

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

JOSIE BADGER; EMILY GELLATLY; and,  
ANGELA HUNTER, individually and on behalf  
of all others similarly situated,

Plaintiffs,

v.

COLE CAPITAL CORPORATION; COLE  
CREDIT PROPERTY TRUST V, INC.; and  
COLE CREDIT PROPERTY TRUST IV, INC.,

Defendants.

Case No.

**FILED ELECTRONICALLY**

**CLASS ACTION COMPLAINT**

COMES NOW, Josie Badger, Emily Gellatly, and Angela Hunter, (“Plaintiffs”), on behalf of themselves and all others similarly situated and allege as follows:

**INTRODUCTION**

1. Plaintiffs bring this action individually and on behalf of all others similarly situated against Cole Capital Corporation, Cole Credit Property Trust V, Inc., and Cole Credit Property Trust IV, Inc. (“Cole Capital” or “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 accessibility barriers in the parking lots and paths of travel at various public accommodations owned, operated, controlled and/or leased by Defendants (“Defendants’ facilities”).

2. Plaintiff Josie Badger has a mobility disability and is limited in the major life activity of walking, which has caused her to be dependent upon a wheelchair for mobility.

3. Plaintiff Emily Gellatly has a mobility disability and is limited in the major life activity of walking, which has caused her to be dependent upon a wheelchair for mobility.

4. Plaintiff Angela Hunter, a quadriplegic, has a mobility disability and is limited in the major life activity of walking. Because of this mobility disability, she depends upon a wheelchair for mobility.

5. Plaintiffs have visited Defendants' facilities and were denied full and equal access as a result of Defendants' inaccessible parking lots and paths of travel.

6. Plaintiffs' experiences are not isolated. Defendants have systematically discriminated against individuals with mobility disabilities by implementing policies and practices that consistently violate the ADA's accessibility guidelines and routinely result in access barriers at Defendants' facilities.

7. In fact, numerous facilities owned, controlled and/or operated by Defendants have parking lots and paths of travel that are inaccessible to individuals who rely on wheelchairs for mobility, demonstrating that the centralized decision making Defendants employ with regard to the design, construction, alteration, maintenance and operation of its facilities causes access barriers, and/or allows them to develop and persist at Defendants' facilities.

8. Unless Defendants are required to remove the access barriers described below, and required to change its policies and practices so that access barriers do not reoccur at Defendants' facilities, Plaintiffs and the proposed Class will continue to be denied full and equal access to those facilities as described, and will be deterred from fully using Defendants' facilities.

9. The ADA expressly contemplates injunctive relief aimed at modification of a policy or practice that Plaintiffs seek in this action. 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).

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

- a) that Defendants remediate all parking and path of travel access barriers at its facilities, consistent with the ADA;
- b) that Defendants change its corporate policies and practices so that the parking and path of travel access barriers at its facilities do not reoccur; and,
- c) that Plaintiffs' representatives shall monitor Defendants' facilities to ensure that the injunctive relief ordered pursuant to Paragraph 10(a) and 10(b) has been implemented and will remain in place.

11. 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 ITS IMPLEMENTING REGULATIONS**

12. The ADA was enacted over a quarter century ago and is 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).

13. The ADA broadly protects the rights of individuals with disabilities in employment, access to State and local government services, places of public accommodation, transportation, and other important areas of American life.

14. Title III of the ADA generally prohibits discrimination against individuals with disabilities in the full and equal enjoyment of public accommodations, 42 U.S.C. § 12182(a), and 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 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).

15. Title III 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).

16. Title III and its implementing regulations define discrimination to include the following:

- a) Failure to remove architectural barriers when such removal is readily achievable for places of public accommodation that existed prior to January 26, 1992, 28 CFR § 36.304(a) and 42 U.S.C. § 12182(b)(2)(A)(iv);
- b) 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, 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) 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. 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).

18. The ADA also provides for specific injunctive relief, which includes the following:

In the case of violations of sections 12182(b)(2)(A)(iv) and section 12183(a) 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 to the extent required by this subchapter. Where appropriate, injunctive relief shall also include...modification of a policy...to the extent required by this subchapter.

42 U.S.C. § 12188(a)(2); 28 C.F.R. § 36.501(b).

### **JURISDICTION AND VENUE**

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

20. Plaintiffs' claims asserted herein arose in this judicial district and Defendant does substantial business in this judicial district.

21. 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**

22. Plaintiff Badger is and, at all times relevant hereto, was a resident of the Commonwealth of Pennsylvania. As described above, as a result of her disability, Plaintiff Badger 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 CFR §§ 36.101 *et seq.*

23. Plaintiff Gellatly is and, at all times relevant hereto, was a resident of the State of Ohio. As described above, as a result of her disability, Plaintiff Gellatly 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 CFR §§ 36.101 *et seq.*

24. Plaintiff Hunter, is and, at all times relevant hereto, was a resident of Canton, OH. As a result of her disability, Plaintiff Hunter relies upon a wheelchair for mobility, and 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 CFR §§ 36.101 *et seq.*

25. Defendant Cole Capital Corporation's headquarters are located at 2325 East Camelback Road, Suite 1100, Phoenix, AZ 85016.

26. Defendant Cole Credit Property Trust V, Inc.'s headquarters are located at 2325 East Camelback Road, Suite 1100, Phoenix, AZ 85016.

27. Defendant Cole Credit Property Trust IV, Inc.'s headquarters are also located at 2325 East Camelback Road, Suite 1100, Phoenix, AZ 85016.

28. Defendants are public accommodations pursuant to 42 U.S.C. §12181(7).

### **FACTUAL ALLEGATIONS**

#### **I. Defendants have Denied Plaintiffs Full and Equal Access to Their Facilities.**

29. Plaintiffs Badger and Hunter have visited Defendants' locations at 100 Tractor Lane, Gibsonia, PA (Tractor Supply Co.) ("Subject Property I") and 800 Chauvet Dr., Pittsburgh, PA (hhgregg) ("Subject Property II"). Plaintiff Gellatly has visited Subject Property II, as well as Defendants' property at 820 Liberty Ave., Meadville, PA (CVS) ("Subject Property III") (collectively, "Subject Properties"). Plaintiffs experienced unnecessary difficulty and risk due to

excessive slopes in Defendants' parking facilities and access aisles and a lack of accessible signage during these visits.

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

31. Plaintiff Badger lives north of Pittsburgh, Pennsylvania in the Ellwood City/Wampum area and travels throughout the region frequently. Plaintiff Badger has been to Subject Properties I and II, including in the last year, where she experienced unnecessary difficulty due to excessive slopes in Defendants' parking facilities and access aisles.

32. Despite this difficulty, Plaintiff Badger plans to return to these properties in the future in order to purchase, among other things, home maintenance and decorating items.

33. Furthermore, Plaintiff Badger intends to return to Defendants' facilities, including Subject Properties I and II, to ascertain whether they remain in violation of the ADA.

34. Plaintiff Gellatly lives in Ohio. Plaintiff Gellatly has been to Subject Properties II and III, including in the last year, where she experienced unnecessary difficulty due to excessive slopes in Defendants' parking facilities and access aisles and a lack of accessible signage

35. Despite this difficulty, Plaintiff Gellatly plans to return to these properties in the future while visiting family and friends in near Conneaut Lake or Pittsburgh to see friends or attend educational programs, and when traveling through the area on her way to wheelchair racing events.

36. Furthermore, Plaintiff Gellatly intends to return to Defendants' facilities, including the Subject Properties II and III, to ascertain whether Defendants' facilities remain in violation of the ADA.

37. Plaintiff Hunter lives in Ohio. Plaintiff Hunter has been to Subject Properties I and II, including in the last year, where she experienced unnecessary difficulty due to excessive slopes in Defendants' parking facilities and access aisles.

38. Despite this difficulty, Plaintiff Hunter plans to return to these properties in the future to purchase electronics and outdoor yard items while visiting friends or dining in Pittsburgh.

39. Furthermore, Plaintiff Hunter intends to return to Defendants' facilities, including Subject Properties I and II, to ascertain whether Defendants' facilities remain in violation of the ADA.

40. Plaintiffs will be deterred from returning to and fully and safely accessing Defendants' facilities, however, 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 their facilities.

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

42. As individuals with mobility disabilities who are dependent upon a wheelchair, Plaintiffs are directly interested in whether public accommodations, like Defendants, have architectural barriers that impede full accessibility to those accommodations by individuals with mobility-related disabilities.

**II. Defendants Repeatedly Deny Individuals With Disabilities Full and Equal Access to their Facilities.**

43. Defendants are engaged in the ownership, management and development of properties, including brick and mortar retailers, like Tractor Supply Company, hhgregg, and CVS.



44. 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 their facilities.

45. To date, Defendants' centralized design, construction, alteration, maintenance and operational policies and practices have systematically and routinely violated the ADA by designing, constructing and altering facilities so they are not readily accessible and usable, by failing to remove architectural barriers, and by failing to maintain and operate facilities so that the accessible features of Defendants' facilities are maintained.

46. On Plaintiffs' behalf, investigators examined multiple locations owned, controlled, and/or operated by Defendants, and found the following violations, which are illustrative of the fact that Defendants implement policies and practices that routinely result in accessibility violations:

- a) 100 Tractor Lane, Gibsonia, PA (Subject Property I)
  - i. The surfaces of one or more purportedly accessible parking spaces had slopes exceeding 2.1%; and
  - ii. The surfaces of one or more access aisles had slopes exceeding 2.1%.
- b) 800 Chauvet Dr., Pittsburgh, PA (Subject Property II)
  - i. The surfaces of one or more purportedly accessible parking spaces had slopes exceeding 2.1%; and
  - ii. The surfaces of one or more access aisles had slopes exceeding 2.1%.
- c) 820 Liberty Ave., Meadville, PA (Subject Property III)
  - i. The surfaces of one or more purportedly accessible parking spaces had slopes exceeding 2.1%;
  - ii. The surfaces of one or more access aisles had slopes exceeding 2.1%;
  - iii. No spaces were designated as "van accessible" at one or more groups of purportedly accessible parking spaces; and

d) 10707 W Peoria Ave., Sun City, AZ

- i. The surfaces of one or more purportedly accessible parking spaces had slopes exceeding 2.1%;
- ii. The surfaces of one or more access aisles had slopes exceeding 2.1%;
- iii. A curb ramp located on the route to the building entrance had a running slope exceeding 8.3%; and
- iv. One or more signs designating spaces as “accessible” were mounted less than 60 inches above the finished surface of the parking area.

e) 1315 E Chandler Blvd., Phoenix, AZ

- i. The surfaces of one or more purportedly accessible parking spaces had slopes exceeding 2.1%;
- ii. A curb ramp located on the route to the building entrance had a running slope exceeding 8.3%;
- iii. No spaces were designated as “van accessible” at one or more groups of purportedly accessible parking spaces; and
- iv. One or more signs designating spaces as “accessible” were mounted less than 60 inches above the finished surface of the parking area.

f) 725 N Dysart Rd., Avondale, AZ

- i. The surfaces of one or more purportedly accessible parking spaces had slopes exceeding 2.1%;
- ii. No spaces were designated as “van accessible” at one or more groups of purportedly accessible parking spaces; and
- iii. One or more signs designating spaces as “accessible” were mounted less than 60 inches above the finished surface of the parking area

g) 1831 E McDowell Road, Phoenix, AZ

- i. The surfaces of one or more purportedly accessible parking spaces had slopes exceeding 2.1%; and
- ii. A portion of the route to the store entrance had a cross slope exceeding 2.1%.

h) 13035 W Rancho Santa Fe Blvd., Avondale, AZ

- i. A curb ramp located on the route to the building entrance had a running slope exceeding 8.3%; and
  - ii. No spaces were designated as “van accessible” at one or more groups of purportedly accessible parking spaces.
- i) 5801 E Calle Guadalupe, Tempe, AZ
  - i. A curb ramp projected into an access aisle.
- j) 1635 E Southern Ave., Phoenix, AZ
  - i. A curb ramp located on the route to the building entrance had a running slope exceeding 8.3%.

47. The fact that individuals with mobility-related disabilities are denied full and equal access to numerous of Defendants’ facilities, and the fact that each of these facilities deny access by way of inaccessible parking facilities, is evidence that the inaccessibility Plaintiff experienced is not isolated, but rather, caused by Defendants’ systemic disregard for the rights of individuals with disabilities.

48. Defendants’ systemic access violations demonstrate that Defendants either employ policies and practices that fail to design, construct and alter its facilities so that they are readily accessible and usable, and/or that Defendants employ maintenance and operational policies and practices that are unable to maintain accessibility.

49. As evidenced by the widespread inaccessibility of Defendants’ parking facilities, absent a change in Defendants’ corporate policies and practices, access barriers are likely to reoccur in Defendants’ facilities even after they have been remediated.

50. 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 and allow, inaccessibility to affect Defendants’ network of facilities.

### **CLASS ALLEGATIONS**

51. Plaintiffs bring this class action, pursuant to Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure, on behalf of themselves and the following nationwide class: all wheelchair users who have attempted, or will attempt, to utilize the parking facilities at all locations within the United States for which Defendants own and/or control the parking facilities.

52. 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.

53. 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.

54. 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.

55. 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 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.

56. 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**

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

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

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

60. Further, the accessible features of Defendants' facilities, which include the parking lots and paths of travel, are required to be maintained so that they are readily accessible to and usable by individuals with mobility disabilities. 28 U.S.C. § 36.211.

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

62. Furthermore, the architectural barriers described above demonstrate that Defendants have failed to remove barriers, as required by 42 U.S.C. Section 12182(b)(2)(A)(iv).

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

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

64. 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.

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

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

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

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

69. 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.

70. Given that Defendants have not complied with the ADA's requirements to make their facilities fully accessible to, and independently usable by, individuals who use wheelchairs, Plaintiffs invoke 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 described above, and the relevant implementing regulations of the ADA, in that Defendants' facilities, as described above, are not fully accessible to, and independently usable by, individuals who use wheelchairs;
- b. A permanent injunction pursuant to 42 U.S.C. § 12188(a)(2) and 28 CFR § 36.501(b) which directs Defendants to: (i) take all steps necessary to remove the architectural 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; (ii) that Defendants change their corporate policies and practices to prevent the reoccurrence of access barriers post-remediation; and, (iii) that Plaintiff shall monitor Defendants' facilities to ensure that the injunctive relief ordered above remains in place.
- c. An Order certifying the class proposed by Plaintiffs, and naming Plaintiffs as class representatives and appointing their 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 CFR § 36.505; and,
- f. The provision of whatever other relief the Court deems just, equitable and appropriate.

Dated: March 31, 2017

Respectfully Submitted,

By: /s/ Benjamin J. Sweet  
Benjamin J. Sweet (PA 87338)  
Stephanie K. Goldin (PA 202865)  
Kevin W. Tucker (PA 312144)  
**CARLSON LYNCH SWEET**  
**KILPELA & CARPENTER, LLP**  
1133 Penn Avenue, 5<sup>th</sup> Floor  
Pittsburgh, PA 15222  
(p) 412.322.9243  
*Counsel for Plaintiffs Emily Gellatly, Josie Badger, and Angela Hunter*

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
Josie Badger, Emily Gellatly, and Angela Hunter
(b) County of Residence of First Listed Plaintiff Allegheny
(c) Attorneys (Firm Name, Address, and Telephone Number)
Carlson Lynch Sweet Kilpela & Carpenter LLP, 1133 Penn Avenue, 5th Floor, Pittsburgh, PA 15222 Phone: 412-322-9243

DEFENDANTS
Cole Capital Corporation, Cole Credit Property Trust V, Inc., and Cole Credit Property Trust IV, Inc.
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT
110 Insurance
120 Marine
130 Miller Act
140 Negotiable Instrument
150 Recovery of Overpayment & Enforcement of Judgment
151 Medicare Act
152 Recovery of Defaulted Student Loans (Excludes Veterans)
153 Recovery of Overpayment of Veteran's Benefits
160 Stockholders' Suits
190 Other Contract
195 Contract Product Liability
196 Franchise
REAL PROPERTY
210 Land Condemnation
220 Foreclosure
230 Rent Lease & Ejectment
240 Torts to Land
245 Tort Product Liability
290 All Other Real Property

FORFEITURE/PENALTY
625 Drug Related Seizure of Property 21 USC 881
690 Other
LABOR
710 Fair Labor Standards Act
720 Labor/Management Relations
740 Railway Labor Act
751 Family and Medical Leave Act
790 Other Labor Litigation
791 Employee Retirement Income Security Act
IMMIGRATION
462 Naturalization Application
465 Other Immigration Actions
BANKRUPTCY
422 Appeal 28 USC 158
423 Withdrawal 28 USC 157
PROPERTY RIGHTS
820 Copyrights
830 Patent
840 Trademark
SOCIAL SECURITY
861 HIA (1395ff)
862 Black Lung (923)
863 DIWC/DIWW (405(g))
864 SSID Title XVI
865 RSI (405(g))
FEDERAL TAX SUITS
870 Taxes (U.S. Plaintiff or Defendant)
871 IRS—Third Party 26 USC 7609
OTHER STATUTES
375 False Claims Act
376 Qui Tam (31 USC 3729(a))
400 State Reapportionment
410 Antitrust
430 Banks and Banking
450 Commerce
460 Deportation
470 Racketeer Influenced and Corrupt Organizations
480 Consumer Credit
490 Cable/Sat TV
850 Securities/Commodities/Exchange
890 Other Statutory Actions
891 Agricultural Acts
893 Environmental Matters
895 Freedom of Information Act
896 Arbitration
899 Administrative Procedure Act/Review or Appeal of Agency Decision
950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Title III of the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.
Brief description of cause:
Public accommodation violation

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$
CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE 03/31/2017 SIGNATURE OF ATTORNEY OF RECORD /s/ Benjamin J. Sweet

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE



JS 44A REVISED June, 2009  
IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA  
THIS CASE DESIGNATION SHEET MUST BE COMPLETED

**PART A**

This case belongs on the (  Erie  Johnstown  Pittsburgh) calendar.

1. **ERIE CALENDAR** - If cause of action arose in the counties of Crawford, Elk, Erie, Forest, McKean, Venang or Warren, OR any plaintiff or defendant resides in one of said counties.
2. **JOHNSTOWN CALENDAR** - If cause of action arose in the counties of Bedford, Blair, Cambria, Clearfield or Somerset OR any plaintiff or defendant resides in one of said counties.
3. Complete if on **ERIE CALENDAR**: I certify that the cause of action arose in \_\_\_\_\_ County and that the \_\_\_\_\_ resides in \_\_\_\_\_ County.
4. Complete if on **JOHNSTOWN CALENDAR**: I certify that the cause of action arose in \_\_\_\_\_ County and that the \_\_\_\_\_ resides in \_\_\_\_\_ County.

**PART B** (You are to check ONE of the following)

1.  This case is related to Number \_\_\_\_\_ . Short Caption \_\_\_\_\_
2.  This case is not related to a pending or terminated case.

DEFINITIONS OF RELATED CASES:

**CIVIL:** Civil cases are deemed related when a case filed relates to property included in another suit or involves the same issues of fact or it grows out of the same transactions as another suit or involves the validity or infringement of a patent involved in another suit

**EMINENT DOMAIN:** Cases in contiguous closely located groups and in common ownership groups which will lend themselves to consolidation for trial shall be deemed related.

**HABEAS CORPUS & CIVIL RIGHTS:** All habeas corpus petitions filed by the same individual shall be deemed related. All pro se Civil Rights actions by the same individual shall be deemed related.

**PART C**

I. CIVIL CATEGORY (Select the applicable category).

1.  Antitrust and Securities Act Cases
2.  Labor-Management Relations
3.  Habeas corpus
4.  Civil Rights
5.  Patent, Copyright, and Trademark
6.  Eminent Domain
7.  All other federal question cases
8.  All personal and property damage tort cases, including maritime, FELA, Jones Act, Motor vehicle, products liability, assault, defamation, malicious prosecution, and false arrest
9.  Insurance indemnity, contract and other diversity cases.
10.  Government Collection Cases (shall include HEW Student Loans (Education), V A Overpayment, Overpayment of Social Security, Enlistment Overpayment (Army, Navy, etc.), HUD Loans, GAO Loans (Misc. Types), Mortgage Foreclosures, SBA Loans, Civil Penalties and Coal Mine Penalty and Reclamation Fees.)

I certify that to the best of my knowledge the entries on this Case Designation Sheet are true and correct

/s/ Benjamin J. Sweet

Date: March 31, 2017

\_\_\_\_\_

ATTORNEY AT LAW

NOTE: ALL SECTIONS OF BOTH ÔŠPRU MUST BE COMPLETED BEFORE CASE CAN BE PROCESSED.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Pennsylvania

JOSIE BADGER; EMILY GELLATLY; and, ANGELA HUNTER, individually and on behalf of all others similarly situated,

Plaintiff(s)

v.

Civil Action No.

COLE CAPITAL CORPORATION; COLE CREDIT PROPERTY TRUST V, INC.; and COLE CREDIT PROPERTY TRUST IV, INC.

Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Cole Capital Corporation 2325 East Camelback Road Suite 1100 Phoenix, AZ 85016

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Benjamin J. Sweet
Carlson Lynch Sweet Kilpela & Carpenter, LLP
1133 Penn Avenue, 5th Floor
Pittsburgh, PA 15222

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_ .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Pennsylvania

JOSIE BADGER; EMILY GELLATLY; and, ANGELA HUNTER, individually and on behalf of all others similarly situated,

Plaintiff(s)

v.

COLE CAPITAL CORPORATION; COLE CREDIT PROPERTY TRUST V, INC.; and COLE CREDIT PROPERTY TRUST IV, INC.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Cole Credit Property Trust IV, Inc. 2325 East Camelback Road Suite 1100 Phoenix, AZ 85016

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Benjamin J. Sweet
Carlson Lynch Sweet Kilpela & Carpenter, LLP
1133 Penn Avenue, 5th Floor
Pittsburgh, PA 15222

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_ .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Pennsylvania

JOSIE BADGER; EMILY GELLATLY; and, ANGELA HUNTER, individually and on behalf of all others similarly situated,

Plaintiff(s)

v.

Civil Action No.

COLE CAPITAL CORPORATION; COLE CREDIT PROPERTY TRUST V, INC.; and COLE CREDIT PROPERTY TRUST IV, INC.

Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Cole Credit Property Trust V, Inc. 2325 East Camelback Road Suite 1100 Phoenix, AZ 85016

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Benjamin J. Sweet
Carlson Lynch Sweet Kilpela & Carpenter, LLP
1133 Penn Avenue, 5th Floor
Pittsburgh, PA 15222

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Cole Capital Corporation, Two Others Facing ADA Compliance Lawsuit \[Correction\]](#)

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