

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

NICHOLAS RYAN DE PALO,

Plaintiff,

-vs-

Case No. 2:11-cv-683-UA-SPC

CMC/VILLAGE MARKET PLACE LTD.,
MCKINLEY RETAIL SOUTH LLC.,
SAVERS LABELLE, INC. d/b/a SAVE-A-
LOT PORT CHARLOTTE, a Florida
Corporation,

Defendants.

ORDER

This cause is before the Court *sua sponte*. While Defendants do not raise the issue of standing, federal courts have an “independent obligation to examine their own jurisdiction, and standing ‘is perhaps the most important of [the jurisdictional] doctrines.’ ” *United States v. Hays*, 515 U.S. 737, 742 (1995) (quoting *FW/PBS, Inc. v. Dallas*, 493 U.S. 215, 230-231 (1990)); *see also Univ. of S. Alabama v. Am. Tobacco Co.*, 168 F.3d 405, 410 (11th Cir. 1999).

This is an action seeking injunctive relief and attorney's fees pursuant to the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12181 *et seq.* According to the Complaint (Doc. No. 1), Nicholas Ryan De Palo ("Plaintiff") is a resident of Miami-Dade County and disabled as defined by the ADA. (Doc. No. 1. ¶ 2.) Plaintiff alleges that

CMC/Village Market Place Ltd., McKinley Retail South LLC, and Savers LaBelle, Inc. ("Defendants") are the "owner, lessee, lessor and/or operator" of a "Facility" located at 1811-1825 Tamiami Trail, Port Charlotte, Florida. (Doc. No. 1 ¶ 6.)

I. Legal Standards

A. Pleadings

Federal Rule of Civil Procedure 8(a)(2) requires "a short and plain statement of the claim showing that the pleader is entitled to relief" so as to give the defendant fair notice of the nature of the claim and the grounds upon which it rests. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). The plaintiff must plead factual allegations sufficient to raise a right to relief above the speculative level, *Twombly*, 550 U.S. at 555, and to indicate the presence of the required elements, *Watts v. Fla. Int'l Univ.*, 495 F.3d 1289, 1302 (11th Cir. 2007). Conclusory allegations, unwarranted factual deductions, or legal conclusions masquerading as facts will not prevent dismissal. *Davila v. Delta Air Lines, Inc.*, 326 F.3d 1183, 1185 (11th Cir. 2003). A complaint need not contain detailed factual allegations, but "[a] pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

B. Standing

Article III of the United States Constitution limits the power of federal courts to adjudicating actual "cases" and "controversies." U.S. Const. art. III, § 2, cl. 1. The most significant case-or-controversy doctrine is the requirement of standing. See *Georgia State Conference of NAACP Branches v. Cox*, 183 F.3d 1259, 1262 (11th Cir. 1999). The

party who invokes federal jurisdiction must establish that it has standing to assert its claim. See *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 574 (1992). "In essence the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues." *Warth v. Seldin*, 422 U.S. 490, 498 (1975).

To establish standing in a Title III ADA case such as the instant one, a plaintiff must allege: "(1) an injury in fact; (2) a causal connection between the injury and conduct complained of; . . . (3) that it is likely that the injury will be redressed by a favorable court ruling"; and (4) a "real and immediate threat of future injury by the defendant." *Norkunas v. Seahorse NB, LLC*, 720 F. Supp. 2d 1313, 1315 (M.D. Fla. 2010) (quoting *City of Los Angeles v. Lyons*, 461 U.S. 95, 101-02 (1983)).

II. Discussion

Since September 2011, Plaintiff has filed sixteen identical ADA suits in the Middle District of Florida. For example, with the exception of the names of the defendants, Plaintiff's complaint in the instant case is identical to the complaint he filed in *de Palo v. Countryside Station Ltd. Liab. Co.*, No. 6:12-CV-204-ORL-31, 2012 WL 1231968, at *3 (M.D. Fla. Apr. 12, 2012). Both complaints contain an identical list of nineteen alleged barriers and contain conclusory statements such as "[t]he toilet flush levers are misplaced in violation of the ADAAG." (Doc. No. 1, p. 8.) In *Countryside Station*, United States District Judge Presnell found that the extreme generality of Plaintiff's complaint prevented him from establishing standing, 2012 WL 1231968, at *3, thereby giving Plaintiff notice that his boilerplate complaint is vulnerable to dismissal for failure to plead standing.

Just as in *Countryside Station*, the Court is forced to conclude either that unrelated facilities are violating the ADA in "19 identical ways, and no others . . . or the Plaintiff has a generic list of violations that he plops down in every case whether it applies or not." *Id.*, at *2. Additionally, Plaintiff fails to plead facts indicating the date he visited the "Facility," what areas he investigated while there, and when and for what purpose he intends to return to a facility located approximately 180 miles from his home.

Accordingly, it is hereby **ORDERED** that:

1. The Complaint is **DISMISSED FOR LACK OF STANDING**.
2. Plaintiff shall file an amended complaint on or before July 20, 2012. Failure to comply with this order may result in dismissal of this case with prejudice.
3. Defendant shall respond to the amended complaint in accordance with the requirements of Rule 15 of the Federal Rules of Civil Procedure.

DONE and **ORDERED** in Chambers, Ft. Myers, Florida, on June 26, 2012.



ROY B. DALTON JR.
United States District Judge

Copies to:
Counsel of Record