

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-CV-01646-CMA-CBS

COLORADO CROSS-DISABILITY COALITION, a Colorado non-profit Corporation and  
DAISY MIDTHUN,

Plaintiffs

v.

HCA-HEALTHONE, LLC, d/b/a SWEDISH MEDICAL CENTER,

Defendants.

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**DEFENDANT HCA-HEALTHONE LLC d/b/a SWEDISH MEDICAL CENTER'S  
ANSWER AND JURY DEMAND**

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Defendant HCA-Healthone, LLC's (d/b/a Swedish Medical Center) "SMC" through its counsel, Dickinson, Prud'Homme, Adams & Ingram, LLP, respectfully submits the following Answer and Jury Demand in response to Plaintiffs' Complaint.

**JURISDICTION AND VENUE**

With respect to venue defendant asserts that some elements of relief sought by Plaintiffs are identical to relief provided for by the terms of the *Access Now* settlement. Proper venue for plaintiffs' allegations that Defendant has not complied with terms of the settlement is the U.S. District Court for the Southern District of Florida, Miami Division. Subject matter jurisdiction is not disputed.

## **RESPONSE TO ALLEGATIONS**

The defendant responds to the factual allegations in plaintiffs' complaint as follows:

Defendant admits that HCA-Healthone LLC is a limited liability company doing business as Swedish Medical Center in Englewood, Colorado.

Defendant admits that Daisy Midthun was admitted to SMC emergency room on September 5, 2009. Defendant denies any allegations relating to the involvement of any healthcare providers, or the events relating to the medical care of Daisy Midthun, to the extent that they are inconsistent with the medical records or the testimony of treating health care providers.

With respect to the First Claim for Relief, defendant admits that it is subject to the requirements of the ADA. Defendant denies that it refused to provide Ms. Midthun with a qualified sign language interpreter or that she was deliberately denied effective communication. Defendant denies that it caused Ms. Midthun any damages. Defendant denies that it harmed the plaintiffs or that it will continue to harm the plaintiffs in the future.

With respect to the Second Claim for Relief, defendant denies that it violated the Colorado Civil Rights Act. Defendant denies that it refused to provide Ms. Midthun with a qualified sign language interpreter or that she was deliberately denied effective communication. Defendant denies that it discriminated against Plaintiffs or will continue to discriminate against plaintiffs based on a disability.

With respect to the Third Claim for Relief, Defendant denies that it violated Section 504 of the Rehabilitation Act, 29 U.S.C. §794 et seq. Defendant denies that it refused to provide Ms. Midthun with a qualified sign language interpreter or that she was deliberately denied effective communication. Defendant denies that it discriminated against Plaintiffs or will continue to discriminate plaintiffs based on a disability.

Defendant denies each and every allegation of the Complaint, not specifically admitted.

Furthermore, to the extent that any relief sought by Plaintiffs herein is identical to relief provided for in the *Access Now* settlement, Plaintiffs must avail themselves of the procedure set forth in the terms of the settlement to obtain such relief.

#### **FIRST DEFENSE**

Defendant states that some or all of Plaintiffs' claims may be subject to estoppels or waiver as a result of the litigation and settlement achieved in *Access Now Inc. et al. v. Ambulatory Surgery Center Group, Ltd. Et al.* Case No. 1:99-cv-00109-BLG (S.D. Fla.).

#### **SECOND DEFENSE**

The Plaintiffs do not have proper standing to bring suit.

#### **THIRD DEFENSE**

The Plaintiffs are not or may not be the real party in interest for all or for a portion of Plaintiffs' claimed damages.

#### **FOURTH DEFENSE**

The Plaintiffs may have failed to mitigate their damages, if any.

**FIFTH DEFENSE**

The injuries and damages of the Plaintiffs, if any, may have been proximately caused by the conduct of a third party or parties, over whom this Defendant had no control or right of control, and for whom this Defendant is not responsible.

**SIXTH DEFENSE**

The claims of the Plaintiff are barred by, limited by, or subject to reduction, pursuant to, the provisions of The Americans with Disabilities Act, 42 U.S.C. §§ 12101. *et seq.*

**SEVENTH DEFENSE**

The claims of the Plaintiff are barred by, limited by, or subject to reduction, pursuant to, the provisions of The Colorado Civil Rights Act § 24-34-601 *et seq.*

**EIGHT DEFENSE**

The claims of the Plaintiff are barred by, limited by, or subject to reduction, pursuant to, the provisions of Section 504 of the Rehabilitation Act, 29 U.S.C. §794 *et seq.*

**NINTH DEFENSE**

The claims of the Plaintiffs are barred by, limited by, or subject to reduction, pursuant to, the provisions of C. R. S. § 13-50.5-101 *et seq.*

#### **TENTH DEFENSE**

The Plaintiffs' claims for damages are limited by the provisions of the Health Care Availability Act, pursuant to C.R.S. § 13-64-101, *et seq.* and the provisions of C.R.S. § 13-21-102.5.

#### **ELEVENTH DEFENSE**

The Plaintiffs' claims may be barred, in whole or in part, by comparative negligence, pursuant to C.R.S. §13-21-111, assumption of the risk, pursuant to C.R.S. §13-21-111.7, and failure to follow medical or nursing advice.

#### **TWELFTH DEFENSE**

Plaintiffs' damages must be reduced by any payments or benefits received from collateral sources, pursuant to C.R.S. § 13-21-111.6.

#### **THIRTEENTH DEFENSE**

The claims of the Plaintiffs are barred by, limited by, or subject to reduction, pursuant to, the provisions of C. R. S. § 13-21-111.5.

#### **FOURTEENTH DEFENSE**

Defendant states that the Plaintiffs are members of the class subject to the class action settlement in Access Now Inc. et al v. Ambulatory Surgery Center Group, Ltd. Et al., Case No. 1:99-cv-00109-BLG (S.D. Fla.), and some or all of Plaintiffs' claims may be "Released Claims" under the terms of the Access Now settlement and as such, may be barred in whole or in part by the settlement in that case, and state further that the relief sought by Plaintiffs may likewise be precluded by the Access Now settlement agreement.

**FIFTEENTH DEFENSE**

Defendant reserves the right to amend the Answer to assert additional affirmative defenses revealed during the course of discovery.

**WHEREFORE**, Defendant SMC asks the Court to dismiss the Plaintiffs' Complaint and award the Defendant costs and fees, and such further relief as the Court deems proper.

**JURY TRIAL DEMANDED**

Dated this 7<sup>TH</sup> day of September, 2010.

Respectfully submitted,

s/Gilbert Dickinson  
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d/b/a Swedish Medical Center

**CERTIFICATE OF SERVICE**

I hereby certify that on this 7th day of September, 2010, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following via e-mail:

Kevin W. Williams  
Colorado Cross-Disability Coalition  
655 Broadway, Suite 775  
Denver, Colorado 80203  
Email: [kwilliams@ccdconline.org](mailto:kwilliams@ccdconline.org)

s/Shanon Clowers