IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.: 09-cv-02757-WYD-KMT

COLORADO CROSS-DISABILITY COALITION,
ANITA HANSEN,
ROBERT SIROWITZ,
JOSHUA STAPEN,
ROBIN STEPHENS, and
BENJAMIN HERNANDEZ

Plaintiffs,

v.

ABERCROMBIE & FITCH CO.,
ABERCROMBIE & FITCH STORES, INC., and
J.M. HOLLISTER LLC, d/b/a HOLLISTER CO.,

Defendants.

DEFENDANTS' RENEWED
MOTION TO DISMISS FOR LACK OF STANDING

Defendants, Abercrombie & Fitch Co., Abercrombie & Fitch Stores, Inc., and J.M. Hollister, LLC, move the Court to dismiss Plaintiffs' Third Amended and Class Action Complaint for lack of subject matter jurisdiction, pursuant to F.R. Civ. P. (12)(b)(1). As set forth in the Memorandum in Support of this Renewed Motion, all plaintiffs lack constitutional standing to assert their federal claims for a nationwide injunction, plaintiff Colorado Cross-Disability Coalition lacks prudential standing to assert claims on behalf of its Members, and the Court should decline to exercise supplemental jurisdiction over their remaining state law claims.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 20th, 2010, I have caused to be electronically filed the foregoing with the Clerk of Courts using CM/ECF system which will send notification of such filing to the following e-mail addresses:

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ABERCROMBIE & FITCH CO.,
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Defendants.

DEFENDANTS' MEMORANDUM IN SUPPORT OF RENEWED MOTION TO DISMISS FOR LACK OF STANDING

Defendants previously moved to dismiss plaintiffs' Second Amended and Class Action Complaint for lack of standing. (DN 50.) After the motion was fully briefed, the Court granted plaintiffs' motion to further amend their pleadings, which defendants had not opposed. (DN 72.) In their Third Amended and Class Action Complaint (DN 73), plaintiffs now attempt to assert new claims and to cure the defects in standing that defendants had pointed out in their motion. Plaintiffs' new allegations do not establish that they have standing to bring their claims, for the reasons set forth below, and their Third Amended and Class Action Complaint therefore should be dismissed pursuant to F.R.Civ.P. 12(b)(1).

The factual allegations of plaintiffs' pleadings do not show that they have standing to assert their First Claim for Relief, which seeks a nationwide injunction to remedy alleged violations of the Americans with Disabilities Act ("ADA"), 42 U.S.C. 12181, *et seq*. Plaintiff

Colorado Cross-Disability Coalition ("CCDC") lacks standing to assert this claim on its own behalf, because it has suffered no cognizable injury-in-fact from the alleged inaccessible conditions at defendants' stores, or on behalf of its unnamed members, because they lack standing to litigate those claims. The five individual plaintiffs do not have standing to assert their ADA claims against all of defendants' Hollister stores "nationwide," and against their other stores in Colorado, because they face no immediate threat of harm as to stores they have never patronized and do not intend to patronize in the future.

The Court should then decline to exercise pendent jurisdiction over plaintiffs' Second Claim for Relief, which asserts Colorado state law damage claims. There is no federal subject matter jurisdiction over this case, and plaintiffs' claims should be dismissed as a matter of law.

I. Statement of Alleged Facts

Defendants move to dismiss this lawsuit pursuant to Fed.R.Civ.P. 12(b)(1) on the grounds that the facts alleged in plaintiffs' Third Amended and Class Action Complaint would be insufficient to demonstrate standing even if they were true. Accordingly, plaintiffs' factual allegations should be presumed to be true in deciding defendants' motion. *See Calderon v. Kansas Dept. of Social and Rehabilitation Services*, 181 F.3d 1180, 1183 (10th Cir. 1999).

The five individual plaintiffs in this case use wheelchairs for mobility and allege that they encountered inaccessible conditions at three of defendants' Hollister stores. (Third Amended Complaint, DN 73, at ¶¶ 15-19, 60-62, 89, 109, 117, 140, 156, 170, 182-83.) All five allege that they shopped at a Hollister store located in Lone Tree, Colorado; two shopped at a Hollister store in Westminster, Colorado; and one shopped at a Hollister store in Beaumont, Texas. (*Id.*) In each instance, they allege that steps at the main entrances to the stores required them to use an

alternative wheelchair-accessible entrance, that service counters were too high, and that merchandise displays impeded their movement through the stores. (*Id.*, at ¶¶ 60-193.)

Plaintiff CCDC is a Colorado corporation whose members include the five individual plaintiffs and others with disabilities, as well as people who advocate for their rights. (*Id.*, at ¶¶ 9, 14.) CCDC alleges that the inaccessible conditions at defendants' stores have caused it to devote resources to this lawsuit that it otherwise could have devoted to "other outreach, advocacy, and educational efforts," and that this "frustrates" CCDC's organizational goal of achieving full inclusion for people with disabilities. (*Id*., at ¶¶ 203-204.) However, CCDC further alleges that the resources it is devoting to the present lawsuit are being used to "identify[ ] and counteract[ ] the sources of discrimination," which also advances that goal. (*Id.,* at ¶ 206.)

Plaintiffs' First Claim for Relief, for alleged violations of Title III of the ADA, is asserted by CCDC, the five individual plaintiffs, and the members of a putative nationwide class. They seek "an injunction ordering Defendants to comply with the ADA with respect to all Hollister Co. stores nationwide and all Abercrombie & Fitch and abercrombie stores in Colorado." (*Id*., Prayer for Relief, at ¶ 3). In plaintiffs' Second Claim for Relief, for alleged violations of the Colorado Civil Rights Act ("CRAA"), Colo. Rev. Stat. 24-34-601, *et seq.,* CCDC, the five individual plaintiffs, and members of the putative nationwide class who reside in Colorado seek monetary damages for the same alleged conditions at defendants' stores. (*Id*., at ¶¶ 231.)

II. Argument

A. The First Claim for Relief should be dismissed because plaintiffs do not have standing to assert this ADA claim.

In the First Claim for Relief, CCDC (on its own behalf and on behalf of its members) and the five individual plaintiffs (on their own behalf and as proposed representatives of a putative national class) all seek the same injunction requiring defendants' Hollister stores "nationwide"

and their other stores in Colorado to comply with the ADA. Defendants have renewed their earlier motion to dismiss because the factual allegations of plaintiffs' pleadings still fail to meet their burden of demonstrating that they have standing to assert this claim. As set forth below, CCDC has not alleged facts establishing that it will sustain a "certain and imminent" injury, as required for standing by Article III, Section 2 of the United States Constitution, and its allegations also fail to demonstrate that it has standing to assert this claim on behalf of its members for their alleged injuries. The five individual plaintiffs have similarly failed to allege facts showing that they will sustain a "certain and imminent" injury with respect to each of defendants' stores unless an injunction is issued.

Standing is the threshold question in every federal case, as it determines whether the court has legal authority to decide the dispute. *Warth v. Seldin*, 422 U.S. 490, 498 (1975). "Article III of the Constitution restricts the federal courts to the adjudication of 'Cases' and 'Controversies,'" *Tandy v. City of Wichita*, 380 F.3d 1277, 1283 (10th Cir. 2004), and "[t]he doctrine of standing is one of several doctrines that reflect this fundamental limitation." *Summers v. Earth Island Institute*, -- U.S. --, 129 S. Ct. 1142, 1149 (2009). Indeed, standing is "perhaps the most important limit on federal subject matter litigation," *Allen v. Wright*, 468 U.S. 737, 750 (1984), because it ensures that "the plaintiff has alleged such a personal stake in the outcome of the controversy as to warrant his invocation of federal court jurisdiction." *Summers, supra*, 129 S. Ct. at 1149, *quoting Warth, supra,* 422 U.S. at 498-99 (original emphasis). The standing requirement prevents plaintiffs from "convert[ing] the judicial process into 'no more than a vehicle for the vindication of the value interests of concerned bystanders.'" *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.,* 454 U.S. 464, 473 (1982) (quotation omitted).

Because it is the party claiming federal jurisdiction, a plaintiff "bears the burden of showing that he has standing for each type of relief sought." *Summers, supra*, 129 S. Ct. at 1149. *See also D.L. v. Unified School Dist. No. 497,* 596 F.3d 768, 775 (10th Cir. 2010) (same). (D. Colo. 2007). A plaintiff's pleadings must show, *inter alia*, that "the plaintiff . . . suffered an injury-in-fact – an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical." *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560-61 (1992) (citations and internal punctuation omitted). *See also Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.,* 528 U.S. 167, 180-81 (2000) (*quoting Lujan*); *Stewart v. Kempthorne,* 554 F.3d 1245, 1253 (10th Cir. 2009). "[T]he alleged injury must be stated as factual and not speculative." *Gianzero v. Wal-Mart Stores, Inc.,* No. 09-CV-656, 2010 WL 1258073, at *1 (D. Colo. 2010).

Prospective injunctive relief is the only remedy available for the ADA claims plaintiffs assert in this action. *See* 42 U.S.C. 12188(a)(1) and (2). *See also Lewis v. Burger King,* 361 Fed.Appx. 937, 938, fn. 1 (10th Cir. 2010) ("monetary relief is not available to private litigants under Title III of the ADA"); *Lucas v. K-Mart Corporation*, 234 F.R.D. 688, 690 (D. Colo. 2006) ("Title III [of the ADA] does not provide a damage remedy for private plaintiffs"). In order to establish standing, each of the plaintiffs in the present case must therefore allege facts establishing that they will sustain injuries in the future. "[A] plaintiff seeking injunctive relief premised upon an alleged past wrong must demonstrate a 'real and immediate threat' of repeated future harm to satisfy the injury-in-fact prong of the standing test. This requirement is independent of the substantive requirements for equitable relief." *City of Los Angeles v. Lyons,* 461 U.S. 95, 111 (1983) (emphasis added). *See also Tandy, supra,* 380 F.3d at 1283-84 ("[t]he threatened injury must be 'certainly impending' and not merely speculative;" *quoting Laidlaw,*

supra). "[T]he lesson of *Lujan* [*supra*] is clear: mere allegations that at some point in the future an injury might occur are not enough to establish standing. What is required is a more particularized allegation showing that an injury will occur at a certain time in the future." *National Coalition of Latino Clergy, Inc. v. Henry,* No. 07-CV-613, 2007 WL 4390650, at *3 (N.D. Okla. 2007) (original emphasis).

Accordingly, plaintiffs must allege facts demonstrating that they "will suffer future discrimination at the hands of the defendant" in order to plead an ADA injury-in-fact and establish standing. *Gregory v. Otac, Inc.,* 247 F. Supp. 2d 764, 770 (D. Md. 2003). "[V]iolation of the ADA does not alone establish injury" and, thus, is insufficient to establish standing to file suit for the violation. 247 F. Supp. 2d at 769. For example, one of the plaintiffs in *Tandy, supra*, alleged that the defendant's public buses violated the ADA because they were not accessible to people who use wheelchairs, and further alleged that he "desired" to use the buses in the future, but the Court of Appeals for the Tenth Circuit found that these allegations did not "suffice to establish that he is under a real and immediate threat of repeated injury. Therefore, [he] has no standing. . . ." 380 F.3d at 1288.

Plaintiffs' factual allegations must also satisfy prudential standing requirements. *See Warth, supra,* 422 U.S. at 498 ("the [standing] inquiry involves both constitutional limitations on federal-court jurisdiction and prudential limitations on its exercise"); *Edwards v. Doe,* 331 Fed. Appx. 563, 567 (10th Cir. 2009) (same). "The prudential strand of the standing doctrine is the recognition that sometimes courts must refuse to hear claims brought by litigants who are not properly situated." *National Coalition, supra,* 2007 WL 4390650, at *7.

As set forth below, plaintiffs' allegations in the present case do not meet the Article III injury-in-fact requirement, and CCDC also lacks prudential standing to assert claims for alleged

injuries to its members.

1. Plaintiff CCDC has not alleged sufficient facts to demonstrate that it has standing to assert its ADA claims.

CCDC is apparently attempting to assert ADA claims on its own behalf and on behalf of its members. Plaintiffs' pleadings must separately establish that CCDC has standing to bring each of these types of claims. *Laidlaw, supra,* 528 U.S. at 180-81. As set forth below, the factual allegations of the Third Amended Complaint do not demonstrate that CCDC has standing to assert the organizational claims it asserts on its own behalf, for alleged injuries to CCDC, or the representational claims it asserts on behalf of its members, for alleged injuries to the members.

a. CCDC lacks Article III standing to bring ADA claims on its own behalf for its alleged injuries.

CCDC seeks injunctive relief under the ADA for injuries that it has purportedly sustained as a result of inaccessible conditions at defendants' stores. An organization that files suit for an injury suffered by the organization must meet the same requirements for standing that an individual plaintiff must satisfy. *Laidlaw, supra,* 528 U.S. at 180-81. Accordingly, CCDC bears the burden of alleging sufficient facts to establish, *inter alia,* that it has suffered an injury-in-fact. *Sierra Club, supra,* 2007 WL 45985 at *1, fn. 3.

CCDC alleges that it has been injured because the conditions at defendants' stores have caused it to "devote resources" to filing this lawsuit that "could have been devoted to its other outreach, advocacy, and educational efforts," thereby "frustrating" CCDC's ability to achieve its organizational goals. (Third Amended Complaint, *supra*, at ¶¶ 202-205.) This is not a legally cognizable injury-in-fact for purposes of Article III standing. *See Equal Rights Center v. Post Properties, Inc.,* 657 F. Supp.2d 197, 200 (D.D.C. 2009) ("[o]rganizational plaintiffs . . . will not

be able to establish the injury necessary for constitutional standing when it consists merely of the impact on its activities caused by their willful diversion of their resources in response to the defendants' conduct"). *See also Buchanan v. Consolidated Stores Corp.,* 125 F.Supp.2d 730, 737-38 (D. Md. 2001), where the Court found that these allegations do not establish standing on the part of a disability rights organization to assert ADA claims:

> ERC appears to allege that it suffered injury as a result of having to divert its resources from other programs to investigate Defendant's alleged discrimination….Simply alleging [plaintiff] spent money to test or challenge alleged discrimination did not support standing. . . . ERC chose to investigate Defendant's policy . . . ERC cannot now claim that because it chose to channel its funds this way, Defendant … has caused it injury-in-fact sufficient to satisfy Article III standing requirements.

(Emphasis added).

Courts have also specifically rejected the contention that conflict between a defendant's conduct and an organization's goals is a sufficient injury-in-fact to establish Article III standing on the part of the organization. *See Maryland Highways Contractors Association v. State of Maryland,* 933 F.2d 1246, 1251 (4th Cir. 1991), *cert. denied*, 502 U.S. 939 (1991) ("although the Association alleges that its broad purposes have been violated . . . this type of injury is insufficient to support standing").

Moreover, an organization's goals are not frustrated if it diverts resources in order to file a lawsuit that is intended to accomplish those goals. *See Doe v. Obama*, 670 F.Supp.2d 435, 441 (D. Md. 2009) ("[t]o the extent that the complaint alleges that NOEL suffers an injury because it is unable to fulfill its purpose… the court does not find this injury sufficient to meet the requirements of standing… NOEL is fulfilling its purpose… by the very act of filing this lawsuit"); *Goldstein v. Costco Wholesale Corp.,* 278 F.Supp.2d 766, 771 (E.D. Va. 2003) ("[w]hen an organization's primary source of revenue is litigation directed against alleged

discrimination, it cannot be said that the organization's participation in such litigation impairs its ability to do its work"). In their Third Amended Complaint, *supra*, at ¶¶ 196, 206, plaintiffs acknowledge that CCDC has filed and "resolved" other lawsuits for alleged ADA violations, and that it has "devoted resources… to the present lawsuit … to identify and counteract discrimination in the community including that of Defendants." (Emphasis added.)

If allegations of "diversion of resources" and "frustration" of an organization's goals were sufficient for Article III standing, an organization could unilaterally create an injury-in-fact in every case by merely filing suit, thereby incurring legal expenses and diverting its resources, and by alleging that the defendants are frustrating its goals. Not surprisingly, courts have refused to find that an organization has Article III standing to pursue ADA claims based on these allegations. *See, e.g., Small v. General Nutrition Companies, Inc.,* 388 F.Supp.2d 83, 94 (E.D.N.Y. 2005) ("[a]n organization cannot, of course, manufacture the injury necessary to maintain a suit from its expenditure of resources on that very suit. Were the rule otherwise, a litigant could create injury-in-fact by bringing a case") (*quoting Spann v. Colonial Village, Inc.,* 899 F.2d 24, 27 (D.C. Cir. 1990), *cert. denied,* 498 U.S. 980 (1990).

In any event, an organization's "frustration" and reallocation of resources are not an injury-in-fact, as discussed above, and CCDC's ADA claim should be dismissed for lack of standing.

b. CCDC lacks standing to bring ADA claims on behalf of its members for injuries to its members.

CCDC is also apparently attempting to assert ADA claims on behalf of unnamed members of the organization who have purportedly encountered inaccessible conditions at defendants' stores but have not joined this litigation as named plaintiffs. (DN 31, at ¶ 19; DN 73, at ¶208.) Defendants move to dismiss these claims because the factual allegations of the Third

Amended Complaint do not show that CCDC has standing to bring representational claims for alleged injuries to unnamed members of the organization.

First, an organization does not have standing to sue on behalf of its members unless "its members would otherwise have standing to sue in their own right." *Hunt v. Washington State Apple Advertising Commission,* 432 U.S. 333, 343 (1977). *See also Utah Association of Counties v. Bush,* 455 F.3d 1094, 1099 (10th Cir. 2006) (same). The purpose of this requirement is "to weed out [organizations] who try to bring cases, which could not otherwise be brought, by manufacturing allegations of standing that lack any real foundation." *New York State Club Association v. City of New York,* 487 U.S. 1, 9 (1988).

In the present case, CCDC does not allege that any of its unnamed members have encountered inaccessible conditions at defendants' stores and that they intend to return to those stores. It has not even attempted to plead facts establishing an injury-in-fact for any of its unnamed members, and the five named plaintiffs are asserting their own claims in this litigation. "Plaintiffs claiming organizational standing [must] identify members who have suffered the requisite harm." *Summers, supra,* 129 S.Ct. at 1152. An organization "cannot…shoehorn an unknown number of supposed but unknown victims [of ADA violations] into their cause of action by the mechanism of associational standing." *Concerned Parents to Save Dreher Park Center v. City of West Palm Beach,* 884 F.Supp. 487, 489 (S.D. Fla. 1994).

Even if CCDC had sufficiently alleged facts showing that its unnamed members have standing to assert ADA claims, CCDC could not assert claims on their behalf against stores that they never attempted to patronize in the past and do not intend to patronize in the future. CCDC does not have standing to assert ADA claims on behalf of its members against all of defendants' stores in the absence of allegations showing that its members would have standing to bring those

claims. *See Small, supra,* 388 F.Supp.2d at 97-98:

> [I]f DIA can establish the standing of one of its members… DIA will have established associational standing. Its standing would only be coextensive with the standing that member would enjoy, however…. Thus, the association would only have standing with respect to the specific stores at which the member…has standing.

In *Equal Rights Center v. Hilton Hotels Corp.,* No. 07-1528, 2009 WL 6067336 (D.D.C. 2009), the District Court rejected an organization's attempt to establish representational standing on behalf of its unnamed members in an ADA case for this reason and held that, "at a minimum, the [plaintiff organization] must state: (1) who these members are; (2) which Hilton hotels they visited; (3) what accessibility barriers they encountered; and (4) whether they would return to that hotel or those hotels were it not for the accessibility barriers." CCDC has not alleged any of these basic facts with respect to its unnamed members in the present case. It therefore has no standing to assert ADA claims on their behalf.

CCDC's allegations also fail to establish that it has representational standing to assert ADA claims on behalf of its unnamed members because litigating those claims would unavoidably require the participation of the members. *See Sierra Club, supra,* 2007 WL 45985, at *1, fn. 4 ("[a]n organization has representational standing to bring suit on behalf of its members if… neither the claim asserted nor the relief requested requires individual participation by its members"); *Utah Association, supra,* 455 F.3d at 1099 (same) CCDC cannot possibly prove that defendants' alleged violations of the ADA caused injury to its unnamed members unless they testify, *inter alia,* that they encountered inaccessible conditions at defendants' stores and intend to return to those stores. *See Concerned Parents, supra,* 884 F.Supp. at 488 (holding that the plaintiff organization did not have representational standing because an ADA claim "requires proof as to each individual claimant"); *Association for Disabled Americans, Inc. v. Concorde Gaming Corp.,* 158 F.Supp.2d 1353, 1363-64 (S. D. Fla. 2001) (same); *Disabled in*

Action of Metropolitan New York v. Trump International Hotel and Tower, No. 01-CIV-5518, 2003 WL 1751785 (S.D. N.Y. 2003) (same).

Finally, CCDC also lacks standing to assert claims on behalf of its unnamed members because "access to the federal courts should be limited to those litigants best suited to assert the claims," and "the persons best suited to challenge practices impinging on individual rights are the direct victims of the alleged illegal practices." *Mackey v. Nationwide Insurance Companies,* 724 F.2d 419, 421-23 (4th Cir. 1984). *See also Gladstone Realtors v. Village of Bellwood,* 441 U.S. 91, 100 (1979). CCDC has pled no facts demonstrating that it is better suited to pursue these claims than the members whose claims are being asserted. In *Buchanan*, *supra,* the Court applied this rule and held that the plaintiff organization did not have associational standing to assert ADA claims on behalf of its unnamed members against a chain of retail stores:

> [H]elping a plaintiff to acquire information to bring a lawsuit does not confer standing. Nothing bars the individual plaintiffs or anyone else directly harmed by Defendant's policy from proceeding with this action….[A] proper remedy may be afforded to any plaintiffs actually injured by Defendant's practices without ERC as a party.

125 F.Supp.2d at 739 (emphasis added).

Accordingly, CCDC lacks standing to assert ADA claims on behalf of its unnamed members, and those claims should be dismissed.

2. The individual plaintiffs have not alleged sufficient facts to demonstrate that they have standing to assert their ADA claims.

The five individual plaintiffs in this action have also failed to plead essential facts establishing that they have standing to seek a nationwide injunction against defendants. These plaintiffs have no standing to obtain injunctive relief with respect to any specific store unless they allege that they encountered inaccessible conditions at that store and intend to return to that store. They have made such allegations as to only the three stores identified in their pleadings,

and, thus, they have not alleged that future injury is "certain and imminent" with respect to defendants' stores nationwide. *See Summers, supra*, 129 S. Ct. at 1149 (for Article III standing to assert a claim for injunctive relief, "a plaintiff must show that he is under threat of suffering 'injury in fact' that is concrete and particularized; the threat must be actual and imminent, not conjectural or hypothetical").

The five individual plaintiffs have therefore failed to establish that they have standing to obtain nationwide injunctive relief requiring defendants to remedy alleged ADA violations at their stores, as requested in their Third Amended Complaint, and these claims should be dismissed.

B. The Second Claim for Relief should be dismissed in the absence of any viable federal claim.

CCDC, the five individual plaintiffs, and a putative class of Colorado residents also assert claims under the Colorado Civil Rights Act, Colo. Rev. Stat. 24-34-601*, et seq*. (DN 73, Second Claim for Relief.) The Court should decline to exercise pendent jurisdiction over these state law claims after it dismisses plaintiffs' ADA claims for lack of standing. The supplemental jurisdiction statute, 28 U.S.C. 1367(a), provides that district courts may exercise jurisdiction over state law claims only in actions in which they "have original jurisdiction." In the present case, this Court has never had subject matter jurisdiction over plaintiffs' federal ADA claims, as set forth above, and thus has no discretion to exercise jurisdiction over the state law claims. *See Kaw Nation ex rel. McCauley v. Lujan*, 378 F.3d 1139, 1142 (10th Cir. 2004) ("because plaintiffs' complaint does not present a federal question, there was no original jurisdiction in the district court, and hence no basis for supplemental jurisdiction").

Even before the supplemental jurisdiction statute was enacted, the United States Supreme Court had long recognized that "a case properly belongs in state court… when the federal law

claims have dropped out of the lawsuit in its early stages and only state law claims remain." *Carnegie-Mellon University v. Cohill,* 484 U.S. 343, 350 (1988). This rule is now codified at 28 U.S.C. 1367(c), which provides that "district courts may decline to exercise supplemental jurisdiction over a claim…if…(3) the district court has dismissed all claims over which it has original jurisdiction…" Courts in this Circuit have repeatedly recognized that a plaintiff's state law claims should be dismissed in these circumstances. *See, e.g. Harrison v. University of Colorado Health Sciences Center,* 337 Fed. Appx. 750, 755 (10th Cir. 2009).

III. Conclusion

The Court should dismiss this action pursuant to Fed.R.Civ.P. 12(b)(1) for lack of standing. Plaintiffs have not carried their burden of alleging sufficient facts to demonstrate that they have standing to assert their First Claim for Relief, for injunctive relief under the ADA, and the Court should decline to exercise pendent jurisdiction over their Second Claim for Relief, for monetary damages under Colorado state law. Accordingly, the Court should dismiss the Third Amended and Class Action Complaint in its entirety for lack of subject matter jurisdiction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 20th, 2010, I have caused to be electronically filed the foregoing with the Clerk of Courts using CM/ECF system which will send notification of such filing to the following e-mail addresses:

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