

7. Venues that SFX owns, leases, or operates include the Electric Factory in Philadelphia, Pennsylvania; the Post Gazette Pavilion at Star Lake in Burgettstown, Pennsylvania; and the Tweeter Center in Tinley Park, Illinois.

General Allegations

8. SFX is a private entity that owns, leases, or operates a place of public accommodation within the meaning of Section 30 §12181, and is, therefore a public accommodation within the meaning of Title III of the ADA, 42 U.S.C. § 12181(7) and 28 C.F.R. § 12181. SFX is thus subject to the requirements of Title III of the ADA, 42 U.S.C. §§ 12181-12189.

9. SFX has a policy on access of medications into Venues, (1) which prohibits patrons from taking any syringes or needles for medical purposes, including needles used for insulin and lancets for testing blood, into the concert venue.

10. This policy also provides that diabetics are not allowed to bring food and keep it with them inside the venue.

11. Individuals with diabetes who use insulin must test their blood sugar with lancets and inject insulin with syringes. They carry certain kinds of food with them. Lack of immediate access to their blood testing equipment, food and/or glucose, and insulin is life threatening.

12. Insulin-using diabetics are individuals with disabilities within the meaning of 42 USC § 12102.

Complainant Elizabeth Cote

13. Elizabeth Cote has had diabetes for eleven years. She is on an aggressive insulin program; she tests her blood sugar level between 8 and 10 times a day and takes insulin shots between 4 and 6 times a day. She is an individual with a disability within the meaning of 42 U.S.C. § 12102, and its implementing regulation, 28 C.F.R. § 36.104.

14. Elizabeth Cote and her husband attended a concert at the Electric Factory in Philadelphia, Pennsylvania on November 8, 2013. Upon entering the concert venue, the security personnel insisted that she turn her diabetic supplies over to the medical staff, and told her she would not be permitted on the concert floor with her syringes. Ms. Cote explained that as a diabetic she had to have her diabetic kit on her person at all times because she needs immediate access to her testing equipment and insulin. The medical staff told her she would have to leave the establishment if she did not turnover her diabetic supplies. She thus left her supplies with the medical staff.

When she needed to take her regularly scheduled insulin shot at 10:00 PM, she looked for a staff member to contact the medical technician, as she had been instructed. She felt very shaky. She had difficulty getting assistance from the staff and getting her medical supplies from the medical technician. The first employee she found told her she had to search for an employee with a radio. When she found an employee with a radio, she returned to the medical technician who met Ms. Cote in front of the theater. She had to wait for him

chnician turned a flashlight on her and watched her test her blood sugar and then inject herself with insulin. It took approximately 15 minutes for Ms. Cote to get her medical supplies.

16. SFX's policy and actions caused Ms. Cote to suffer humiliation, emotional distress, frustration, and anxiety, and potential harm to her health. She attends approximately 25 concerts a year and has never been refused entry because of her medical condition or needs, or been required to separate from her medical supplies.

17. As a direct and proximate result of SFX's policy prohibiting patrons from taking their diabetic supplies with them into a concert, Ms. Cote was denied equal access to and equal enjoyment of the concert.

Ms. Cote will never return to the Electric Factory nor attend any concerts where she is required to relinquish her diabetic supplies.

Complainant Jeff Shirley

19. Mr. Shirley was diagnosed with diabetes in November 1998. His doctor instructed him always to keep his diabetic kit on his person. He is an individual with a disability within the meaning of 42 U.S.C. § 12102, and its implementing regulation, 18 C.F.R. § 36.103.

20. Mr. Shirley attended a concert at Post Gazette Pavilion in Burgettstown, Pennsylvania on June 20, 1999. The staff at the Post Gazette Pavilion told Mr. Shirley that he was not permitted to attend the concert while in possession of his diabetic kit, and that he needed to leave his kit at the medical tent. His kit contained his glucose testing machine, two types of insulin, lancets for drawing blood, test strips, an insulin pen, and emergency glucose paste. The staff even refused his request to keep just the equipment he needed in order to monitor his blood sugar - the lancets, test strips and glucose-testing machine. Mr. Shirley registered his kit at the medical tent. He was told that if he left his diabetic supplies, he could speak with anyone in a staff shirt and the staff person would take him to the medical tent. This procedure would cause him to miss the first half-hour of the concert.

21. At the end of the three-hour concert, Mr. Shirley felt extremely tired and shaky, likely due to low blood sugar, and asked a staff member for assistance. After waiting 45 minutes, a golf cart pulled up and drove him through the crowds of people approximately one mile to the medical tent.

22. SFX's policy and actions caused Mr. Shirley to suffer humiliation, emotional distress, frustration, and anxiety, and potential harm to his health. Particularly because Mr. Shirley was recently diagnosed with diabetes, being separated from his diabetic kit caused him significant anxiety.

23. As a direct and proximate result of SFX's policy prohibiting patrons from taking their diabetic supplies with them into a concert, Mr. Shirley was denied equal access to and equal enjoyment of the concert.

24. Mr. Shirley will never again attend a concert at which he is required to relinquish his diabetic supplies.

Complainant Mary Jungenburg

curity check, she presented her diabetic supplies for inspection, including a glucose testing machine, a lancet, test strips, insulin and e. The security staff instructed her to leave her lancets in a box on the ground and told her she was not permitted to keep her supplies in the concert venue. She refused and asked to speak to a supervisor. The supervisor, a paramedic, also told her she was required to leave her diabetic supplies. She again refused. The paramedic ultimately agreed to allow her to keep her diabetic supplies if he wrote down her name and seat number and checked on her during the concert. In fact, the paramedic did not check on her.

27. SFX's policy and actions caused Ms. Jungenberg to suffer humiliation, emotional distress, frustration, and anxiety. She was not able to enjoy the concert.

28. As a direct and proximate result of SFX's policy prohibiting patrons from taking their diabetic supplies with them into a concert, Ms. Jungenberg was denied equal enjoyment of and an equal opportunity to attend the concert.

29. Ms. Jungenberg will never attend a concert at which she is required to relinquish her diabetic supplies.

Complainant James Radermacher

30. Mr. Radermacher has had diabetes for thirty-three years. He is an individual with a disability within the meaning of 42 V.S.A. § 102b, and its implementing regulation, 28 C.P.R. § 36.104.

31. Mr. Radermacher and his wife attended a concert at the Tweeter Center in Tinley Park, Illinois on July 20, 2001, to celebrate their wedding anniversary. At the security check, he presented his diabetic supplies, including insulin, syringes, blood testing strips, lancets, and glucose gel. The security staff told him he could not enter the facility with his supplies. A paramedic told him he had to leave his supplies at the first aid tent. Mr. Radermacher explained that he needed to keep his medication with him. After some conversation with the paramedic at the first aid tent, and Mr. Radermacher's statement that he would not relinquish his supplies unless the paramedic signed a statement stating that he personally would be responsible for them, the paramedic gave his supplies back to him and allowed him to enter the concert.

32. SFX's policy and actions caused Mr. Radermacher to suffer humiliation, emotional distress, frustration, and anxiety, which was detracted from his enjoyment of the concert. During the thirty-three years he has had diabetes, no one has ever taken away his diabetic supplies.

33. As a direct and proximate result of SFX's policy prohibiting patrons from taking their diabetic supplies with them

A Pattern or Practice of Discrimination With Regard to the Complainants and Other Individuals

With Disabilities in Violation of Title III of the ADA

35. SFX's policy prohibiting patrons from keeping their diabetic supplies with them forces individuals with insulin-using diabetes to face unreasonable and life-threatening health risks and/or denies them an equal opportunity to attend concerts at SFX facilities.

36. SFX's policy and conduct described in paragraphs 9 through 34 constitutes discrimination on the basis of disability in violation of Title III of the ADA, 42 U.S.C. § 12182, and its implementing regulation, 28 C.F.R. Part 36, because SFX's policy and conduct discriminates against individuals on the basis of disability in the full and enjoyment of the goods, services, facilities, privileges, advantages, accommodations or a place of public accommodation, in violation of 42 U.S.C. § 12182(a) and 28 C.F.R. § 36.201(a) by;

A. Imposing or applying eligibility criteria that screen out or tend to screen out individuals with disabilities in violation of 42 U.S.C. § 12182(b)(2)(A)(i) and 28 C.F.R. § 36.301;

B. Affording an individual or class of individuals on the basis of a disability or disabilities with an opportunity to participate in or benefit from goods, services, facilities, privileges, advantages or accommodations in a manner that is not equal to that afforded to others, in violation of 42 U.S.C. § 12182 (b)(1)(A)(ii) and 28 C.F.R. § 36.202(b);

C. Failing to make reasonable modifications in policies, practices, or procedures, in violation of 42 U.S.C. § 12182(b)(2) and 28 C.F.R. § 36.302(a);

D. Providing an individual or class of individuals on the basis of a disability or disabilities with goods, services, facilities, privileges, advantages or accommodations that are different from those provided to other individuals, in violation of 42 U.S.C. § 12182(b)(1)(A)(ii) and 28 C.F.R. § 36.202(c); and,

E. Denying an individual or class of individuals on the basis of a disability or disabilities the opportunity to participate in or benefit from its goods, services, facilities, privileges, advantages or accommodations, in violation of 42 U.S.C. § 12182(b)(1)(A)(i) and 28 C.F.R. § 36.202(a).

37. SFX's policy and conduct as described herein constitutes (a) a pattern or practice of discrimination within the meaning of 42 U.S.C. § 12188(b)(1)(B)(i) and 28 C.F.R. § 36.503(a); and (b) discriminatory conduct that raises an issue of general public importance within the meaning of 42 U.S.C. § 12188(b)(1)(B)(ii) and 28 C.F.R. § 36.503(b).

38. Any other persons with diabetes or other disabilities who have been the victims of SFX's discriminatory policy are aggrieved.

PRAYER FOR RELIEF

BEFORE, the United States prays that the Court:

- A. Declare that SFX's discriminatory policy and practices as set forth above violate the Americans with Disabilities Act, 42 §§ 12101 -12189, and the U.S. Department of Justice's implementing regulation, 28 C.F.R. Part 36;

- B. Enjoin SFX, its officers, agents and employees, and all other persons in active concert or participation with any of them, from discriminating on the basis of disability against any individual seeking to attend a performance or event in a venue owned, leased, or operated by SFX;

- C. Order SFX to institute and implement policies and procedures that will eliminate discrimination on the basis of disability;

- D. Award compensatory damages against SFX in an amount to be determined at trial in favor of Elizabeth Cote, Jeff Shirley, James Rungenberg, and James Paul Radermacher and all other individuals with disabilities who have been injured as a result of SFX's violation of Title III of the ADA;

- E. Assess a civil penalty against the Defendants in the amount authorized by 42 U.S.C. § 12188(b)(2)(C) and 28 C.F.R. § 36.601 to vindicate the public interest; and

- F. Order such other appropriate relief as the interests of justice may require.

United States of America requests a jury trial on all questions of fact or combined questions of law and fact raised by this complaint.

Respectfully submitted,
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