,000 or less). Plaintiff's visit(s) to Waters Mini City Market have shown that violations exist. These violations include, but are not limited to:

Parking

1) The plaintiff had difficulty exiting the vehicle as the designated parking space access aisle was located on an excessive slope. Violation: Some of the disabled use access aisles are located on a slope in violation of Section 4.6.3 and 4.6.6 of the ADAAG, whose resolution is readily achievable.

Entrance Access and Path of Travel

1) The plaintiff could not traverse through areas of the facility as the required 36" path is not provided. Violation: There is not a continuous path of travel connecting all essential elements of the facility, in violation of Sections 4.3.1 and 4.3.2 of the ADAAG, whose resolution is readily achievable.

2) The plaintiff had difficulty using some of the curb ramps as the slopes were excessive.

Violation: There are curb ramps at the facility that contain excessive slopes or cross slopes in violation of Sections 4.7.2 and 4.7.5 of the ADAAG, whose resolution is readily achievable.

3) The plaintiff had difficulty traversing the path of travel due to abrupt changes in level.

Violation: There are changes in levels of greater than ½ inch, violating Section 4.3.8 of the ADAAG, whose resolution is readily achievable.

Access to Goods and Services

1) The plaintiff could not reach the self-serve items as they were mounted too high.

Violation: There are self-service areas with dispensers whose controls are outside of the

reach ranges prescribed in Section 4.2 of the ADAAG, whose resolution is readily achievable.

Public Restrooms

- 1) The plaintiff could not use the mirror as it was mounted too high. Violation: The mirrors provided for public use in the restroom are in violation of the requirements in Section 4.19 of the ADAAG, whose resolution is readily achievable.
 - 2) The plaintiff was exposed to a cutting/burning hazard because the lavatory pipes were not wrapped. Violation: The lavatory pipes were not fully wrapped or maintained in violation of Sections 4.19 and 36.211 of the ADAAG, whose resolution is readily achievable.
 - 3) The plaintiff could not use the toilet without assistance as the required grab bars were not provided. Violation: Compliant grab bars are not provided in the restrooms prescribed in Sections 4.16.4 and 4.26 of the ADAAG, whose resolution is readily achievable.
 - 4) The plaintiff could not flush the toilet without assistance as the flush valve was not mounted on the wide area. Violation: The flush valve is not mounted on the compliant side in violation of Section 4.16.5 of the ADAAG, whose resolution is readily achievable.
 - 5) There are permanently designated interior spaces without proper signage in violation of Section 4.1.2 and 4.30 of the ADAAG, whose resolution is readily achievable.
10. The discriminatory violations described in this Complaint are not an exclusive list of the Defendant's ADA violations. Plaintiff requires the inspection of the Defendant's place of public accommodation in order to photograph and measure all of the discriminatory acts violating the ADA and all of the barriers to access. The Plaintiff and all other individuals

similarly situated, have been denied access to, and have been denied the benefits of services, programs and activities of the Defendant's buildings and its facilities, and have otherwise been discriminated against and damaged by the Defendant because of the Defendant's ADA violations, as set forth above. The Plaintiff and all others similarly situated will continue to suffer such discrimination, injury and damage without the immediate relief provided by the ADA as requested herein. In order to remedy this discriminatory situation, the Plaintiff requires an inspection of the Defendant's place of public accommodation in order to determine all of the areas of non-compliance with the Americans with Disabilities Act.

11. Defendant has discriminated against the Plaintiff by denying her access to full and equal enjoyment of the goods, services, facilities, privileges, advantages and/or accommodations of its place of public accommodation or commercial facility in violation of 42 U.S.C. § 12181 et seq. and 28 CFR 36.302 et seq. Furthermore, the Defendant continues to discriminate against the Plaintiff, and all those similarly situated by failing to make reasonable modifications in policies, practices or procedures, when such modifications are necessary to afford all offered goods, services, facilities, privileges, advantages or accommodations to individuals with disabilities; and by failing to take such efforts that may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services.
12. Plaintiff is without adequate remedy at law and is suffering irreparable harm. Plaintiff has retained the undersigned counsel and are entitled to recover attorney's fees, costs and

litigation expenses from the Defendant pursuant to 42 U.S.C. § 12205 and 28 CFR 36.505.

13. Defendant is required to remove the existing architectural barriers to the physically disabled when such removal is readily achievable for its place of public accommodation that have existed prior to January 26, 1992, 28 CFR 36.304(a); in the alternative, if there has been an alteration to Defendant's place of public accommodation since January 26, 1992, then the Defendant is required to ensure to the maximum extent feasible, that the altered portions of the facility are readily accessible to and useable by individuals with disabilities, including individuals who use wheelchairs, 28 CFR 36.402; and finally, if the Defendant's facility is one which was designed and constructed for first occupancy subsequent to January 26, 1993, as defined in 28 CFR 36.401, then the Defendant's facility must be readily accessible to and useable by individuals with disabilities as defined by the ADA.
14. Notice to Defendant is not required as a result of the Defendant's failure to cure the violations by January 26, 1992 (or January 26, 1993, if Defendant has 10 or fewer employees and gross receipts of \$500,000 or less). All other conditions precedent have been met by Plaintiffs or waived by the Defendant.
15. Pursuant to 42 U.S.C. § 12188, this Court is provided with authority to grant Plaintiff Injunctive Relief, including an order to require the Defendant to alter Waters Mini City Market to make those facilities readily accessible and useable to the Plaintiff and all other persons with disabilities as defined by the ADA; or by closing the facility until such time as the Defendant cures its violations of the ADA.

WHEREFORE, Plaintiff respectfully requests:

- a. The Court issue a Declaratory Judgment that determines that the Defendant at the commencement of the subject lawsuit is in violation of Title III of the Americans with Disabilities Act, 42 U.S.C. § 12181 et seq. .
- b. Injunctive relief against the Defendant including an order to make all readily achievable alterations to the facility; or to make such facility readily accessible to and usable by individuals with disabilities to the extent required by the ADA; and to require the Defendant to make reasonable modifications in policies, practices or procedures, when such modifications are necessary to afford all offered goods, services, facilities, privileges, advantages or accommodations to individuals with disabilities; and by failing to take such steps that may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services.
- c. An award of attorney's fees, costs and litigation expenses pursuant to 42 U.S.C. § 12205.
- d. Such other relief as the Court deems just and proper, and/or is allowable under Title III of the Americans with Disabilities Act.

Respectfully submitted, this the 4th day of November, 2014.

/s/ Christopher D. Lane
Christopher D. Lane
NC State Bar No.: 20302
Attorney for Plaintiff

3802-A Clemmons Rd.
Clemmons, NC 27012
Telephone: 336-766-0229
Facsimile: 336-766-9145
Email: cdllaw@juno.com

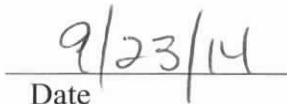
VERIFICATION OF COMPLAINT

Re: JACKIE BLUE v. WATERS INVESTMENTS, INC., RALEIGH, ADA
Assistance File No. 1184-NC, Thomas Bacon P.A. File No. 5173-NC
Property: Waters Mini City Market, 4510 Capital Boulevard, Raleigh, NC 27604

I hereby swear and affirm, under penalty of perjury, that I visited the property referenced above. I personally encountered barriers to access which discriminated against me by making access more difficult or impossible for me. I requested that a lawsuit be filed on my behalf to bring the property into compliance. I personally reviewed the Complaint and affirm that it truly and accurately describes my disability, visit to the property, and the barriers that are present at the facility. I authorize this action.

Pursuant to 28 U.S.C. Section 1746, I declare, certify, verify, and state, under penalty of perjury that the foregoing is true and correct.


JACKIE BLUE


Date