UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO (DENVER)

THE CIVIL RIGHTS AND ENFORCEMENT CENTER, on behalf of its members, and MARGARET DENNY, on behalf of herself and a proposed class of similarly situated persons, Plaintiff, v. SAGE HOSPITALITY RESOURCES, LLC, Defendant.	Case No.: 1:15-cv-00236

DEFENDANT SAGE HOSPITALITY RESOURCES' MOTION TO DISMISS PLAINTIFFS' COMPLAINT AND MEMORANDUM OF LAW

Defendant, Sage Hospitality Resources, LLC ("SHR"), by and through its attorneys, and pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6), requests that Plaintiffs' Complaint be dismissed in its entirety. In support of this Motion, Defendant states as follows:

INTRODUCTION

On February 4, 2015, the Civil Rights and Enforcement Center ("CREEC") and Margaret Denny ("Denny") filed a class action Complaint alleging violations of Title III of the Americans with Disabilities Act, 42 U.S.C. 12181, *et seq*. ("ADA") relating to the accessibility of The Oxford Hotel ("The Oxford") and the TPS Suites Broomfield Boulder's ("TPS") transportation services. Compl. ¶ 4. This was but one of four such "cookie cutter" complaints filed by Plaintiffs' counsel within a one month span.[1] Here, Plaintiffs named

[1] Plaintiffs' counsel filed three near identical Complaints in the Northern District of California against hotel owners alleging the same violations on January 15, 2015. (Case Nos. 2015-cv-00224, 2015-cv-00224, and 2015-cv-00224). Despite its laudable purposes, Title III of the ADA has often been subject to abuse. *See, e.g., Molski v. Kahn Winery*, 405 F. Supp. 2d 1160, 1164-1168 (C.D. Cal. 2005) (holding that litigation history is relevant in determining standing); *Brother v. Miami Hotel Inv.'s, LTD.*, 341 F. Supp. 2d 1230, 1233

SHR as the sole Defendant alleging that SHR "owned and/or operated" the two hotels. On behalf of Denny, members of CREEC, and a class of disabled individuals, Plaintiffs further seek injunctive relief as to the alleged sixty-eight hotels owned and/or operated by SHR nationwide. Plaintiffs' Complaint, however, is fatally flawed in several regards. *First*, Plaintiffs named the wrong entity. SHR does not own or operate the hotels referenced in the Complaint. *Second*, Plaintiffs attempt to rely upon pure speculation and guesswork to turn an isolated local issue into a nationwide class fails as they have no standing with respect to hotels they never contacted. *Third*, Plaintiffs further lack standing to bring this suit with respect to **any** hotels because they rely solely on conclusory allegations insufficient to establish any credible threat of immediate future harm. *Fourth*, Plaintiffs' request for Rule 23 class action status should be stricken and/or dismissed pursuant to Rule 12(b)(6) because Plaintiffs have not plead a plausible basis for nationwide class relief. Accordingly, for these reasons (and as described more fully below), Plaintiffs' Complaint should be dismissed in its entirety and with prejudice.

I. STANDARD OF REVIEW

A motion to dismiss for lack of standing is resolved under Rule 12(b)(1) because it attacks the subject matter jurisdiction of the court. *U.S. v. Rodriguez-Aguirre*, 264 F.3d 1195, 1202 n.5 (10th Cir. 2001). Where the defendant challenges the facts upon which subject matter jurisdiction depends, the court does not presume the truthfulness of the complaint's factual allegations. *Id. at* 1203. Such is the case here.

(S.D. Fla. 2004) (commenting on the proliferation of ADA Title III lawsuits and abuse of Title III to collect attorney's fees); *Rodriguez v. Investco, LLC*, 305 F. Supp. 2d 1278, 1281 (M.D. Fla. 2004) (noting the birth of a "cottage industry"). Accordingly, "[e]nsuring that standing requirements are met by each plaintiff in each lawsuit brought under the ADA enables courts to ensure that the ADA is not being abused." *Doran v. Del Taco, Inc.*, 2006 U.S. Dist. LEXIS 53551, *19 (C.D. Cal. July 5, 2006).

The standard of review for a motion to dismiss under Fed. R. Civ. P. 12(b)(6) is well established. "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (*quoting Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads **factual content** that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 566 U.S. at 678 (emphasis added). "[D]ismissal is appropriate where 'the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct.'" *Al-Owhali v. Holder*, 687 F.3d 1236, 1240 (10th Cir. 2012) (*quoting Iqbal*, 556 U.S. at 679). Accordingly, in examining a complaint under Rule 12(b)(6), "[the court should] disregard conclusory statements and look only to whether the remaining, factual allegations plausibly suggest the defendant is liable." *Khalik v. United Air Lines*, 671 F.3d 1188, 1191 (10th Cir. 2012). This is especially true where, as here, plaintiffs seek to bring a "potentially massive . . . controversy" through nationwide class action litigation. *See Twombly*, 550 U.S. at 558.

II. PLAINTIFFS' ALLEGATIONS

Plaintiffs allege that SHR "owns and/or operates" the Oxford and TPS hotels in Colorado and that both hotels offer their guests a local shuttle service within a few miles of each hotel. Compl. ¶¶ 11, 15. Denny, a wheelchair bound individual, claims to have contacted The Oxford and TPS in October of 2014, asked each hotel whether it provided wheelchair-accessible transportation services and was informed by each hotel that it did not. Compl. ¶¶ 12, 16. Had each hotel offered accessible transportation services, Denny further claims that she would have stayed at each hotel and that she would like to stay at

each hotel in the future if she is informed that such accessible services exist. Compl.¶¶ 14, 18. Without naming any individuals other than Denny, CREEC asserts associational standing on behalf of its members who use wheelchairs or scooters for mobility, and who would like to stay at SHR hotels. Compl. ¶ 21.

In addition to The Oxford and TPS, Plaintiffs seek a nationwide injunction against an alleged sixty-eight hotels in nineteen states purportedly owned and/or operated by SHR. Compl. ¶ 21. In support of this request, Plaintiffs assume, based "[o]n information and belief, Sage owns and/or operates a number of other hotels in the United States that offer transportation services to their guests but do not offer equivalent transportation services to guests who use wheelchairs or scooters" and then lists ten other hotels in other states. Compl. ¶ 19. Upon the same purported information and belief, Plaintiffs refer to a variety of distinctly branded hotels including Element, Hilton, Marriott, Fairfield Inn & Suites, Courtyard, Hampton Inn, and Homewood Suites "believed" to be non-compliant. *Id.* Plaintiffs did not allege they attempted to contact these other hotels nor otherwise identify the basis for their alleged "information and belief."

III. ARGUMENT

A. SHR Does Not Own Or Operate The Oxford Hotel Or The TownePlace Suites.

As a threshold matter, SHR is not a proper Defendant and Plaintiffs have no standing with respect to SHR, because SHR does not own or operate The Oxford or TPS. Only an owner or operator of a public accommodation can be liable for Title III violations. *See* 42 U.S.C. § 12182 (a).[2] To "operate" a place of public accommodation means to exercise control over the alleged discriminatory action and to have the authority to take

[2] A leasee may also be liable under Title III, however, Plaintiffs made not such allegation in their Complaint.

remedial measures. *See Dahlberg v. Avis Rent A Car Sys., Inc.*, 92 F. Supp. 2d 1091, 1101-1102 (D. Colo. 2000). Moreover, to have standing to obtain injunctive relief, the plaintiff must establish, in part, the existence of a causal connection between the asserted injury-in-fact and the challenged action of the defendant and that the injury will be redressed by a favorable decision. *Shotz v. Cates*, 256 F.3d 1077, 1081 (11th Cir. 2001). Because SHR is not an owner or operator of the hotels in question, SHR is not liable under Title III and Plaintiffs cannot establish a causal connection between any injury and SHR's action or that an alleged injury can be redressed by an injunction against SHR.

In this case, documentary evidence clearly refutes Plaintiffs' conclusory allegations that SHR owns or operates The Oxford or TPS. Plaintiffs allege that SHR "owns and/or operates" the Oxford and TPS, however, the operating agreement for each hotel identifies a different entity, neither of which is SHR. *See* Exhibits 1, 2, 4, & 5. Additionally, Plaintiffs' Complaint alleges that SHR purchased or leased vehicles for use in their transportation system (Compl. ¶ 20), however, the actual leases for the vehicles at The Oxford and TPS again do not identify SHR. *See* Exhibits 1, 3, 4 & 6.[3] In an analogous case, *Herbert v. CHR Holding Corp.*, the court considered a lease agreement produced by defendant in a Rule 12(b)(6) motion to dismiss plaintiff's ADA Title III complaint because the complaint alleged that defendant leased the property. 2015 U.S. Dist. LEXIS 9932, *4-6 (E.D. La. Jan. 28, 2015). Moreover, public records, accessible to Plaintiffs prior to filing the Complaint, reveal that SHR is not listed on the deeds to each property or the business

[3] Consideration of such documents are permissible without converting this motion to one for summary judgment. *See Wheeler v. Hurdman*, 825 F.2d 257, 259 n.5 (10th Cir. 1987) (A Rule 12(b)(1) motion may include references to evidence extraneous to the complaint without converting it to a Rule 56 motion); *See also Shifrin v. Colorado*, 2010 U.S. Dist. LEXIS 86594, *7-9, 11-13 (D. Colo. July 22, 2010) (records of public agencies and documents incorporated by reference and central to a plaintiff's claims may be considered in support of a Fed. R. Civ. P. 12(b)(6) motion.)

licenses for the Hotels. *See* Exhibits 7-11; *Shifrin*, 2010 U.S. Dist. LEXIS 86594 at *11. These records clearly demonstrate that SHR is not a proper defendant because it is not the owner or operator of The Oxford or TPS. Accordingly, Plaintiffs' Complaint should be dismissed in its entirety.

B. CREEC and Denny Lack Standing To Assert Injunctive Relief.

Further, neither Denny nor CREEC have standing to assert claims of injunctive relief as to hotels never contacted by Denny or CREEC. Article III, Section 2 of the United States Constitution limits federal jurisdiction to actual cases or controversies. A federal court therefore has an obligation to assure itself at the outset of the litigation that a litigant who seeks an injunction has Article III standing. *See Friends of the Earth, Inc. v. Laidlaw Envtl. Serv.'s, Inc*., 528 U.S. 167, 179-80 (2000). The standing doctrine ensures that the "scarce resources of the federal courts are devoted to those disputes in which the parties have a concrete stake." *Id.* at 191. Even on a motion to dismiss, "standing cannot be inferred argumentatively from averments in the pleadings, but rather must affirmatively appear in the record. . . .[I]t is the burden of the party who seeks the exercise of jurisdiction in his favor, clearly to allege facts demonstrating that he is the proper party to invoke judicial resolution of the dispute." *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 231 (1990).

(1) Denny Lacks Personal Standing For Hotels She Never Contacted.

Denny has no standing on her own behalf to challenge barriers at hotels she has not contacted and had no intention of visiting. In order to have standing, Denny must have suffered an injury in fact that is concrete and particularized **and** actual and imminent. *Tandy v. City of Wichita*, 380 F.3d 1277, 1283 (10th Cir. 2004). For purposes of Title III,

this requires that a plaintiff "prove **knowledge** of the barriers and that they would visit the [hotel] in the imminent future but for those barriers." *Steger v. Franco*, 228 F.3d 889, 892 (8th Cir. 2000) (emphasis added). In this case, Denny has not alleged **actual knowledge** of any violations at other hotels purportedly owned or operated by SHR. Instead, Plaintiffs merely allege "upon information and belief" other hotels have similar transportation policies. Compl. ¶ 19. Indeed, the Complaint does not specify whether this was even Denny's belief, the belief of CREEC's other members, or of CREEC's counsel.

The Complaint's failure to allege that Denny had "actual knowledge" of other hotels' transportation policies dooms her standing with respect to these hotels. In *Clark v. McDonalds*, the District Court refused to "infer actual notice" of an ADA Title III barrier at restaurants that the plaintiff had never visited, but which the plaintiff alleged to have a "general knowledge" regarding discriminatory features said to be commonplace at McDonald's. 213 F.R.D. 198 (D.N.J. Mar. 3, 2003). Similarly, in *Clark v. Burger King Corp.*, the plaintiff sought an injunction requiring Burger King to bring all of its US locations into compliance with the ADA. 255 F. Supp. 2d 334 (D.N.J. 2003). The Court held that the plaintiff had standing at the handful of restaurants at which he encountered accessibility barriers. *Id.* at 343. But, the plaintiff lacked standing to challenge locations where he did not know of any accessibility barriers "absent any allegation that there exist[ed] (1) particular commonality of construction, or (2) that [defendant] implement[ed] a corporate policy violative of the ADA." *Id.*

Moreover, in *Equal Rights Ctr. v. Hilton Hotels Corp.*, the Court rejected similar attempts to seek injunctive relief against 2,896 Hilton Family Brand Hotels, when the named plaintiffs only alleged knowledge of ADA Title III violations at 24 hotels. 2009 U.S.

Dist. LEXIS 126645, *19-20 (D.D.C. Mar. 25, 2009). The Court rejected plaintiffs' argument that the allegation in plaintiffs' complaint that "their injuries arise from Hilton's practices at a corporate level" was sufficient to state a claim for nationwide relief or demonstrative of a common corporate plan. *Id.* at 20. The Tenth Circuit addressed this issue in *Colo. Cross-Disability Coalition v. Abercrombie & Fitch Co.,* 765 F.3d 1205, 1212-1213 (10th Cir. 2014). In *Abercrombie*, the Tenth Circuit held that an individual plaintiff does not have standing to seek a nationwide injunction in her own right because she would lack standing to pursue allegations against stores which she did not visit. *Id.* The Tenth Circuit relied upon the Seventh Circuit's decision in *Scherr v. Marriott Int'l, Inc.*, 703 F.3d 1069, 1075 (7th Cir. 2013), which held that an ADA plaintiff did not have standing to challenge the design of fifty-six hotels she had no plans ever to visit.

In this case, Denny has not alleged any specific knowledge of the conditions at hotels other than The Oxford or TPS. Instead, Plaintiffs allege "upon information and belief" that other hotels owned or operated by Sage do not offer accessible transportation services. These allegations are no different than the "general knowledge" allegations rejected in *Clark v. McDonalds* or the "practices at a corporate level" as alleged and rejected in *Hilton Hotels Corp.* Accordingly, Denny's request for an injunctive relief for hotels she never contacted should be dismissed.

(2) Plaintiffs' "Information and Belief" Allegations Are Insufficient.

In deciding this Motion, this Court should not consider Plaintiffs' "information and belief" allegations related to a common corporate policy because the Complaint does not allege any facts plausibly supporting such an inference. In *Twombly*, the complaint before the Supreme Court contained the similar allegation that: "Plaintiffs allege upon information

and belief that [the Defendants] have entered into a contract, combination or conspiracy to prevent competitive entry in their respective local telephone and/or high speed internet services markets and have agreed not to compete with one another and otherwise allocated customers and markets to one another." *Twombly,* 550 U.S. at 551. The Supreme Court rejected this pleading as inadequate under Fed. R. Civ. P. Rule 8(a)(2) entitlement requirements. *Id.* at 555-556. The Supreme Court recognized that "[f]actual allegations must be enough to raise a right to relief above the speculative level." *Id.* at 555*; See also Iqbal*, 556 U.S. at 678 ("A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.")

Essentially, Plaintiffs seek to turn this Court into a national clearing house for Title III litigation and launch costly nationwide discovery based on Denny's alleged actual knowledge of two distinctly branded hotels and their practices. A plausible inference cannot be drawn from these allegations that because two out of SHR's purported sixty-eight hotels (less than three percent) do not provide equivalent transportation services, SHR has a corporate policy of non-compliance. *See Hilton Hotels Corp.*, 2009 U.S. Dist. LEXIS 126645 at *20 (insignificant sample of noncompliant hotels is not sufficient to demonstrate "corporate policy of non-compliance" and prevent dismissal of class relief). Moreover, Plaintiffs cannot rely upon such information and belief pleading when there was nothing preventing Plaintiffs from calling the other hotels referenced in the Complaint and inquiring about their transportation services in order to provide support for their claim. Therefore, the invocation of the phrase "information and belief," without more, does not satisfy the fact-based pleading and Rule 8 entitlement requirements of *Twombly*.

(3) CREEC Lacks Associational Standing For Hotel's Never Contacted.

CREEC's associational standing is limited to the standing of Denny. To have associational standing, CREEC must satisfy three requirements: "(a) Its members [must] otherwise have standing to sue in their own right; (b) the interests it seeks to protect [must be] germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested [must] require[] the participation of individual members in the lawsuit." *John Roe #2 v. Ogden*, 253 F.3d 1225, 1230 (10th Cir. 2001) *quoting Hunt v. Wash. St. Apple Adver. Comm'n*, 432 U.S. 333, 343 (1977). To satisfy the first element of this *Hunt* test, "an organization suing as representative [must] include at least one member with standing to present, in his or her own right, the claim (or the type of claim) pleaded by the association." *United Food & Commercial Workers Union Local 751 v. Brown Group, Inc.*, 517 U.S. 544, 555 (1996).

The scope of this associational standing is limited to the standing of its alleged members. *See Clark*, 255 F. Supp. 2d at 345 (an organizational plaintiff "has representative standing to assert ADA violations only in so far as [the named member] has standing.") In *Hilton Hotels Corp.*, the D.C. District Court rejected an association's alleged standing to sue on behalf of unnamed members who encountered accessibility barriers at various unnamed Hilton branded hotels not visited by the named plaintiffs. *Hilton Hotels Corp.*, 2009 U.S. Dist. LEXIS 126645 at *14. Instead, the association's standing was limited to that of the hotels that its members identified in the complaint. *Id.*

In this case, CREEC's standing is limited to Denny's standing because CREEC has not alleged any other member with specific knowledge of any purported barrier at any other hotels. This matter is analogous to *CCDC v. Women's Health Care Assocs., P.C.*,

where the District Court found that the Colorado Cross-Disability Coalition ("CCDC"), a signatory to the instant action, failed to include sufficient factual allegations supporting a claim for class-wide relief. 2010 U.S. Dist. LEXIS 119955, *11 (D. Colo. Oct. 25, 2010). CCDC merely alleged the defendant "maintains and/or engage [sic] in policies, practices and procedures that do not provide effective communication for patients who are deaf." The District Court dismissed the class allegations because "there [were] no factual allegations supporting that conclusion … [and] [n]o class-wide relief would be appropriate on the basis of these allegations." *Id.* Similarly, CREEC's request for an injunction for hotels Denny never contacted should be dismissed.

(4) CREEC and Denny' Failed to Plead Intent to Return.

Plaintiffs further lack standing because Denny has not adequately pled an intent to ever stay at The Oxford, TPS or any other alleged SHR hotel in the future. In boilerplate fashion, Plaintiffs allege that "Denny would like to stay at the [specific hotel] in the future and use the hotel's transportation services, and will do so if she is informed that such accessible services exist." Compl. ¶ 18. To satisfy the injury-in-fact requirement for standing, however, Denny must set forth plausible allegations that she is likely to return to the hotels, otherwise no real threat of future injury exists. *See e.g., Judy v. Pinhgue*, 2009 WL 4261389, *2 (S.D. Ohio 2009); *D'Lil v. Best Western Encina Lodge & Suites*, 538 F.3d 1031, 1036 (9th Cir. 2008). "Someday" intentions without any description of concrete plans or any indication beyond mere speculation on when someday will occur, do not support a finding for real and imminent injury. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 564 (1992); *Access for Am., Inc. v. Associated Out-Door Clubs, Inc.*, 188 F. App'x 818 (11th Cir. 2006) (allegations that the plaintiff would return "someday" insufficient to establish standing); *Steger*, 228 F.3d at 892 (same).

To determine whether a Title III plaintiff is likely to return to the defendant's place of business, courts routinely examine: (1) the proximity of the plaintiff's residence; (2) the plaintiff's past patronage; (3) the definitiveness of the plaintiff's plan to return; and (4) the plaintiff's frequency of travel near the defendant. *Harris v. Del Taco., Inc.*, 396 F. Supp. 2d 1107, 1114 (C.D. Cal. 2005) (plaintiff who lived over 500 miles away from the defendant restaurant lacked standing); *Rosenkrantz v. Markopoulos*, 254 F. Supp. 2d 1250, 1253 (M.D. Fla. 2003) (Miami plaintiff lacked standing to sue a hotel located hundreds of miles away in Clearwater, Florida, even though relatives resided 20 miles away); *Brown v. Grand Island Mall Holdings, LTD*, 2010 WL 489531, *4 (D. Neb. 2010) (The failure to provide dates or describe the purposes for any alleged prior visits "casts doubt" on whether a plaintiff will ever patronize a location in the future); *See also Clark.*, 255 F. Supp. 2d at 343 (same). While an allegation of a specific date and time to return is not necessary, Plaintiffs must at least allege some fact that "would move Plaintiffs' purported 'desire to return' from a pure speculative proposition to a real and immediate threat of future injury." *Stevens v. Premier Cruises*, 215 F. Supp. 2d at 1237, 1239 (11th Cir. 2000).

In this case, Plaintiffs failed to plead sufficient facts for the Court to make a determination of standing. In an analogous case, the Court in *Gilkerson* dismissed a complaint because the plaintiff failed to plead the proximity of non-compliant ATMs to her home, past patronage, frequency of her travel near that ATM, and concrete plans to return. *Gilkerson v. Chasewood Bank,* 1 F.Supp.3d 570 (S.D. Tex., Feb. 27, 2014). Likewise, in this case, Plaintiff Denny did not plead any facts that would enable the Court to evaluate her conclusory "someday" stated intent to stay at The Oxford or TPS. Notably

absent from the Complaint are any allegations regarding the city she lives in, her specific intentions to visit Denver or Boulder in the future, the reasons why she intended to visit the named hotels in the first instance, and whether she has ever visited Denver or Boulder. In fact, while Plaintiff alleges that she called these hotels, she did not state that she even visited the area at the time. Because CREEC's standing is limited to the standing of Denny (*see supra* § III(B)(3)), and Denny has not alleged standing, Plaintiffs' Complaint must be dismissed for this reason as well.

C. A Rule 23 Class For Nationwide Injunctive Relief Cannot Be Certified.

Although Denny only contacted two hotels purportedly owned and/or operated by SHR, she seeks to bring her Title III claim on behalf of a class of all mobility impaired disabled individuals on a nationwide basis. Plaintiffs assert that SHR has a common policy of not providing accessible transportation services at all of the hotels it owns or operates. However, nowhere in the Complaint do Plaintiffs allege any factual basis for this speculative assertion. Rather, in an apparent attempt to turn a routine individual accessibility suit into a nationwide class action, Plaintiffs assume that the accessibility violations Denny allegedly experienced were also experienced by a disabled individual at every one of SHR's alleged hotels in states all across the country. Indeed, Plaintiffs' Complaint confirms as much, as the key allegations supporting a class action are plead "on information and belief." Compl. ¶ 19 ("On information and belief, Sage owns and/or operates a number of other hotels in the United States that offer transportation services to their guests but do not offer equivalent transportation services to guests who use wheelchairs or scooter").

The nationwide injunctive relief sought by Plaintiffs is inappropriate because the Complaint lacks any factual allegations plausibly supporting a claim for nationwide injuries

necessitating such relief. *See Lewis v. Casey*, 518 U.S. 343, 348-49 (1996) (an order of system wide class injunctive relief must be supported by widespread actual injury). Plaintiffs have not plead any set of facts that support a plausible assertion of such widespread systemic injuries. Federal courts have used motions to dismiss and/or strike to test the viability of a class at the earliest pleading stage of the litigation. *See, e.g., Thompson v. Merck & Co.*, 2004 WL 62710, *2 (E.D. Pa. Jan. 6, 2004); *Riley v. Compucom Sys.*, 2000 U.S. Dist. LEXIS 4096, *1 (N.D. Tex. Mar. 31, 2000); *Lumpkin v. E.I. Du Pont de Nemours & Co.*, 161 F.R.D. 480, 481 (M.D. Ga. 1995); *Kasalo v. Harris & Harris, Ltd.*, 656 F.3d 557, 563 (7th Cir. 2011) (A court may "deny class certification even before the plaintiff files a motion requesting certification"); *Gen Tel. Co. of the S.W. v. Falcon*, 457 U.S. 147, 160 (1982) (The court need not wait for a motion for class certification if "the issues are plain enough from the pleadings...").

Under these circumstances, this Court should dismiss or strike the class action allegations to the extent Plaintiffs seek injunctive relief with respect to hotels for which Denny never contacted. In addition to the arguments contained in Section III(B)(2), *supra*, federal courts have confirmed that such "information and belief" allegations do not support class actions. *See Spencer v. Reg'l Acceptance Corp.*, 2005 U.S. Dist. LEXIS 45221, at *4-5 (S.D. Fla. Aug. 19, 2005) (ruling that allegations "upon information and belief" of a nationwide policy of violating the FLSA does not support a collective action because, …[the plaintiff] has alleged no particularized facts supporting the existence of such a policy or practice on a national level."); *Treme v. HKA Enters., Inc.*, 2008 U.S. Dist. LEXIS 97420, *7 (W.D. La. Apr. 7, 2008) (ruling that allegations of the existence of similarly situated employees "upon information and belief" are insufficient to support a FLSA

collective action); *Nicholas v. CMRE Fin. Servs., Inc.*, 2009 U.S. Dist. LEXIS 49105, *11-12 (D. N.J. June 9, 2009) (granting the defendant's motion for a more definite statement because "the Complaint does not set forth a sufficient factual basis for its class allegations; indeed, the class allegations under Rule 23 in the Complaint are phrased as legal conclusions based on the language of the class action pleading requirements"); *Smith v. Lyons, Doughty & Veldhuis, P.C.,* 2008 U.S. Dist. LEXIS 56725, *15-16 (D. N.J. July 28, 2008) (dismissing the plaintiff's class claims because "the Complaint alleges no facts suggesting that [defendant] had a policy or practice of communicating with consumers it knew to be represented by counsel. . ." and "[d]iscovery should not serve as a fishing expedition during which Plaintiff searches for evidence in support of facts he has not yet pleaded"). "Rule 8[…] does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions." *Iqbal*, 129 S. Ct. at 1950. Accordingly, this Court should dismiss Plaintiffs' requested class relief as to hotels never contacted by Plaintiffs.[4]

CONCLUSION

Wherefore, Defendant Sage Hospitality Resources, LLC, respectfully requests that this Honorable Court dismiss Plaintiffs' Complaint with Prejudice, and grant such other relief as deemed appropriate.

Date: March 24, 2015

Respectfully submitted,

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[4] Defendants reserve the right to submit more extensive certification briefing in the event this case progresses to that point.

CERTIFICATE OF SERVICE

I certify that on this 24th day of March 2015, I electronically filed the foregoing pleading with the Clerk of Court using the CM/ECF system which will automatically send an e-mail notification of such filing to the following attorney of record:

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