

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. _____

CSMN INVESTMENTS, LLC, a Colorado limited liability company,

Plaintiff,

v.

CORDILLERA METROPOLITAN DISTRICT, a political subdivision of the State of Colorado, CORDILLERA PROPERTY OWNERS ASSOCIATION, INC., a Colorado nonprofit corporation, and DAVID BENTLEY, DAVID DAVIES, ROBERT EGAN, KITTY GEORGE, LARRY KYTE, JUDITH G. MCBRIDE, RACHEL OYS, ED SHRINER, BRUCE SMATHERS, PATRICK WILHELM, and TOM WILNER in their individual capacities.

Defendants.

**COMPLAINT AND REQUEST FOR DECLARATORY JUDGMENT,
INJUNCTIVE RELIEF, AND DAMAGES**

Plaintiff CSMN Investments, LLC, a Colorado limited liability company (“CSMN”), by and through its undersigned counsel, and for its Complaint and Request for Declaratory Judgment, Injunctive Relief, and Damages against Defendants Cordillera Metropolitan District (“CMD”), Cordillera Property Owners Association (“CPOA”), David Bentley (“**Bentley**”), David Davies (“**Davies**”), Robert Egan (“**Egan**”), Kitty George (“**George**”), Larry Kyte (“**Kyte**”), Judith G. McBride (“**McBride**”), Rachel Oys (“**Oys**”), Ed Shriner (“**Shriner**”), Bruce Smathers (“**Smathers**”), Patrick Wilhelm (“**Wilhelm**”), and Tom Wilner (“**Wilner**,” and together with CMD, CPOA, Bentley, Davies, Egan, George, Kyte, McBride, Oys, Shriner, Smathers, and Wilhelm, “**Defendants**”), alleges as follows:

Nature of the Case

1. In this case, CSMN brings claims against Defendants under the Americans With Disabilities Act, 42 U.S.C. § 12131 *et seq.* (the “**ADA**”); the Fair Housing Amendments Act of 1988, 42 U.S.C. § 3601 *et seq.* (“**FHA**”); the Civil Rights Act of 1871, 42 U.S.C. §§ 1983, 1985(3), and 1986; the Colorado Anti-Discrimination Act of 1957, Colo. Rev. Stat. § 24-34-501 *et seq.* (the “**CFHA**”); the Colorado Special District Act, Colo. Rev. Stat. § 32-1-101 *et seq.* (the “**SDA**”); and additionally brings claims for declaratory judgment, and unjust enrichment in connection with Defendants’ discriminatory and unlawful opposition to CSMN’s efforts to convert the former Lodge and Spa at Cordillera (the “**Lodge**”), located on certain real property (the “**Property**”) owned by CSMN in the Cordillera community (“**Cordillera**”) in Eagle County, Colorado (the “**County**”).

Parties, Property, and Community

2. CSMN is a Colorado limited liability company. CSMN owns the Property and intends to convert the Lodge into a residential drug and alcohol treatment facility, which would constitute a “dwelling” under the FHA and CFHA.

3. CMD is a metropolitan district, established and organized under the SDA, for the purpose of providing services to Cordillera. CMD is a “public entity” under the ADA, 42 U.S.C. § 12131, and a person under the FHA, 42 U.S.C. § 3602(d), the CFHA, Colo. Rev. Stat. § 24-34-501(3), and under 42 U.S.C. §§ 1983, 1985(3), 1986. The CMD is governed by a board of directors (the “**CMD Board**”).

4. On June 3, 2016, the CMD Board, pursuant to its authority under the SDA “[t]o appoint, hire, and retain agents, employees, engineers, and attorneys,” Colo. Rev. Stat. § 32-1-

1001(1)(i), and jointly with the CPOA board of directors, formed a legal committee of the CMD (the “**Legal Committee**”), and appointed individuals thereto.

5. CPOA is a Colorado nonprofit corporation. CPOA is the property owners’ association formed by and existing pursuant to that certain Declaration of Protective Covenants, Conditions, and Restrictions for Cordillera (the “**Declaration**”), recorded May 12, 1993 in the real property records of the County at Reception No. 504866, and amended by that certain Amended and Restated Declaration of Protective Covenants, Conditions and Restrictions for Cordillera, recorded October 26, 2016 in the real property records of the County at Reception No. 201618114, and as further amended by that certain Limited Amendment to the Amended and Restated Declaration of Protective Covenants, Conditions and Restrictions for Cordillera, recorded April 27, 2017 in the real property records of the County at Reception No. 201707438, with responsibilities for management and maintenance of the Cordillera community, and enforcement under the Declaration. CPOA is a person under the FHA, 42 U.S.C. § 3602(d), the CFHA, Colo. Rev. Stat. § 24-34-501(3), and under 42 U.S.C. §§ 1983, 1985(3), 1986.

6. Bentley was, at all times relevant to this action, an elected member of the CMD Board, acting under color of state law. Bentley is a person under the FHA, 42 U.S.C. § 3602(d), the CFHA, Colo. Rev. Stat. § 24-34-501(3), and under 42 U.S.C. §§ 1983, 1985(3), 1986.

7. Davies was, at all times relevant to this action, an elected member of the CMD Board, acting under color of state law. Davies is a person under the FHA, 42 U.S.C. § 3602(d), the CFHA, Colo. Rev. Stat. § 24-34-501(3), and under 42 U.S.C. §§ 1983, 1985(3), 1986.

8. Egan was, at all times relevant to this action, an elected member of the CMD Board, acting under color of state law. Egan is a person under the FHA, 42 U.S.C. § 3602(d), the CFHA, Colo. Rev. Stat. § 24-34-501(3), and under 42 U.S.C. §§ 1983, 1985(3), 1986.

9. George was, at all times relevant to this action, an elected member of the CMD Board, acting under color of state law. George is a person under the FHA, 42 U.S.C. § 3602(d), the CFHA, Colo. Rev. Stat. § 24-34-501(3), and under 42 U.S.C. §§ 1983, 1985(3), 1986.

10. Kyte was, at all times relevant to this action, a member of the Legal Committee, acting under color of state law. Kyte is a person under the FHA, 42 U.S.C. § 3602(d), the CFHA, Colo. Rev. Stat. § 24-34-501(3), and 42 U.S.C. §§ 1983, 1985(3), 1986.

11. McBride was, at all times relevant to this action, an elected member of the CMD Board, acting under color of state law. McBride is a person under the FHA, 42 U.S.C. § 3602(d), the CFHA, Colo. Rev. Stat. § 24-34-501(3), and under 42 U.S.C. §§ 1983, 1985(3), 1986.

12. Oys was, at all times relevant to this action, the district manager of CMD, acting under color of state law. Oys is a person under the FHA, 42 U.S.C. § 3602(d), the CFHA, Colo. Rev. Stat. § 24-34-501(3), and under 42 U.S.C. §§ 1983, 1985(3), 1986.

13. Shriner was, at all times relevant to this action, a member of the Legal Committee, acting under color of state law. Shriner is a person under the FHA, 42 U.S.C. § 3602(d), the CFHA, Colo. Rev. Stat. § 24-34-501(3), and under 42 U.S.C. §§ 1983, 1985(3), 1986.

14. Smathers was, at all times relevant to this action, a member of the Legal Committee, acting under color of state law. Smathers is a person under the FHA, 42 U.S.C. § 3602(d), the CFHA, Colo. Rev. Stat. § 24-34-501(3), and under 42 U.S.C. §§ 1983, 1985(3), 1986.

15. Wilhelm was, at all times relevant to this action, a member of the Legal Committee, acting under color of state law. Wilhelm is a person under the FHA, 42 U.S.C. § 3602(d), the CFHA, Colo. Rev. Stat. § 24-34-501(3), and under 42 U.S.C. §§ 1983, 1985(3), 1986.

16. Wilner was, at all times relevant to this action, a member of the Legal Committee, acting under color of state law. Wilner is a person under the FHA, 42 U.S.C. § 3602(d), the CFHA, Colo. Rev. Stat. § 24-34-501(3), and under 42 U.S.C. §§ 1983, 1985(3), 1986.

Jurisdiction and Venue

17. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331, 1343, and 2201; 42 U.S.C. § 3613; 42 U.S.C. § 1983; and 42 U.S.C. § 12133. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction over CSMN's additional claims under state law because CSMN's state law claims relate to CSMN's federal law claims, arise out of a common nucleus of operative facts, and form part of the same case or controversy under Article III of the United States Constitution.

18. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, because CSMN's claims arise from unlawful conduct occurring in Eagle County, Colorado, and because the property that is the subject of this action is located in Eagle County, Colorado, and because at least one of the Defendants resides in Colorado.

Facts

CORDILLERA, THE PUD, AND THE PROPERTY

19. Cordillera is a planned resort residential community in the County, near Edwards, Colorado. Developed beginning in the late 1980s, Cordillera contains a mix of approximately

577 single-family residences, several hundred additional vacant residential lots, a golf course, the Lodge, and other improvements.

20. The zoning, including land uses and development standards, of Cordillera is governed by the Cordillera Subdivision Eleventh Amended and Restated Planned Unit Development Control Document (the “**PUD**”), which was approved by the County Board of County Commissioners (the “**BOCC**”) on December 21, 2009. The PUD amended and restated a pre-existing version of the planned unit development control document. A true and correct copy of the PUD is attached hereto as **Exhibit A**.

21. The PUD divides Cordillera into several planning parcels, for which it provides a list of permitted uses and development densities.

22. Under the PUD, the Property is designated as the “**Lodge Parcel**.” Section 2.01.1 of the PUD provides for thirty-four unique land uses which are permitted on the Lodge Parcel. Uses permitted on the Lodge Parcel include, *inter alia*, “Clubhouse and Lodge building or buildings with related facilities”; “Medical Office/Facilities, limited to clinic and outpatient facilities for non-critical care, including, without limitation, for outpatient plastic surgery and other cosmetic procedures”; “Professional Offices”; “Lodging and Accommodations”; “Residential – Single-family”; “Residential – Townhome”; “Residential – Multi-family”; “Residential – Condominium and/or fractional interest ownership”; and “Employee Housing.”

23. A metropolitan district such as CMD is a “special district” as that term is defined in the SDA, Colo. Rev. Stat. § 32-1-103(20), a political subdivision of the State of Colorado, and a public body, with the authority to levy property taxes, and commonly formed for the purpose of

financing, planning, designing, constructing, operating, and maintaining public improvements for and within such district's territory and service area.

24. CMD's territory and service area includes all of Cordillera. CMD is governed by its approved service plan, the Amended and Restated Consolidated Service Plan for Squaw Creek Metropolitan District and Cordillera Metropolitan District (the "**Service Plan**") and the SDA. Colo. Rev. Stat. § 31-1-207(1). A true and correct copy of the Service Plan is attached hereto as **Exhibit B**. The powers and duties of the CMD Board are as set forth in the Service Plan and in the SDA.

25. Neither the Service Plan nor the SDA authorizes CMD or the CMD Board to regulate or enforce land use; commence administrative or judicial proceedings pertaining to the same; or to pledge credit, loan, donate, grant, or otherwise financially aid in any way, a private entity.

26. The SDA authorizes the CMD Board to appoint, hire, and retain agents, employees, engineers, and attorneys. Colo. Rev. Stat. § 32-1-1001(1)(i).

27. The district manager is an employee of CMD.

28. The members of the Legal Committee were appointees and agents of CMD.

29. Prior to March 1, 2017, and during all times prior that are relevant to this action, the Lodge was operated as a 56-room hotel, which also contained a restaurant, recreational facilities, and a spa.

TIMELINE OF EVENTS

30. Prior to July 31, 2017, the Property was owned by Behringer Harvard Cordillera, LLC, a Delaware limited liability company ("**BH**").

31. On or about May 2016, CSMN entered into a contract with BH to purchase the Property, for the express purpose of operating an upscale residential rehabilitation center for persons recovering from drug and alcohol addiction, eating disorders, and other psychiatric conditions (the “**Use**”).

32. In order for CSMN to begin operation of the Use, Colorado law required CSMN to obtain a license from the Colorado Department of Human Services, Office of Behavioral Health, to conduct substance use disorder treatment. The licensing application required CSMN to submit “[c]urrent documentation of compliance with local zoning ordinances from local planning/zoning office.” A true and correct copy of the licensing application is attached hereto as **Exhibit C**.

33. In order to satisfy the requirements for licensing under Colorado law, CSMN, by and through its attorneys, sought a written confirmation from the County Planning Director (the “**Director**”) that the PUD permitted the Use on the Property.

34. The Director issued a letter, dated June 1, 2016, which confirmed that the Use was permitted on the Property pursuant to the PUD (the “**Interpretation**,” a true and correct copy of which is attached hereto as **Exhibit D**). Specifically, the Interpretation concluded that the Use fell within the following land use category as permitted under the PUD: “Medical Office/Facilities, limited to clinic and outpatient facilities for non-critical care, including, without limitation, for outpatient plastic surgery and other cosmetic procedures.” To correct a procedural deficiency, the Director re-issued the Interpretation on July 1, 2016.

35. One day prior to the issuance of the Interpretation, at a joint meeting on May 31, 2016, which was continued to June 3, 2016, the CPOA board of directors and the CMD Board

voted unanimously to authorize CPOA and CMD staff and legal counsel to proceed with an appeal of the Interpretation (the “**BOCC Appeal**”).

36. The Defendants’ actions authorizing the BOCC Appeal were done with the intent to discriminate against CSMN and its prospective clients (the “**Clients**”).

37. On May 31, 2016, Oys, on behalf of CMD and CPOA, sent a notice to the Cordillera community describing CSMN’s proposed Use and stating that “staff and legal counsel are exploring all options to maintain and enhance the community’s compatibility, property values and enjoyment.”

38. Immediately following the issuance of the Interpretation, many members of the Cordillera community sent emails of a discriminatory nature, and demonstrative of animus toward CSMN and its prospective Clients, to the County and the CMD indicating their displeasure with the prospect of the Use and CSMN’s prospective Clients in Cordillera, including the following:

Catastrophe for the community. Heroin addicts moving in with other unbalanced individuals and the predators that surround such facilities. This should be stopped at all costs – if not, our house is going on the market and we are willing to take a substantial loss to avoid such a changed neighborhood. I would not be comfortable allowing our grandchildren outside unguarded.

Email from David Samuels M.D., May 31, 2016;

This is a neighborhood not a healthcare farm.

Email from Jim Ferraco, May 31, 2016;

This is very disturbing in that the first image of CCMG is ‘Heroin Addiction Treatment...’. You have my vote for declination!

Email from Ronald Baker, May 31, 2016;

Take this very seriously! The only important phrase in the list of services to be offered is “substance abuse – everything else is just a smoke screen to divert attention ... If it goes through I believe it will be a dry out center for alcoholics and the drug addicted... On average only 8 to 12% of these people recover. That means that 90% relapse. And many begin to relapse as they enter the facility which means that they become drug and alcohol seeking machines while there and will leave the facility in desperate search of nearby supply – our nearby houses!

Email from Buzz Larson, June 3, 2016;

Next, I wanted to literally vomit when I found out about the “potential” sale to a group that would use this property for the purpose of a “Wellness and Rehab” center. When researching the company buying the property, they have a long lineage and history associated with opiate addiction and their primary function in the past has been to ween people off of heroin specifically. It is my opinion they are going into this project under the ruse of a “wellness center” or a “weight loss facility” when clearly their past shows it will develop into a much more profitable center to ween heroin addicts from all over the country!!

Email from Dallas L. Hixson, June 4, 2016;

Who “wins” from this situation? Homeowners lose, prospective new homeowners lose, the county loses, and even the poor people who might be the asylum residents will be resented greatly just for their presence.

Letter form Stephen R. Morrissey, June 5, 2016;

We are writing as very concerned home owners concerning the reported contract regarding the sale of the Lodge and Spa to an opiate addiction treatment facility masquerading as a “Premium Health and Wellness Center.” As I am sure you are aware, such an occurrence would be catastrophic for our community from economic, safety and family equanimity standpoints. The entire community is agitated over this possible transition and look to our CPOA and CMD Boards to urgently undertake actions to block this sale. I believe that preventing this injury to our community will be the defining and most important action that any CPOA and CMD Board will have undertaken since the foundation of Cordillera as a safe upscale family oriented lifestyle location.

Letter from David Samuels, June 3, 2016;

Sounds like the sale is happening sooner than later! We need to stop this ASAP!

Email from Lainie Edinburg; June 16, 2016;

The idea of raising my young children in a community where recovering opiate addicts are living so close, dining in my favorite restaurants, shopping in my same grocery stores, buying their morning coffee at my Starbucks, and driving the streets of my neighborhoods deeply concerns me. I am immediately concerned for my young childrens' [sic.] safety. Clinics like this attract predators who prey on those suffering from addiction, bringing crime and unrest to our community...

Email from Kristi Dozois, June 7, 2016;

The presence of such a facility in our community would be poisonous to the essential values of the community by introducing a population destructive to our neighborhood's peace of mind, real estate values, and carefully cultivated reputation. No longer would my grand children [sic.] be allowed to play outside unguarded, my doors be left unlocked, my burglar alarm inactivated or my firearms not at hand. The population enrolled at this facility, and the always present predators accompanying this population, are precisely the population we attempted to avoid by investing in the heretofore Cordillera lifestyle.

Email from David Samuels, M.D., June 4, 2016;

This is insane. How can this be? Yes, the loss of the Lodge will impact our lifestyle but turning it into a Drug Treatment Center will negatively impact our life even more significantly. I will no longer feel safe, I will no longer leave my doors unlocked and I will no longer hike alone with my dog, as I will be fearful that a drug addict may be lurking around. I am scared... This will ruin our Paradise.

Letter to Protest the Sale of the Lodge from Colette Wilbanks, June 8, 2016;

[W]hat about the safety of our family? We will have to secure the house 24/7. Our kids constantly exposed to addicts. And our community will be destroyed by this. I can't describe the feeling

that my wife and I have right now. We can't sleep and have shed too many tears...

Email from Chase, Katie & Charlie Terwilliger, June 7, 2016;

As a home owner in the Divide of Cordillera I wanted to make every county commissioner aware of the danger you are subjecting every home owner in Cordillera to by approving the use of drug rehab center and mental institution in our gated family community! ... How could you put this community into such risk?

Email from Lindlee Dermody, June 4, 2016;

I certainly don't feel comfortable with the idea of my grandchildren playing outside or hiking in the neighborhood where persons with addictions could be as well as "dealers" who might be trying to reach the "patients" inside!

Email from Robert and Leslie Nathan, June 6, 2016;

I hike alone with my small dog frequently on the trails near the Lodge. I walk the short course with my small dog in all four seasons at all times of the day, most often alone. I have always felt safe and secure. But now, I have to worry. Will I be safe on my hikes and walks? Will I be safe in my home? Will I encounter an individual with multiple mental disorders? Will an individual with multiple mental disorders come onto my property or my home without permission? Can I take my grandchildren to the fishing pond without an escort? What do I do if I meet a one of these addicts?

Letter from Catherine Gassman, June 15, 2016. True and correct copies of these and other emails are attached hereto as **Exhibit E**.

39. On June 6, 2016, Oys, on behalf of CMD and CPOA, sent a notice to the Cordillera community stating that "the CMD and CPOA Boards are united in actively pursuing all options to halt Concerted Care Management Group from creating a health and wellness facility with mental health, substance abuse, weight management and nutrition, and other services. Such a facility is incompatible within our resort-residential community." That notice

further stated, with respect to the emails referenced above and others, “we have received many emails expressing concerns and sharing ideas, all of which are greatly appreciated.”

40. On June 10, 2016, after many of the above-referenced discriminatory emails were sent to the County and the CMD, Oys, on behalf of the CMD and CPOA, sent a notice to the Cordillera community stating that “[t]he CMD and CPOA Boards and I are incredibly thankful that property owners have taken such an active role in expressing your concerns with both us and the Eagle County Commissioners.”

41. Upon information and belief, on June 22, 2016, after the above-referenced discriminatory emails were sent to the County and the CMD, Wilner, a retired attorney with decades of experience, in reference to such discriminatory emails, sent an email to Cordillera community member Jeanne Quagliano stating that “the appeal, and our comments to the County, should concentrate on the fact that this sale would permanently take ‘away’ the main (central, essential, critical) amenities in the neighborhood *I think it would be best not to discuss the other ideas in emails*” (emphasis added).

42. On June 28, 2016, representatives of CSMN and BH met with Oys, members of the CMD Board, and members of the CPOA board of directors to discuss CSMN’s plans for the Use. CSMN’s representatives informed those present at the meeting that CSMN and the Clients were protected under the ADA and the FHA.

43. On June 29, 2016, the Defendants filed the BOCC Appeal to appeal the issuance of the Interpretation.

44. The Defendants’ action in filing the BOCC Appeal was done with intent to discriminate against CSMN and the Clients.

45. On June 30, 2016, CMD and CPOA held a joint meeting at which over 200 members of the Cordillera community were in attendance.

46. At the June 30, 2016 meeting, in response to CSMN's statements at the June 28, 2016 meeting, and in order to shield the discriminatory intent of the Defendants, attorneys for CMD and CPOA, as well as members of the Legal Committee, encouraged community members to submit comments to the BOCC opposing the Use and to avoid discriminatory remarks about the prospective Clients in favor of facially neutral remarks pertaining to the legal interpretation of the PUD.

47. At the June 30, 2016 meeting, Lew Harstead, counsel for CMD and CPOA, counseled the Cordillera community members: "Don't focus on who will be using [the Lodge], focus on what it will be used for."

48. After emphasizing to the Cordillera community that it should convey the Lodge's importance to the Cordillera community to the BOCC and district court, Defendant Wilner stated at the June 30, 2016 meeting, "Don't talk about who will use [the Lodge]."

49. In coaching Cordillera community members to avoid discriminatory remarks, Defendant Kyte, an attorney with many years of experience, stated at the June 30, 2016 meeting, "We have to assume everybody we don't want listening is." He continued, "There are words we should not use, even in private."

50. At the June 30, 2016 meeting, Cordillera community members booed and hissed at any two individuals who spoke in support of the Use.

51. On September 20, 2016, the BOCC held a hearing (the "**BOCC Hearing**") at which several members of the Cordillera community testified regarding the proposed Use.

52. At the BOCC Hearing, in order to hide their animus and despite the fact that the Declaration expressly permitted the closure of the Lodge, members of the Cordillera community testified regarding their concerns that the Lodge would no longer be accessible to the community, their concerns regarding safety of the Clients who would reside in the Lodge, and their beliefs regarding the intent and meaning of the PUD.

53. At the close of the BOCC Hearing, the BOCC voted unanimously to affirm the Interpretation, however, the BOCC modified the Interpretation to reflect its conclusion that the Facility was permitted under the PUD as a multi-family residential building for the residential portion of the Facility, and as an outpatient facility for non-critical care for the portion of the Facility that would provide clinical services.

54. On October 11, 2016, the BOCC approved Resolution 2016-079 addressing the parties' various arguments, upholding the Interpretation that the Facility is permitted under the PUD, and outlining its reasoning in detail (the "**BOCC Decision**"). A true and correct copy of the BOCC Decision is attached hereto as **Exhibit F**.

55. On September 23, 2016, the CMD Board and the CPOA board of directors voted to authorize a state judicial appeal of the BOCC Decision pursuant to Colorado Rules of Civil Procedure Rule 106(a)(4) ("**Rule 106(a)(4)**").

56. The Defendants' actions in authorizing the appeal pursuant Rule 106(a)(4) were done with intent to discriminate against CSMN and its prospective Clients, and as a direct result of community animus.

57. On November 8, 2016, Defendants, by and through their attorneys, filed the Rule 106(a)(4) appeal, captioned *Cordillera Property Owners Association, Inc. and Cordillera*

Metropolitan District v. Eagle County, Colorado, Case No. 2016CV30363, which was later consolidated with Case No. 2016CV30361 (the “**Civil Action**”).

58. The Defendants’ actions in filing the Civil Action were done with intent to discriminate against CSMN and its prospective Clients, and as a direct result of community animus.

59. The Defendants have continued to prosecute the Civil Action with intent to discriminate against CSMN and its prospective Clients and as a direct result of community animus against persons with disabilities and for the purpose of making housing unavailable or denying housing to persons with disabilities.

60. To shield their discriminatory intent, the Defendants have, multiple times throughout the course of the BOCC Appeal and the Civil Action, changed their legal arguments, at times alternatively arguing that the Use will negatively impact Cordillera property values, that Cordillera residents have an implied right under the PUD to have perpetual access to the Lodge, that the PUD requires that the Lodge be maintained as a hotel use, that the Use is “inpatient” in violation of the PUD, and that the BOCC’s approval of the PUD was fraudulent.

61. Upon information and belief, in prosecuting the BOCC Appeal and Civil Action, CMD has expended over \$361,124 in attorneys’ fees to date, and CPOA has expended over \$286,175 in attorneys’ fees to date.

62. The Service Plan does not authorize CMD to commence the BOCC Appeal or the Civil Action, or to allocate any revenues of CMD toward the same.

63. CMD has therefore pledged its credit, loaned, gifted, donated to, or aided CPOA in its prosecution of the BOCC Appeal and the Civil Action, for the discriminatory purpose of blocking CSMN's and the Clients' ability to operate and reside in Cordillera.

64. Upon information and belief, neither the Declaration nor any contract between CMD and CPOA authorizes CMD to furnish covenant enforcement and design review services on behalf of CPOA.

65. Upon information and belief, neither CMD nor CPOA have appealed any decision of a County official pertaining to zoning matters prior to the BOCC Appeal.

66. Upon information and belief, unlike their treatment of CSMN, Defendants would not appeal a decision of a County official that would have allowed non-disabled persons to use or reside in the Lodge.

67. The actions taken by Defendants have exacerbated community animus with respect to CSMN and the prospective Clients' peaceable use of, benefit from, and enjoyment of the Lodge and the Property.

68. The actions taken by Defendants were done with the purpose, intent, and motivation to substantially interfere with the rights of CSMN and its prospective Clients to use, benefit from, and enjoy the Lodge and the Property in a manner equal to non-disabled persons' rights to do so.

69. As more fully described above, the actions of Defendants Bentley, Davies, Egan, George, Kyte, McBride, Oys, Shriner, Smathers, Wilhelm, and Wilner with respect to CSMN and the proposed Use, were performed on behalf of themselves, in their individual capacities, as well as on behalf of CMD in its official capacity.

70. At all times pertinent to matters pled in this Complaint, Defendants CMD, Bentley, Davies, Egan, George, Kyte, McBride, Oys, Shriner, Smathers, Wilhelm, and Wilner were acting under the color of state law.

71. As a direct and proximate result of the Defendants' actions described above, CSMN has been compelled to divert resources, energy, and funds from other activities related to its efforts to assist persons with disabilities to use, enjoy, and reside in the Cordillera community.

72. As a direct and proximate result of Defendants' actions described above, CSMN has been effectively barred from commencing the Use and providing housing and services to the Clients, and the Defendants have chilled CSMN from developing and using the Property and the Lodge for the Use.

73. As a direct and proximate result of Defendants' actions described above, CSMN has suffered damages and incurred attorney's fees and other related expenses.

74. CSMN has suffered and will continue to suffer irreparable injury as a direct and proximate result of Defendants' actions described above, until such time as its rights are vindicated.

75. There is no adequate remedy at law through which CSMN can expeditiously establish and enforce its right to occupy and freely use the Property for the Use.

**First Claim for Relief
(Americans With Disabilities Act)
Against Defendant CMD**

76. CSMN realleges and incorporates herein by reference each preceding paragraph.

77. CMD is a "public entity" as defined by the ADA, 42 U.S.C. § 12131.

78. The ADA states, “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132.

79. The Clients who would reside at CSMN’s Property by virtue of their drug, alcohol, and/or other related disabilities are among those entitled to the protections of the ADA.

80. As a service provider who was subject to legal action and whose use of the Property is restricted due to its efforts to provide residential services to persons with disabilities, CSMN is also entitled to legal protection under the ADA.

81. CMD’s actions constitute intentional discrimination against CSMN and its future Clients in violation of Title II of the ADA, 42 U.S.C. § 12132.

**Second Claim for Relief
(Fair Housing Act)
Against All Defendants**

82. CSMN realleges and incorporates herein by reference each preceding paragraph.

83. CSMN’s proposed Use of the Lodge constitutes a “dwelling” as that term is defined in the FHA, 42 U.S.C. § 3602(b).

84. The FHA prohibits “discriminat[i]on in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of (A) that buyer or renter, (B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or (C) any person associated with that buyer or renter.” 42 U.S.C. § 3604(f)(1).

85. The Clients who would reside at CSMN’s Property by virtue of their drug, alcohol, and/or other related disabilities are among those entitled to the protections of the FHA.

86. As a service provider who was subject to legal action and whose use of the Property is restricted due to its efforts to provide residential services to persons with disabilities, CSMN is also entitled to legal protection under the FHA.

87. The actions of Defendants CMD, CPOA, Bentley, Davies, Egan, George, Kyte, McBride, Oys, Shriner, Smathers, Wilhelm, and Wilner have made unavailable and denied a dwelling to CSMN and its future Clients in violation of the FHA, 42 U.S.C. § 3604(f)(1).

**Third Claim for Relief
(Civil Rights Act of 1871)
Against Defendants CMD, Bentley, Davies, Egan, George, Kyte, McBride, Oys, Shriner,
Smathers, Wilhelm, and Wilner**

88. CSMN realleges and incorporates herein by reference each preceding paragraph.

89. Under color of state law, CMD, Bentley, Davies, Egan, George, Kyte, McBride, Oys, Shriner, Smathers, Wilhelm, and Wilner injured CSMN by conspiring to deprive, failing to stop the deprivation, or depriving CSMN and its future Clients of equal protection of the laws and due process of law, including freedom of association and rights to privacy, as guaranteed under the First and Fourteenth Amendments to the United States Constitution, and as guaranteed under the ADA, 42 U.S.C. § 12132, in violation of the Civil Rights Act of 1871, 42 U.S.C. §§ 1983, 1985(3), and 1986.

**Fourth Claim for Relief
(Colorado Anti-Discrimination Act of 1957, Housing Practices)
Against All Defendants**

90. CSMN realleges and incorporates herein by reference each preceding paragraph.

91. CSMN's proposed Use of the Lodge constitutes a "dwelling" as that term is used in the CFHA, Colo. Rev. Stat. § 24-34-502.2.

92. The CFHA prohibits “discriminat[ion] in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of a buyer or renter, an individual who will reside in the dwelling after it is so sold, rented, or made available, or of any individual associated with that buyer or renter.” Colo. Rev. Stat. § 24-34-502.2(1)(a).

93. The Clients who would reside at CSMN’s Property by virtue of their drug, alcohol, and/or other related disabilities are among those entitled to the protections of the CFHA.

94. As a service provider who was subject to legal action and whose use of the Property is restricted due to its efforts to provide residential services to persons with disabilities, CSMN is also entitled to legal protection under the CFHA.

95. The actions of Defendants CMD, CPOA, Bentley, Davies, Egan, George, Kyte, McBride, Oys, Shriner, Smathers, Wilhelm, and Wilner have made unavailable and denied a dwelling to CSMN and its future Clients in violation of the CFHA, Colo. Rev. Stat. § 24-34-502.2(1)(a).

**Fifth Claim for Relief
(Colorado Special District Act)
Against Defendant CMD**

96. CSMN realleges and incorporates herein by reference each preceding paragraph.

97. The SDA provides that “[a]ny material departure from the service plan as originally approved, or, if the same has been modified, from the service plan as modified, which constitutes a material modification thereof as set forth in subsection (2) of this section, may be enjoined by the court approving the organization of such special district . . . upon the motion of any interested party as defined in section 32-1-204(1).” Colo. Rev. Stat. § 32-1-207(3)(a).

98. As a property owner within CMD, CSMN is an interested party as defined in Colo. Rev. Stat. § 32-1-204(1).

99. CMD's actions as described above, including CMD's filing of the BOCC Appeal and the Civil Action, constitute a material departure from the Service Plan in violation of the SDA. Colo. Rev. Stat. § 32-1-207(3)(a).

**Sixth Claim for Relief
(Unjust Enrichment)
Against Defendant CPOA**

100. CSMN realleges and incorporates herein by reference each preceding paragraph.

101. CSMN is a taxpayer within the CMD.

102. CPOA received a benefit from the CMD, including a pledge of credit, loan, gift, donation, or aid, in the amount expended by CMD on behalf of CPOA in prosecuting the BOCC Appeal and the Civil Action, and otherwise opposing the Use.

103. As a taxpayer within CMD, the benefit to CPOA came at and continues to come at the expense of CSMN.

104. The benefit accruing to CPOA from CMD is occurring under circumstances that would make it unjust for CPOA to retain the benefit without commensurate compensation to CSMN and other similarly situated parties.

Prayer for Relief

WHEREFORE, CSMN respectfully requests that this honorable Court afford it the following relief:

1. Exercise jurisdiction over this action;

2. Issue the following declaratory relief and preliminary and permanent injunctive relief declaring that:

- (a) Defendant CMD has violated the ADA;
- (b) All Defendants have violated the FHA;
- (c) Defendants CMD, Bentley, Davies, Egan, George, Kyte, McBride, Oys, Shriner, Smathers, Wilhelm, and Wilner have violated 42 U.S.C. §§ 1983, 1985(3), and 1986;
- (d) Defendant CMD has violated the SDA; and
- (e) Defendant CPOA has been unjustly enriched

and ordering Defendants to cease and desist from their prosecution of the Civil Action and all appeal(s) thereof and to allow CSMN to operate the Use as a residential substance abuse treatment facility as permitted by the PUD;

- 3. Award appropriate compensatory damages;
- 4. Grant such other relief as may be appropriate, including, but not limited to, reasonable attorney's fees, costs, and litigation expenses.

Dated this 20th day of October, 2017.

OTTEN, JOHNSON, ROBINSON,
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