

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No.

COLORADO CROSS-DISABILITY COALITION,  
a Colorado non-profit corporation,

Plaintiff,

v.

REGIONAL TRANSPORTATION DISTRICT,  
a political subdivision of the State of Colorado,

Defendant.

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**COMPLAINT**

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Plaintiff Colorado Cross-Disability Coalition, by and through its attorneys, the Colorado Cross-Disability Coalition Legal Program, hereby submits its Complaint for violations of the Americans with Disabilities Act and the Vocational Rehabilitation Act of 1973.

**INTRODUCTION**

1. In 1973, Congress enacted Section 504 of the Vocational Rehabilitation Act (“Section 504”). 29 U.S.C. § 794. Under this law, recipients of federal financial assistance are prohibited from discriminating against individuals with disabilities. Although many transportation providers are recipients of federal financial assistance, few were accessible to individuals with disabilities who require the use of wheelchairs or other mobility devices at the time the law was passed, and few were accessible long after the law was passed. Individuals

with disabilities who require the use of wheelchairs were simply excluded from transportation services otherwise available to the “public.”

2. In 1978, disability activists in Denver, Colorado, members of Americans Disabled for Accessible Public Transportation (“ADAPT”), protested the inaccessibility of the Regional Transportation District (“RTD”) bus system. These disabled activists, many of whom required the use of wheelchairs and other mobility devices, stopped RTD service at the intersection of Broadway and Colfax in downtown Denver, Colorado to let everyone know that people with disabilities who require the use of wheelchairs were members of the public entitled to use public transportation.

3. A plaque on Colfax Avenue between Broadway and Lincoln Streets in Denver commemorates the events and the location where the group of disabled protesters, who came to be known as the “Gang of 19,” shut down RTD’s bus service, some removing themselves from their wheelchairs into the street to prevent busses from moving while chanting and singing “We will ride!”

4. It took many similar protests like the one described around the country and continued activism, including legislative activism, by individuals with disabilities to finally gain the right to use public transportation.

5. On July 12, 1990, Congress enacted the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12101, *et seq.*, establishing the most important civil rights law for people with disabilities in our country’s history.

6. In the ADA’s “Findings and Purposes” section, Congress found, “discrimination

against individuals with disabilities persists in such critical areas as . . . transportation . . . and access to public services. 42 U.S.C. § 12101(a)(3).

7. Congress explicitly stated that, among the purposes of the ADA, are:
    - a. “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;”
    - b. “to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities . . . ;” and
    - c. “to invoke the sweep of congressional authority, including the power to enforce the 14th Amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.”
- 42 U.S.C. § 12101(b).

8. After the passage of the ADA and due to the never-ending activism of groups like ADAPT, RTD became one of the first bus systems of its kind to install wheelchair lifts on busses.

9. The ADA mandates that when entities like RTD acquire new vehicles, they must now be “readily accessible to and useable by” individuals with disabilities, including those who use wheelchairs.” 42 U.S.C. § 12142(a). Such buses now must have wheelchair lifts or ramps and must have securement locations or wheelchair locations that will accommodate the size of a common wheelchair. *See* 42 U.S.C. § 12149; 49 C.F.R. §§ 38.21, 38.23.

10. Nevertheless, individuals with disabilities who require the use of wheelchairs and mobility devices continued to experience discrimination by transportation providers, including

RTD, in many ways.

11. RTD engaged in systemic failures to comply with the ADA in 1999 and 2000. The Colorado Cross-Disability Coalition (“CCDC”) investigated numerous complaints from its members and others who use mobility devices. These complaints included RTD bus operators passing up passengers who use mobility devices at bus stops without stopping to avoid having to take the time needed, repeated broken wheelchair lifts, bus operators improperly securing wheelchairs causing damage to expensive and necessary medical equipment, bus operators complaining to other passengers on the bus routinely whenever they had to board a passenger who uses a mobility device, and many other ADA violations. This led to CCDC and individuals with disabilities filing a lawsuit, *Taylor et. al. v. the Regional Transportation District*, 00-Z-981 (D. Colo. 2000).<sup>1</sup> RTD denied any discrimination against passengers with mobility impairments and any ADA violations.

12. In 2001, the *Taylor* case was resolved and resulted in a court ordered consent decree. This comprehensive court order required RTD to comply with the ADA and ensure that wheelchair lifts were maintained and in operable working order. The order required RTD to develop and implement a system of ensuring alternative transportation when a passenger who uses a mobility device was denied a ride. It required RTD to ensure that wheelchair securement was conducted properly. Pursuant to the order, bus operators who failed to comply received appropriate discipline. The court order also required extensive training for bus operators, which

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<sup>1</sup> Information about that lawsuit is available on CCDC’s website, at the following URL: <http://www.ccdconline.org/case/265>.

was conducted by CCDC members with disabilities who require the use of wheelchairs, to ensure compliance. RTD was required to conduct outreach to the disability community to explain the changes to its service that would be made in order to comply with the consent decree. CCDC conducted extensive monitoring of RTD service during the term of the consent decree. RTD was also required to pay attorneys' fees to CCDC's attorneys for the time spent investigating complaints and violations. The court order required RTD to pay a monetary penalty for violations of the court order. The term of the consent decree was five years.

13. During the term of the consent decree, CCDC instructed its members who had complaints regarding RTD service to get the bus number, route number, route direction, time of day, and other information related to the incident giving rise to the complaint to ensure accurate reporting.

14. RTD's service improved during the term of the consent decree for CCDC's members with disabilities who require wheelchairs or mobility devices to ride RTD buses, but still, CCDC needed to, and did, have and did submit to RTD numerous complaints that were resolved through the consent decree's dispute resolution mechanisms. Complainants recovered penalties when they demonstrated RTD's failures to comply, bus operators were disciplined when they did not comply, and RTD was required to take affirmative steps to rectify the problems.

15. After the consent decree expired, in or about 2007, CCDC began receiving complaints regarding RTD bus operators refusing to board passengers who use mobility devices, claiming "the bus is full," when it was obvious the bus was not full.

16. Again, CCDC demanded RTD take action to solve the problem. CCDC members and staff had numerous meetings with RTD officials to reach a solution to this problem. After lengthy negotiations and exhaustive time and resources on CCDC's part, RTD promised to draft and implement new policies and procedures and train all bus operators to comply with new policies to address these issues and sought CCDC's approval in doing so.

17. As set forth in this Complaint, the problems identified in paragraph 16 lessened for a while, but resurfaced again in 2010, 2012 and again this year, 2013.

18. Each time, CCDC staff and members spent an enormous amount of time and resources getting RTD to address this same issue: RTD allows nondisabled individuals with large objects like grocery carts and large strollers to occupy the two required wheelchair seating locations -- the only places where disabled passengers who use wheelchairs can sit -- and does little or nothing to ask or encourage them to move from those seats if and when a passenger who uses a wheelchair and needs those spaces and attempts to board the bus. Bus operators say, "The bus is full," and leave the passenger who uses a wheelchair at the bus stop.

19. In or about 2007, 2010 and 2012, RTD provided CCDC with new policies that it claimed it would implement to resolve these issues. These policies included extensive training for RTD bus operators. The policies are discussed in this Complaint. Despite the alleged implementation of these policies and training, RTD fails to follow those policies and fails to comply with the ADA.

20. In addition, despite the passage of two major federal civil rights law for people with disabilities, a lawsuit and court ordered consent decree requiring five years of monitoring

and supervision, and numerous meetings and interactions between CCDC and RTD, RTD still denies passengers who use mobility devices access to its buses as required by law and otherwise discriminates against them.

21. As set forth in this complaint, RTD refuses to ensure passengers who use mobility devices have access to the only accessible locations on RTD's buses they can use.

22. RTD favors the rights of other individuals over the rights of passengers who have disabilities that require the use of wheelchairs and mobility devices.

23. CCDC brings this lawsuit on behalf of itself as an organization and on behalf of its members against whom RTD discriminates. The lawsuit seeks a declaration from the Court that RTD is in violation of the ADA and Section 504, an injunction from the court, ordering RTD to comply with the ADA, damages for CCDC, and the recovery of reasonable attorneys' fees and costs as permitted by law.

### **JURISDICTION**

24. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343, 42 U.S.C. § 12133, and 29 U.S.C. § 794a. The Court may grant declaratory and other relief pursuant to 28 U.S.C. §§ 2201 and 2202.

25. Venue is proper within this District pursuant to 28 U.S.C. § 1391.

### **PARTIES**

26. Plaintiff Colorado Cross-Disability Coalition ("CCDC") is a non-profit corporation whose members are persons with disabilities and their nondisabled allies. As such,

CCDC is an entity in a known relationship with and or association with individuals with known disabilities.

27. CCDC has employees, board members and members who are individuals with disabilities who require the use of wheelchairs who use public transportation in and around the Denver metropolitan area.

28. Defendant Regional Transportation District (“RTD”) is a political subdivision of the State of Colorado, with the “duties, privileges, immunities, rights, liabilities, and disabilities of a public body politic and corporate.” Colo. Rev. Stat. § 32-9-119(1)(a).

29. RTD was created pursuant to Colo. Rev. Stat. § 32-9-105.

30. RTD is a “public entity” within the meaning of 42 U.S.C. § 12131(1)(B) and 28 C.F.R. § 35.104.

31. RTD receives federal financial assistance within the meaning of 29 U.S.C. § 794 and its implementing regulations.

32. RTD has its principal place of business at 1600 Blake Street, Denver, Colorado 80202-1399.

33. In addition to other types of transportation systems and services, RTD operates a “fixed route system” within the meaning of 42 U.S.C. § 12141(3).

34. For purposes of this complaint, when “RTD” is used, it means RTD itself and its contractors who operate fixed route bus services.

### **GENERAL ALLEGATIONS**

1. Each CCDC member who uses a mobility device referenced in this complaint is an individual with a disability within the meaning of the ADA and Section 504.

2. On most RTD buses there are only two locations where a passenger who requires the use of a wheelchair while riding on RTD's buses can sit, known as "securement locations" or "securement areas."<sup>2</sup>

3. Securement locations or wheelchair locations have to be a certain size and shape and must be in certain locations to enable an individual with a disability who requires a wheelchair or mobility device to be able to ride on the bus. *See* 49 C.F.R. § 38.23.

4. If there are two passengers who use mobility devices already seated in the securement locations, bus operators usually will tell a waiting passenger who uses a mobility device that the securement locations are full and that the person will not be permitted to board the bus.

5. RTD buses are designed so that seats in the securement area can also be used by passengers who do not use mobility devices. *See* 49 C.F.R. § 38.23(d)(2) ("Securement areas may have fold-down seats to accommodate other passengers when a wheelchair or mobility aid is not occupying the area, provided the seats, when folded up, do not obstruct the clear floor

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<sup>2</sup> Securement systems or devices are required on fixed route buses so that an individual who uses a wheelchair can secure or restrain the wheelchair from moving. *See, e.g.*, 49 C.F.R. § 37.165; 49 C.F.R. § 38.23(2)(d). RTD makes the choice of whether to use securement devices optional at the passenger's discretion. *See* 49 C.F.R. § 37.5(c) ("An entity shall not require an individual with a disability to use designated priority seats, if the individual does not choose to use these seats."); *see also* 49 C.F.R. § 37.165 (d) ("The entity may not deny transportation to a wheelchair or its user on the ground that the device cannot be secured or restrained satisfactorily by the vehicle's securement system.")

space required.”) These seats can be folded down when the securement locations are not in use by a passenger who uses a mobility device.

6. On RTD buses, there are signs that inform bus passengers to comply with requests to move from the fold-down seats in the securement locations if a passenger who uses a mobility device wants to board and needs to access the securement locations.

7. The signs referenced in the preceding paragraph are required by ADA regulations. *See* 49 C.F.R. § 38.27(a) (“Each vehicle shall contain sign(s) which indicate that seats in the front of the vehicle are priority seats for persons with disabilities, and that other passengers should make such seats available to those who wish to use them. . . . (b) Each securement location shall have a sign designating it as such.”).

8. Most RTD buses are equipped with a camera that records video.

9. RTD has informed CCDC that the cameras on buses record over past recordings as follows: “media is overwritten after approximately 2-1/2 to 3 days for buses, and 7 days for light rail vehicles. New buses being purchased by RTD should have a longer overwriting period of approximately 7 days. If an incident is brought to RTD’s attention and media is pulled by RTD, a copy is generally retained for 5 years.”

10. CCDC members with disabilities who use mobility devices have complained to RTD regarding not being able to board RTD buses because passengers with large objects or strollers are blocking the wheelchair securement locations.

11. Because of the prior lawsuit, extensive training CCDC provided to RTD and the methods of dispute resolution CCDC and RTD used in the past, CCDC members with disabilities who use mobility devices have knowledge about RTD's bus cameras and recording policies.

12. CCDC members with disabilities who use mobility devices have requested that RTD review and save the recordings when they have complained about RTD's service.

13. The recordings are evidence that may show whether the bus was full, whether people using the securement locations are passengers with disabilities using mobility devices and how the bus operator interacted with passengers during incidents when a person with a disability who uses a mobility device attempts to board.

14. On some occasions, CCDC members with disabilities who use mobility devices who have complained to RTD and requested preservation of the recordings have requested that RTD make those recordings available for the complaining CCDC member to review.

15. On information and belief, RTD has refused to provide recordings to CCDC members who have disabilities who use mobility devices who have requested recordings.

16. On information and belief, when CCDC members who have disabilities who use wheelchairs have requested recordings be reviewed or provided, RTD has not "pulled" the media for review as described in paragraph 9.

17. On information and belief, when CCDC members who have disabilities who use wheelchairs have requested RTD make the recording available for the individual to review, RTD has not done so.

18. On information and belief, RTD used to have a policy prohibiting strollers from on RTD buses.

19. At times relevant to this Complaint, RTD has had a policy that strollers are permitted on RTD busses, but that the stroller must be collapsed if the bus becomes full.

20. At the time of the filing of this Complaint, RTD's website has a "stroller policy," which reads as follows:

**Acceptable stroller size**

Maximum size for an uncollapsed stroller is 48" long by 36" wide. A stroller should be equipped with an operable brake and should be capable of being stowed out of the aisle. Strollers that are not being occupied by children must be collapsed and stowed. If a bus or train is full, all strollers must be collapsed and stowed.

**Using priority seating and securement areas**

If the stroller fits within RTD's size requirements, then passengers can occupy the priority seating and securement area. However, if the bus is full or may be become full or a disabled or elderly passenger boards, passengers must be prepared to move towards the rear of the bus or train and stow away the stroller.

Individuals with disabilities, who cannot carry their children, and children with disabilities, who need to remain in a stroller, may remain seated in the priority seating and securement area. See <http://www.rtd-denver.com/Reports.shtml> (last accessed October 7, 2013).

21. RTD bus operators have not followed this policy.

22. At times relevant to this Complaint, RTD has had a policy that strollers are permitted on RTD busses, but that the stroller must be collapsed if a passenger using a mobility device wants to board and requires use of the wheelchair securement area.

23. RTD bus operators have not followed this policy.

24. At times relevant to this Complaint, RTD has had a policy that bus operators inform passengers with strollers when they board that they must collapse the stroller if a passenger using a mobility device boards and needs to use the wheelchair securement locations.

25. RTD bus operators have not followed this policy.

26. RTD allows individuals with large carts and other devices to occupy the wheelchair securement without asking them to move for boarding passengers who use wheelchairs.

27. RTD bus operators have allowed individuals with strollers to occupy the wheelchair securement area without asking them to move for boarding passengers who use wheelchairs.

28. RTD bus operators have allowed individuals with strollers to occupy the wheelchair securement without asking them to collapse or stow the strollers to allow boarding passengers who use wheelchairs to board and use the securement area.

29. RTD bus operators have allowed individuals with large carts, strollers and other devices to be transported in the bus aisle between the securement locations and the accessible route to the bus lift or ramp when a passenger with a disability who uses a wheelchair is seated in the securement and needs to exit the bus.

#### CCDC Allegations

30. CCDC's purpose is to work for systemic change that promotes independence, self-reliance, and full inclusion for people with disabilities in the entire community. As part of that purpose, CCDC seeks to ensure that persons with disabilities who use mobility devices have

access to -- and do not encounter discrimination in -- transportation systems. CCDC engages in extensive outreach as well as advocacy and educational efforts to promote access for and combat discrimination against people with disabilities. This effort and this purpose have been and continue to be adversely affected by Defendant's violations of the ADA and the Rehabilitation Act.

31. Defendant's actions have caused and continue to cause distinct, palpable, and perceptible injury to CCDC.

32. CCDC has devoted resources, which could have been devoted to its other outreach, advocacy, and educational efforts, to meeting and communicating with Defendant in an attempt to secure non-discriminatory transportation for its members and staff.

33. CCDC has devoted resources, which could have been devoted to its other outreach, advocacy, and educational efforts, to counseling members and others who have been injured by Defendant's discrimination and assisting these individuals in resolving problems related to injuries caused by Defendant's discrimination.

34. Defendant's discrimination has damaged CCDC's day-to-day operations by, among other things, causing staff and members to be delayed in arriving to work and to be delayed in attending (or missing completely) meetings, hearings, and other events that their duties for CCDC required them to attend.

35. Defendant's discrimination has damaged CCDC's day-to-day operations by, among other things, causing staff and members to have to meet and consult with RTD about

these issues even though these issues have all been addressed at length before as set forth in this Complaint.

36. Defendant's discrimination has damaged CCDC's day-to-day operations by, among other things, causing staff and members to have to spend significant amounts of time communicating RTD's instances of discrimination to it, and doing so with adequate time to avoid RTD's claim that any evidence of the discrimination has been destroyed.

37. Defendant's discrimination has been and continues to be a barrier to the full participation of persons with disabilities and, therefore, frustrates CCDC's ability to achieve full inclusion for persons with disabilities. For example:

- a. Defendant's discrimination, in and of itself, makes transportation less available to persons with disabilities who use mobility devices;
- b. Defendant's discrimination sends a clear message to persons with disabilities who use mobility devices that they are unwanted on Defendant's vehicles, discouraging persons with disabilities who use mobility devices from using public transportation; and
- c. Defendant's discrimination -- by making transportation less accessible -- perpetuates the segregation of people with disabilities who use mobility devices and sends the messages that such discrimination continues to be acceptable at this time.

38. Defendant's discrimination has required and continues to require CCDC to make a greater effort -- and to allocate resources -- to educate the public that such discrimination is

wrong and otherwise to counteract the adverse impact of such discrimination. This perceptibly impairs CCDC's counseling, advocacy, educational, and training missions.

39. CCDC also has devoted and continues to devote significant resources -- including but not limited to those devoted to the present lawsuit -- to identifying and counteracting the sources of discrimination in the community, including that of Defendant.

40. CCDC's injuries -- including without limitation those described herein -- are traceable to Defendant's discriminatory conduct alleged in this Complaint, and will be redressed by the relief requested in it.

41. CCDC's members and their spouses, friends, relatives, and associates have been injured and will continue to be injured by Defendant's discrimination.

42. The elimination of discrimination, such as that of Defendant, and the integration of persons with disabilities into the community are at the core of CCDC's organizational purpose.

43. The participation of individual CCDC members in the lawsuit is not required either to resolve the claims at issue or to formulate relief.

#### CCDC's Prior Efforts to Ensure RTD Provides Access to Securement locations

44. After the court ordered consent decree with RTD described above expired in or about 2005, CCDC has encountered other discriminatory acts by RTD.

45. CCDC has spent time and resources addressing problems with RTD service for CCDC members who use mobility devices since the consent decree expired.

46. During 2007, CCDC members who use mobility devices experienced a surge in RTD bus operators claiming buses were full when, in fact, the securement locations were not occupied by passengers who mobility devices.

47. During 2010, CCDC members who use mobility devices experienced a surge in RTD bus operators driving by them without stopping, claiming buses were full when, in fact, the securement locations were not occupied by passengers who mobility devices, and there was room on the bus for the waiting passenger.

48. During 2012, CCDC members who use mobility devices experienced a surge in RTD bus operators claiming buses were full when, in fact, the securement locations were not occupied by passengers who mobility devices.

49. Each time CCDC has received these complaints, CCDC staff, including CCDC's Executive Director Julie Reiskin and Legal Program Director Kevin Williams, spent time and resources educating RTD about the complaints by CCDC members who use mobility devices.

50. Each time CCDC has received these complaints, RTD claimed it had developed new policies, practices, and procedures to remedy the complaints raised by CCDC.

51. For example, on July 24, 2012, RTD sent CCDC its new policies.

52. In a letter to Julie Reiskin, Alice Osner, General Superintendent of Transportation, said:

I am sending you copies of material that we're presently using at RTD in our initial and refresher training of operators as well as our out-reach with the community, our newsletter (this is a joint project with the contractor's), the DRMAC road show material, what we're currently displaying at our "wall space" at ATLANTIS, and bulletins addressing ADA concerns.

As you can see we are as committed as ever to training our operators on customer service for ADA compliance and we are working diligently on out-reach to individuals and groups to teach them how to ride fixed route service.

Please let me know if there is any other material you might be interested in seeing and of course any suggestions are always welcome.

53. In a memo identified as No. TR-12-62 dated July 18, 2012, with the subject line “PASSING UP DISABLED PASSENGERS[,]” allegedly provided to “all operators[,]” Alice Osner, General Superintendent of Transportation, said:

All passengers with or without disabilities, are to be treated with the highest degree of respect and concern for safety. Passengers using wheelchairs or other mobility devices may be particularly vulnerable if left stranded at a bus stop. They do not want to wait for the next available bus any more than other passengers. Therefore, if you are unable to accommodate a passenger using a wheelchair or other mobility device for any reason, you are required to report the situation to the dispatcher and remain there until cleared to proceed. Recent changes in the CAD/AVL reporting structure will expedite the task.

54. The memo allegedly required operators to take the following “action” to address this situation:

**Do not assume or state that the bus is too crowded to board a passenger with a mobility device until you have taken the following steps:**

- Look first to see if other passengers are blocking the securement area, or access to the securement area. Disabled passengers using mobility devices have priority in the securement area. If a passenger with a baby stroller, large object, or package is utilizing a securement area, politely ask them to move towards the back, or find another seat and assist if necessary.
- Politely ask those passengers blocking access to move. A good phrase to use is “I need to use these seats to allow a passenger with a disability to board please.”
- Be sure to thank all passengers for their cooperation.
- When you are at a bus stop with both able-bodied passengers and passengers using mobility devices, you must clear the securement area to accommodate the passenger in a wheelchair. It is not acceptable to allow the able-bodied

passengers to board, leaving insufficient space for the passenger with a disability.

- Once sufficient space is made available to board the passenger, deploy the lift, board the passenger, and then continue on the route.

- Never blame the passenger for delays, inconveniences or imply that the passenger is holding up the bus. Keep your interactions polite and respectful.

**The following steps should be taken, if the other passengers are unable or unwilling to move:**

- Remember that you cannot physically force other passengers to move.

However, it should be clearly and politely stated that you expect them to move if possible.

- Do not leave the bus stop until cleared to do so by the dispatcher or supervisor.

- The dispatcher will provide you with information on how the passenger will be accommodated. You must relay this information to the passenger.

- Offer them a courtesy transfer.

- You must provide your name, bus number, or bus number slip upon request without fail.

- Only after following these steps are you to proceed. (Emphasis in original.)

55. The memo advised that video recordings from cameras on buses are sometimes used to confirm the bus operator was following proper procedures.

56. The memo advised that bus operators could now enter a preprogrammed data message “ADA PAX PASS-UP” which “will place the request for assistance on a high priority level, meaning that the call would be handled ahead of other routine calls.”

57. The memo advised operators that if the preprogrammed data message system was unavailable, they should contact a dispatcher using any other means and do so in the presence of the waiting passenger using a mobility device.

58. The memo advised that if operators could not contact a dispatcher, they must offer a passenger a courtesy transfer and contact a dispatcher by way of another bus or radio or by public telephone as soon as possible.

59. In a memo identified as No. TR-12-68 dated July 27,2012, with the subject line “SHARING THE PRIORITY SEATING AREA[,]” allegedly provided to “all operators[,]” Alice Osner, General Superintendent of Transportation, said:

There has been an increase in complaints from customers who use mobility devices regarding the availability of space in the priority seating/securement area. Many people choose to sit in the priority seating area because it affords more room for their belongings or their strollers. This can cause conflicts when the bus is full and people are asked to move because a customer with a mobility device wishes to ride. You may be able to mitigate a potential conflict by politely reminding people as they board that you may need to request the priority seating for a customer using a mobility device. Make sure to follow RTD’s policy, and please do your best to encourage cooperation of all passengers when you are required to ask someone to move from the priority seating area.

60. The memo provided tips to operators regarding ways operators could assist passengers sitting in the securement locations to move to other seating locations.

61. If after the operator undertook all of the above steps and the passenger occupying the securement locations did not move, the memo said:

You must wait at the stop and contact Dispatch via the preprogrammed data message “ADA PAX PASS-UP.” Dispatch will call you back, and you must describe which stop you are waiting at with the customer, and the steps you have taken to resolve the situation. Dispatch will give you instructions (about alternative transportation or the arrival time of the next bus) that you must relay to the waiting customer. Make sure to offer the customer a courtesy transfer for their trouble. Remember, it is only after you have completed these steps that you may continue on your route.

62. CCDC was familiar with these sorts of policy changes from RTD because in 2007, during the surge of complaints from CCDC members who use mobility devices, RTD sent CCDC similar policy changes. RTD then provided policies to CCDC indicating that they had

implemented similar policies, practices, and procedures based on a memo from Greg Yates, General Superintendent of Transportation, to “all operators” dated March 12, 2007.

63. RTD claims that recently, it provided to all bus operators a new policy statement titled “Acknowledgement of Key ADA Issues,” (“2013 Policies”) and requested bus operators initial this policy to indicate the operator received and understood “these mandatory policies and procedures related to RTD’s compliance with the Americans with Disabilities Act of 1990 as it applies to transit.”

64. The 2013 Policies encourage behaviors by bus operators that are likely to lead to discrimination against passengers with mobility impairments who need to use the securement locations, for example:

- a. The 2013 Policies say, “[e]xcept on regional buses, passengers with packages, oversized baggage, large items, or strollers may use the priority seating area if available.”
- b. The policy above provides no restriction on what items may be brought on the bus.
- c. The 2013 Policies say, “[i]f the item is too large to fit in the aisle, it should be collapsed and stowed if possible.”
- d. The policy above guarantees that aisles on RTD buses may be blocked.
- e. CCDC members who use mobility devices have complained that the aisle that is the accessible route between the securement locations and the wheelchair lift needed to exit the bus has been blocked by such items.

f. In Customer Service Reports that CCDC reviewed from its Colorado Open Records Act (“CORA”)<sup>3</sup> request, *see* paragraph 103, other passengers have complained that the aisle that is the accessible route between the securement locations and the wheelchair lift needed to exit the bus has been blocked by such items.

g. The 2013 Policies expressly allow “double wide strollers and jogging strollers” on RTD buses.

h. The 2013 Policies state that “[a]ll strollers should be collapsed if the route is busy or is expected to become busy.”

i. Despite this policy, RTD allows strollers on its buses that RTD management acknowledges cannot be folded.

j. ADA regulations permit, but do not require, passengers other than those who use mobility devices to occupy the fold-down seats in the securement locations. These regulations say nothing about objects, including strollers, being brought on the bus and placed in the securement locations.

65. RTD bus operators do not comply with RTD’s own alleged policies, for example:

a. In RTD’s latest policy change, bus operators are required to “remind customers with [packages, oversized baggage, large items, or strollers] that they may need to move if the [securement area] is needed for a customer with a mobility device.

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Colo. Rev. Stat. § 24-72-201, *et. seq.*

- b. Bus operators do not remind passengers that they may need to move in case a passenger who requires the use of a mobility device needs the securement area.
- c. CCDC members who use mobility devices have not experienced this in the incidents described in this complaint.
- d. RTD has a policy that if the next bus is going to arrive 30 minutes or more and a passenger who uses a mobility device cannot board because the securement area is full, RTD will provide alternative transportation.
- e. RTD has rarely, if ever, provided alternative transportation when a passenger who uses a wheelchair has been denied transportation because the bus was full or both securement areas were occupied.
- f. RTD requires that if space cannot be made in the securement locations, bus operators must “advise all customers that [they] are required to contact dispatch and wait at the stop for further direction to ensure that the passenger in the mobility device is accommodated in a timely manner.”
- g. Bus operators do not advise all customers that they are required to contact dispatch and wait at times when space cannot be made in the securement locations.
- h. Bus operators do not contact dispatch and wait for further direction at times when space cannot be made in the securement locations.

- i. CCDC members who use mobility devices have not experienced this in the incidents described in this complaint.

66. Despite RTD's promises of changed policies and training of bus operators, CCDC members who use mobility devices are still being denied access to the securement locations when passengers who do not have disabilities and/or large objects or strollers are stored there.

67. Despite RTD's promises of changed policies and training of bus operators, CCDC members who use mobility devices still are required to argue with bus operators to be permitted to access the securement locations.

CCDC Member Julie Reiskin

68. CCDC member Julie Reiskin has multiple sclerosis ("MS") and requires the use of a motorized wheelchair.

69. Ms. Reiskin was a plaintiff in CCDC's prior lawsuit against RTD referenced above.

70. Ms. Reiskin is CCDC's Executive Director.

71. Ms. Reiskin experienced discrimination by RTD as set forth in this Complaint.

72. On July 8, 2013, Ms. Reiskin was waiting for the route 38 eastbound at 18th Avenue and Stout Street, at approximately 6:53 p.m.

- a. Bus number 2078 pulled up.
- b. The bus operator said that the bus full.
- c. Ms. Reiskin asked if the securement locations were occupied by passengers who use mobility devices.

- d. The bus operator said that there were three.
- e. The bus operator asked Ms. Reiskin if she wanted him to call dispatch.
- f. Ms. Reiskin responded yes.
- g. A person with the stroller, who on information and belief, had been occupying one of the securement locations offered to move back so that Ms. Reiskin could get on.
- h. The bus operator did not ask the person with the stroller to move from the securement area because a passenger who uses a mobility device was boarding the bus.
- i. When Ms. Reiskin was able to board the bus, she noticed that there was only one wheelchair, a walker, and one stroller in the securement area.
- j. On that same day, Ms. Reiskin emailed a complaint to RTD's Customer Information Services email complaint department ("cis-mail").
- k. In that complaint, Ms. Reiskin provided RTD all of the information listed in this paragraph.
- l. Ms. Reiskin requested that RTD preserve the video tape from this incident for review.
- m. Ms. Reiskin requested that RTD provide a response to her complaint.
- n. On July 9, 2013, Ms. Reiskin received an email response from RTD customer information representative David C. which said:

Thank you for contacting RTD and bringing this to our attention. We have

forwarded your complaint to division management and have requested a video pull for said incident as well. Management will do their investigation on the matter. Your complaint was assigned Feedback ID number 234212. It will take a few days for the investigation to be completed. Please do accept our most sincere apologies.

o. Ms. Reiskin received no further response from RTD.

73. On July 11, 2013 Ms. Reiskin experienced discrimination by RTD.

a. Ms. Reiskin was waiting for the route 0 northbound at 7th Avenue and Lincoln Street, at approximately 5:50 p.m.

b. As a result of MS, Ms. Reiskin has an extreme sensitivity to heat.

c. At the time, it was over 90 degrees.

d. When the bus arrived, the bus operator told Ms. Reiskin that the bus was full.

e. Ms. Reiskin asked if the securement locations were occupied by passengers who use mobility devices.

f. The bus operator said there was a wheelchair, walker and stroller and repeated that the bus full.

g. In front of the bus operator, Ms. Reiskin looked up to get the bus number and took notes down for the purpose of complaining to RTD.

h. At that moment, the bus operator said he would ask the passenger with the stroller to move.

i. Ms. Reiskin observed that he went back and said something to passengers on the bus that Ms. Reiskin could not hear.

- j. The woman with the stroller moved from the securement area and stood blocking the aisle for the remainder of the trip.
- k. When Ms. Reiskin boarded, she observed that there was no passenger using a wheelchair on the bus.
- l. There was a woman using a walker and the woman with the stroller.
- m. On that same day, Ms. Reiskin emailed a complaint to cis-mail.
- n. In that complaint, Ms. Reiskin provided RTD all of the information listed in this paragraph.
- o. Ms. Reiskin requested that RTD preserve the video tape from this incident for review.
- p. Ms. Reiskin requested that RTD provide a response to her complaint.
- q. On July 14, 2013, Ms. Reiskin received an email response from RTD which said:

Thank you for contacting Technical Support. This email is to confirm that we have received your support request. A technician will be contacting you shortly. Thank You Note: In contacting technical support on this issue, please leave "[Incident: 16686]" in the Subject Line. Failure to do so may cause delays in resolving this issue.

- r. Ms. Reiskin received no further response from RTD.
74. On August 12, 2013, Ms. Reiskin experienced discrimination by RTD.
- a. Ms. Reiskin was riding an RTD bus in the securement area.
  - b. A woman with a walker was also riding the bus in the securement area.

- c. When a woman with a stroller wanted to board the bus, the bus operator told the woman that she would have to fold the stroller.
  - d. The bus operator then let the woman sit with the folded stroller blocking the aisle.
  - e. The bus operator never suggested to the woman with the stroller that she may need to go to the back of the bus.
  - f. When the bus arrived at 16th and Lawrence, a woman with a manual wheelchair boarded the bus.
  - g. The bus operator also switched with a new bus operator at this stop.
  - h. As the new bus operator boarded the bus, the original bus operator pointed to Ms. Reiskin and the other passenger who used a mobility device and said, “This kind of thing is why I am late.”
  - i. The bus operator was six minutes late when he had picked up Ms. Reiskin at Fillmore Street.
  - j. Ms. Reiskin makes sure that she is always ready before bus operators stow the lift and are able to begin moving.
75. On September 6, 2013, Ms. Reiskin experienced discrimination by RTD.
- a. Ms. Reiskin was riding on bus 5031 at approximately 8:25 a.m.
  - b. Ms. Reiskin was riding in the securement area.
  - c. The securement area was also occupied by another passenger using a mobility device.

- d. A man got on the bus walking and pushing a wheelchair full of what appeared to be groceries.
- e. This man clogged up the securement area with his wheelchair filled with groceries, causing Ms. Reiskin and the other passenger using a wheelchair to be banged into repeatedly.
- f. That same day, Ms. Reiskin emailed a complaint to cis-mail.
- g. In that complaint, Ms. Reiskin provided RTD all of the information listed in this paragraph.
- h. Ms. Reiskin requested that the video tape of the incident be saved and made available for her review under the CORA.
- i. On September 18, 2013, Ms. Reiskin received an email response from RTD General Superintendent of Transportation, Alice Osner, stating that the video was available for review and asking if Ms. Reiskin normally reviewed videos in her office and if so, if she wanted a copy sent to her.
- j. Although Ms. Reiskin did not receive a copy of this recording from Ms. Osner, CCDC did receive a recording of this incident as a result of a CORA Notice sent to RTD. *See* paragraph 108.
- k. The recording confirms what Ms. Reiskin reported to RTD in her email complaint.
- l. RTD has provided no explanation to Ms. Reiskin or CCDC as to what, if any, action it took as a result of this incident.

CCDC Members Pamela Carter and Paul Stewart

76. CCDC Members Pamela Carter and Paul Stewart are both senior citizens with disabilities who use mobility devices.

77. Ms. Carter and Mr. Stewart both experienced discrimination by RTD.

a. On July 18, 2013, at approximately 10:55 a.m., Ms. Carter and Mr. Stewart were waiting for the route 38 heading eastbound, bus 2093.

b. When the bus arrived, Ms. Carter and Mr. Stewart were told that they could not board the bus because there was a passenger with a stroller in the securement area.

c. Ms. Carter and Mr. Stewart were also told that the passenger with the stroller would not move from the securement area.

d. After Ms. Carter and Mr. Stewart argued with the bus operator, the bus operator allowed them to board the bus.

e. The bus operator called a supervisor.

f. On information and belief, the supervisor said that the bus operator did not have to make the passenger with the stroller move from the securement area.

g. Ms. Carter and Mr. Stewart called CCDC Executive Director Julie Reiskin.

h. Ms. Carter and Mr. Stewart told Ms. Reiskin that they were afraid that the bus operator was going to kick them off the bus.

- i. Ms. Reiskin assured them that this would not happen, and also stated that she hoped the bus operator would not keep the bus sitting there, delaying everyone on board.
- j. Ms. Reiskin stated that this kind of bus operator behavior incites violence and animosity against individuals with disabilities.
- l. That same day, Ms. Reiskin sent a complaint to cis-mail, on behalf of Ms. Carter and Mr. Stewart.
- m. In that complaint, Ms. Reiskin provided RTD all of the information listed in this paragraph.
- n. Additionally, in the complaint, Ms. Reiskin informed RTD of the danger in making people with disabilities wait outside on hot days.
- o. Many people with disabilities are unable to properly control their body temperature as a result of those disabilities, and overheating can cause serious health problems.
- p. Ms. Reiskin also informed RTD that passengers who use mobility devices have no other places to sit on the bus, but that passengers who choose to bring a stroller on the bus have other choices available to them.
- q. Ms. Reiskin requested that the video tape of the incident be saved and made available for her review under CORA.

r. On July 19, 2013, Ms. Reiskin received a voicemail from Alice Osner, General Superintendent of Transportation, saying that the video tape of the incident did not work.

s. Ms. Osner also stated that the bus operator had been disciplined and would go through retraining.

t. Pursuant to the CORA request sent by CCDC, see paragraph 103, CCDC received the “Customer Service Report” about this incident.

u. That Report revealed the complaint was made.

v. The Report states:

Video Request 7-19-13 bb We apologize that your recent ride with us was so challenging. Our division manager has spoken with the operator and has advised the operator of the proper procedures to follow in these circumstances. The operator will be sent for additional training to specifically target ADA policies and procedures. Thank you for bringing your concern to our attention. Beth CSR  
8-6-13

w. Ms. Reiskin did not receive this message.

78. On July 20, 2013, Ms. Carter and Mr. Stewart, who are both senior citizens with disabilities who use mobility devices, were discriminated against by RTD.

a. Ms. Carter and Mr. Stewart were waiting for the route 38 heading westbound at Clayton Street in front of the Hope Center, at approximately 11:30 a.m.

b. When the bus arrived, the bus operator allowed Ms. Carter to board the bus.

- c. Ms. Carter observed that there was a woman with what appeared to be a walker loaded with items and with a large box on the top in the securement area.
- d. Rather than ask the woman with the walker to move, Ms. Carter told Ms. Reiskin she heard the bus operator tell the woman with the walker that she did not have to move.
- e. The bus operator refused to allow Mr. Stewart to board the bus.
- f. Because they were traveling together, Ms. Carter got off the bus.
- g. The bus operator did not offer Ms. Carter or Mr. Stewart transfers.
- h. The next bus that day was not scheduled to arrive for another thirty minutes.
- i. The bus operator did not offer to call dispatch and arrange for other accommodations for Ms. Carter and Mr. Stewart.
- j. The bus started moving while the wheelchair lift was still out.
- k. Ms. Carter and Mr. Stewart contacted CCDC Executive Director Julie Reiskin.
- l. That same day, Ms. Reiskin sent a complaint to cis-mail, on behalf of Ms. Carter and Mr. Stewart.
- m. In that complaint, Ms. Reiskin provided RTD all of the information listed in this paragraph.
- n. Ms. Reiskin also stated that this was the second time this week that Ms. Carter and Mr. Stewart had been subjected to this kind of treatment by RTD.

- o. Ms. Reiskin also requested a copy of the audio and video tapes of the incident under CORA.
- p. As a result of the CORA Notice sent by CCDC, see paragraph 103, CCDC received a recording of this incident.
- q. The recording shows that Ms. Carter boarded the bus.
- r. It shows the bus operator talking to a person seated in the securement area.
- s. The audio on the recording CCDC received is inaudible.
- t. The person seated in the securement area does not move.
- u. The bus operator speaks to Ms. Carter.
- v. Ms. Carter exits the bus.
- w. As a result of the CORA request sent by CCDC, *see* paragraph 103, CCDC received the Customer Service Report for this incident.
- x. This Report states:

The video was requested and viewed at the division and the results were presented to the Division Manager for further review/action. The video shows the operator asking the passenger with walker to vacate her seat. The passenger refuses. The operator then explains the situation to the wheelchair passenger. The wheelchair passenger requests to exit the bus. Operator will be addressed on RTD/ADA procedures. Please extend an apology. Thanks. Robert - EM CSR

- y. Ms. Reiskin did not receive a written response from RTD.
- z. Mr. Stewart and Ms. Carter could have boarded the bus.
- aa. The bus operator refused Mr. Stewart transportation.
- bb. On information and belief, the bus operator did not contact

a supervisor or dispatch about this incident.

79. On that same day, July 20, 2013, at approximately 12:19 p.m., Ms. Carter and Mr. Stewart were again discriminated against by RTD.

- a. Ms. Carter and Mr. Stewart were waiting for the route 38 bus number 5016 at Clayton Street heading westbound.
- b. Ms. Carter and Mr. Stewart had been waiting at the stop for approximately 30 minutes from the time of the incident described in paragraph 78.
- c. When the bus arrived there was a passenger with a stroller in the securement area.
- d. Ms. Carter observed the bus operator say something to the passenger with the stroller who appeared to start moving from the securement area.
- e. However, the bus operator would not open the door and allow Ms. Carter or Mr. Stewart to board until the passenger with the stroller had moved from the securement area completely.
- f. Ms. Carter and Mr. Stewart were unable to board the bus for a long time after it arrived at the stop.
- g. This delay made the total time that Ms. Carter and Mr. Stewart had been waiting for the 38 bus that day in the heat nearly an hour.
- h. After moving, the passenger with the stroller was blocking the aisle, which prevented any other passengers from moving or using the front doors of the bus.

- i. Ms. Carter and Mr. Stewart contacted CCDC Executive Director Julie Reiskin.
- j. That same day, Ms. Reiskin sent a complaint to cis-mail, on behalf of Ms. Carter and Mr. Stewart.
- k. In that complaint Ms. Reiskin provided RTD all of the information listed in this paragraph.
- l. Ms. Reiskin informed RTD that if either Ms. Carter or Mr. Stewart experienced health related problems because they were left to wait in the 98 degree heat, it would be due to RTD's policies.
- m. Ms. Reiskin also requested a copy of the audio and video tapes of the incident under CORA.
- n. Ms. Reiskin did not receive a response from RTD regarding this complaint.
- o. RTD did not offer to make the recording available to Ms. Reiskin.
- p. CCDC sent a CORA Notice, see paragraph 108, requesting the recording for this incident.
- q. RTD responded that the recorder failed and no recording was available.
- r. As a result of the CORA request sent by CCDC, *see* paragraph 103, CCDC received the Customer Service Report for this incident.
- s. This Report states:

The video was inoperable. However the operator did fill out an incident report at the division. This feedback was presented to the Division Manager for further review/action. Thank you, Robert- EM CSR.

t. Ms. Reiskin did not receive a written response from RTD.

80. Ms. Reiskin received numerous calls from Alice Osner, General Superintendent of Transportation, regarding RTD's changes to its policies about these issues and requesting Ms. Reiskin's input and attendance at meetings concerning the same.

81. Ms. Osner and Carolyn Conover, RTD Supervisor of Contractors, came to CCDC's offices to meet with Ms. Reiskin regarding these issues.

82. CCDC had already made its views known to RTD regarding access to the securement locations in 2012.

83. CCDC's members, including Douglas Howey, had also been addressing RTD regarding access to the securement locations in numerous meetings.

#### CCDC Member Douglas Howey

84. CCDC Member Douglas Howey is an individual with a disability who requires the use of a wheelchair.

85. Mr. Howey uses RTD as his primary means of transportation.

86. On March 21, 2013, Mr. Howey experienced discrimination by RTD.

a. Mr. Howey was waiting for the route 11 bus 5241 heading westbound from Centre Point, at approximately 1:58 p.m.

- b. Also waiting at the stop were several pedestrians, a man with a bike, another passenger who uses a mobility device, and woman with a child and stroller.
- c. When the bus arrived, the woman with the stroller boarded first.
- d. Mr. Howey observed the woman lifted up the seat in the securement location and placed her stroller in the securement location.
- e. The bus operator then told Mr. Howey and the other passenger using a mobility device that he only had room for one of them.
- f. Mr. Howey told the bus operator that disabled people have priority in the securement locations, and asked the bus operator if he could request that the woman with the stroller move.
- g. The bus operator responded that he was sorry but only one of them could get on.
- h. Mr. Howey allowed the other passenger using a mobility device to board, since the other passenger had been at the stop first.
- i. Mr. Howey again spoke with the bus operator telling him that strollers do not have priority in the securement area and that he needed to ask the woman to collapse her stroller.
- j. The bus operator responded that he had no ability to ask her to do anything and that Mr. Howey was not allowed on the bus.

- k. As Mr. Howey and the bus operator were speaking, another RTD employee who had been on the bus, badge number 20274, got off the bus with a small child.
- l. As this RTD employee was walking past Mr. Howey, she told her child that Mr. Howey was mean.
- m. The bus operator then returned to the door of the bus and informed Mr. Howey that the woman with the stroller had decided to move the stroller and Mr. Howey could board the bus.
- n. Upon information and belief, the woman decided to move stroller voluntarily, rather than because of a request from the bus operator.
- o. When Mr. Howey boarded the bus, he observed that the stroller, with child in it, was fully blocking the aisle just beyond the securement area.
- p. The bus operator did not ask the woman to clear the aisle by collapsing the stroller.
- q. Mr. Howey parked his motorized wheelchair so as to take up as little room as possible.
- r. The woman with the stroller then moved the stroller to the front of the bus, in front of the two passengers using mobility devices, blocking the accessible route from the securement locations to the accessible exit.
- s. The stroller took up the entire aisle, preventing any passengers from boarding or de-boarding from the front of the bus.

- t. Again, the bus operator did not ask the woman to clear the aisle.
- u. After complaints from other passengers, the woman with the stroller wedged the stroller in front of the other passenger using a mobility device.
- v. The stroller was still partially blocking the aisle and was wedged up against the other passenger using a mobility device's knees.
- w. The woman took her child and found a seat behind Mr. Howey, leaving the stroller unattended.
- x. Because the stroller was sticking out in the aisle, other passengers boarding and disembarking from the front could only traverse through the aisle by leaning over and bumping into Mr. Howey.
- y. At his stop, Mr. Howey could not disembark because the stroller was blocking the aisle.
- z. The bus operator still did not ask the woman to clear the aisle.
- aa. Because the bus operator took no action to assist Mr. Howey, the other passenger using a mobility device lifted the stroller onto his lap to allow Mr. Howey to de-board.
- bb. Later that day, at Mr. Howey's request, Mr. Howey's wife called the RTD Customer Service phone line to file a complaint and spoke with an RTD customer representative.
- cc. The customer service representative stated that there would not be an incident number for this call because there was no incident to report.

dd. The customer service representative also said that the bus operator had acted correctly.

ee. The customer service representative said the representative checked with a supervisor.

ff. On information and belief, the supervisor reported to the customer service representative that RTD works on a first come first serve basis in terms of who occupies wheelchair securement locations.

gg. The supervisor also reported that the bus operator did the right thing in not asking the woman with the stroller to collapse the stroller and make room for passengers who use a mobility device.

hh. On March 22, 2013, Mr. Howey sent an email to RTD Board Member Claudia Folska.

ii. In this email, Mr. Howey provided all the information contained in this paragraph.

jj. Mr. Howey also provided Ms. Folska with a link to a YouTube video Mr. Howey created as a result of the discrimination he experienced by RTD.

kk. Mr. Howey also provided in his email to Ms. Folska a transcript of the video.

ll. Mr. Howey's video contains footage of the other passenger who uses a mobility device lifting the stroller onto his lap to allow Mr. Howey to disembark.

mm. As a result of the CORA request sent by CCDC, see paragraph 103, CCDC received the Customer Service Report for this incident.

nn. The investigation text of the RTD Customer Service Report for this incident states, “video shows no evidence of the events stated in this complaint.”

oo. On March 23, 2013, Mr. Howey received an email response from Ms. Folska.

pp. Ms. Folska stated that as blind single mother she knows about the issues that Mr. Howey brought to her attention.

qq. Ms. Folska asked Mr. Howey to please give her some time to work on these issues with RTD.

87. On July 11, 2013, Mr. Howey sent a complaint to cis-mail and to Carolyn Conover, RTD Supervisor of Contractors, describing the discrimination he has experienced by RTD.

a. In this complaint, Mr. Howey described the repeated issues he has had while riding RTD with large objects or strollers in the securement area.

b. Mr. Howey stated that about 30% of the time he rides RTD, there are strollers, food baskets, large suitcases, or other large objects in the securement area or blocking the aisle.

c. Mr. Howey listed the route numbers on which he had noticed this issue as: 15L, 15, 20, 121, 6, 153, 11, 21, 0.

- d. He stated that in some of these instances the owner of the objects has left them in the securement area or blocking the aisle and taken a seat in another location on the bus.
- e. Mr. Howey stated that up until the 1990's, RTD had a policy that no large object could be brought on the bus and that strollers were an exception, but only if the child was carried and the stroller was collapsed.
- f. Mr. Howey directed RTD to his YouTube channel, [http://www.youtube.com/playlist?list=PLofXcDQbyhKSXiacP-gGbCK-8iKJKE\\_iO](http://www.youtube.com/playlist?list=PLofXcDQbyhKSXiacP-gGbCK-8iKJKE_iO), where he has posted various videos of large objects and/or strollers in the securement area or blocking the aisles of the bus.
- g. Mr. Howey stated that he believes the amount of videos he has taken demonstrates that this issue is systemic.
- h. Mr. Howey also provided a picture of a man in the securement area using a wheelchair as a shopping cart to transport groceries and other items.
- i. Mr. Howey stated that while traveling along Colfax, the bus operator repeatedly denied people who required the use of mobility devices access to the bus because the two wheelchair spots were full, but not with individuals who required the use of a mobility device.
- j. Mr. Howey ended his complaint by requesting that RTD seriously consider changing its policies and practices to support the community of passengers who use mobility devices.

k. Upon information and belief, Mr. Howey did not receive a response to these complaints.

88. On July 29, 2013, Mr. Howey experienced discrimination by RTD.

a. Mr. Howey was waiting for the route 15L heading westbound at Colfax and Aurora Court, at approximately 11:20 a.m.

b. The bus arrived, pulling in ahead of where Mr. Howey was waiting at the stop, forcing him to reposition his wheelchair to board the bus.

c. The bus operator, David, ID# 19909, told Mr. Howey that he had no room and that both wheelchair securement locations were full.

d. From the tone of finality in the bus operator's voice, Mr. Howey felt that the bus operator did not want him to board the bus because he was in a wheelchair, and that he, Mr. Howey, was forced to beg for a spot on the bus.

e. Mr. Howey asked the bus operator if the securement locations were filled with wheelchairs.

f. The bus operator responded that they were not wheelchairs but strollers.

g. The bus operator then extended the lift and allowed Mr. Howey to board the lift.

h. While Mr. Howey waited on the lift suspended in midair, the bus operator left his seat to speak to the passengers with strollers.

i. The passengers with strollers stated that neither of the strollers was capable of collapsing.

j. One of the passengers with a stroller suggested that they turn their strollers so as to take up less space in the securement area.

k. Mr. Howey informed them that this would cause them to block the aisle, preventing him from getting into position in the securement area and causing other safety concerns for all the passengers.

l. Eventually, while Mr. Howey was still waiting on the lift, suspended off the ground, one of the passengers with a stroller moved further back in the bus, behind the securement locations, but blocking the aisle for this section of the bus.

m. At Colfax and Havana, another passenger who uses a mobility device was waiting to board the bus.

n. The bus operator asked the second passenger with a stroller to move to the back of the bus.

o. After this passenger moved, both strollers were blocking the aisle to the back of the bus.

p. Another RTD bus operator, Tina #19622, happened to be a passenger on the bus.

q. Tina informed the bus operator that at least one stroller was completely blocking the aisle on the bus.

r. Upon information and belief, the bus operator did not have any further interaction with the passengers with the strollers, and the aisles remained blocked until they exited the bus.

- s. Later that day at 1:21 p.m., Mr. Howey sent a complaint to cis-mail.
- t. In that complaint, Mr. Howey provided RTD all of the information listed in this paragraph.
- u. Mr. Howey requested of RTD that he receive an apology for RTD's actions.
- v. Mr. Howey also requested that the bus operator be retrained in the ADA requirements, RTD's policy governing strollers, RTD's policy governing large objects on the bus, and customer service.
- w. Mr. Howey also requested that based on his similar experiences on other RTD routes and buses, that all RTD bus operators receive the same retraining.
- x. Mr. Howey also requested a copy of the video recording of the incident under CORA.
- y. Mr. Howey did not receive a response from RTD regarding this complaint.
- z. Mr. Howey did not receive a response about his request for the video.

89. On August 1, 2013, CCDC Member Douglas Howey, an individual with a disability who uses a mobility device, was discriminated against by RTD.

- a. Mr. Howey was waiting for the route 6 bus, number 5078F#41, at 8th and Grant Street, at approximately 5:21 p.m.
- b. There were about four or five other passengers waiting at the stop with Mr. Howey.

- c. When the bus arrived, the bus operator, Carlos, ID# 47529, allowed all of the other passengers to board the bus first.
- d. The bus operator then told Mr. Howey that the bus was full.
- e. The bus operator did not tell any of the other passengers they could not board the bus.
- f. Mr. Howey felt the bus operator was making a final statement and that if he did not respond quickly the bus operator would pull away, leaving Mr. Howey to wait for another bus.
- g. Mr. Howey asked the bus operator what he meant by the statement that the bus was full.
- h. The bus operator responded that there was no room for Mr. Howey because there were already two strollers in the securement area.
- i. Mr. Howey asked the bus operator, "So what?"
- j. The bus operator responded, "So, you cannot get on this bus."
- k. Mr. Howey stated that the securement locations were for passengers who use mobility devices.
- l. The bus operator asked Mr. Howey to wait a minute, and after a short delay lowered the lift for Mr. Howey.
- m. When Mr. Howey boarded the bus, he observed that two strollers were parked in the opposite securement area.

- n. These strollers were protruding out almost entirely into the aisle, leaving very little space in the aisle between Mr. Howey and the strollers.
- o. This forced all of the passengers who passed between the strollers and Mr. Howey to get on and off the bus to lean over Mr. Howey, hitting him with any bags they were carrying.
- p. Mr. Howey spoke to the passengers with the strollers.
- q. They told him that the bus operator never told them upon boarding that they may need to fold their strollers if a passenger who uses a mobility device was boarding the bus.
- r. Later that night at 10:04 p.m., Mr. Howey sent a complaint to cis-mail.
- s. In that complaint, Mr. Howey provided RTD all of the information listed in this paragraph.
- t. In that email complaint Mr. Howey sent to cis-mail, Mr. Howey provided a link to a video he took during the incident,  
[http://www.youtube.com/watch?v=EPbtwSoh6v8&list=PLofXcDQbyhKSXiacP-gGbCK-8iKJKE\\_iO&index=12](http://www.youtube.com/watch?v=EPbtwSoh6v8&list=PLofXcDQbyhKSXiacP-gGbCK-8iKJKE_iO&index=12).
- u. This video showed that because the bus operator allowed the two strollers to stay in the securement area, there was a very small space in the aisle in which passengers could get through.

- v. Mr. Howey's email message was also addressed to Alice Osner, Carolyn Conover, Claudia Folska, Tom Tobiassen, Carol Coe, "titlevi.coordinator@rtd-denver.com," and "angela.gates@dot.gov."
- w. Mr. Howey also informed RTD that his was the second time this week he had been discriminated against by RTD.
- x. Mr. Howey informed RTD that he had sent a similar complaint on July 29, 2013, and had not received a response from RTD.
- y. He also told RTD that he had been reporting similar incidents since February of 2013.
- z. Mr. Howey requested that RTD issue him a formal apology for discriminating against him and making him beg and argue for a ride.
- aa. Mr. Howey also requested that the bus operator be retrained in the ADA requirements, RTD's policy governing strollers, RTD's policy governing large objects on the bus, and customer service.
- bb. Mr. Howey also requested that based on his similar experiences on other RTD routes and buses, that all RTD bus operators receive the same retraining.
- cc. Mr. Howey also requested a copy of the video recording of the incident under CORA.
- dd. Mr. Howey also requested a formal written response addressing each of his requests.

ee. On August 9, 2013, Mr. Howey received a letter from RTD General Manager Phillip A. Washington.

ff. In this letter, Mr. Washington extended his apologies to Mr. Howey for his experiences on RTD.

gg. Mr. Washington informed Mr. Howey that after investigation, RTD determined that the bus operator had not followed proper procedures.

hh. Mr. Washington also informed Mr. Howey that the bus operator had been instructed on proper procedures and would receive additional training.

ii. Mr. Washington also stated the RTD was “in the process” of implementing a refresher training course for all RTD operators.

jj. Mr. Washington stated that because of the large number of RTD operators, this process would take some time.

90. On September 3, 2013, CCDC Member Douglas Howey, an individual with a disability who uses a mobility device, was discriminated against by RTD.

a. Mr. Howey was waiting for the route 6 bus, number 5068, eastbound on Lowry, at approximately 3:20 p.m.

b. Mr. Howey had been waiting at the stop for about ten minutes after having just waited on a different stationary bus with a broken lift for fifty minutes.

c. When the bus arrived, the bus operator told Mr. Howey, “I cannot get room for you.”

- d. On information and belief, there were no other wheelchairs in the securement locations, but the securement locations were occupied by a small shopping cart and a stroller.
- e. Mr. Howey asked the bus operator to try to make room for him, explaining that he has just waited on the other bus with the broken lift, in the heat, for nearly an hour.
- f. After a short delay, the bus operator allowed Mr. Howey to board the bus.
- g. The small shopping cart was blocking the aisle.
- h. Mr. Howey could not maneuver past the shopping cart to get to the securement area.
- i. Mr. Howey informed the bus operator that he could not get past the cart to the securement area.
- j. The bus operator said nothing.
- k. The owner of the cart moved it into the opposite securement area.
- l. On September 8, 2013, Mr. Howey sent a complaint to cis-mail and to RTD employees Alice Osner, Carolyn Conover, Larry Buter, and RTD Board Members Tom Tobiassen and Claudia Folska.
- m. In that complaint, Mr. Howey provided RTD all of the information listed in this paragraph.
- n. In the complaint, Mr. Howey stated that he been informed by Ms. Osner that one of the reasons why bus operators may not allow passengers who use

mobility devices to board a bus is because, “RTD will not disenfranchise the poor simply because they have large objects that they cannot get from point a to point b without public transportation.”

o. Mr. Howey informed RTD that these events do more than just prohibit him from getting to his desired location, the events profoundly confuse him and cause him a great deal of stress.

p. On September 9, 2013, Mr. Howey received an email response from Claudia Folska.

q. In her response, Ms. Folska stated:

I am so sorry this has happened to you. As you may know, we, at RTD are actively working on correcting this sort of problem. I suspect it will take some time as we have so many drivers. I am aware that intensive training of all our drivers to correct this very problem.

That being said, it doesn't make your struggle at that time any better. Thank you for taking time to let us know. Your feedback is so valuable and I appreciate your effort.

We will continue to strive to do better.

r. Later that day at 6:55 p.m., Mr. Howey responded by email to Ms. Folska.

s. Mr. Howey told Ms. Folska that the issues he has experienced go beyond driver training.

t. Mr. Howey stated that RTD’s policies regarding large objects on the buses have also led to the discrimination against him.

u. Mr. Howey stated that he himself is poor; receiving medical benefits due to his disability, and eats food from a food bank.

v. Mr. Howey also stated that the ADA does not address the right of the poor to bring large items on the bus, but it does address his necessary right as an individual with a disability who uses a mobility device to ride public transportation.

w. Mr. Howey also stated his concern over RTD's possible plans to allow bikes onto the buses, which would only increase the discrimination against him.

x. Mr. Howey also stated that while traveling on RTD, he often speaks with the bus operators.

y. From this, he has learned that many bus operators feel that because of RTD's policies regarding large objects and strollers, they are being placed in uncomfortable situations that guarantee conflict.

91. On September 10, 2013, CCDC Member Douglas Howey, an individual with a disability who uses a mobility device, was discriminated against by RTD.

a. Mr. Howey was waiting for the route 0 bus number 2153, heading northbound at Broadway and Mississippi, at approximately 3:30 p.m., in the rain.

b. When the bus arrived, the bus operator told Mr. Howey that there wasn't any room and that he, the bus operator, was late.

c. Mr. Howey asked the bus operator if there were already two passengers who use wheelchairs on board.

d. The bus operator told him, “Yes, we have two.”

e. Mr. Howey observed that it looked as if there was only one passenger using a mobility device in the securement area.

f. The other securement area was being occupied by someone sitting in the fold down seat.

g. Later that day at 4:02 p.m., Mr. Howey sent a complaint to cis-mail.

h. In that complaint, Mr. Howey provided RTD all of the information listed in this paragraph.

i. Mr. Howey also requested that RTD check and investigate whether the bus operator was telling the truth about whether the securement locations were already occupied by passengers using mobility devices.

j. Mr. Howey did not receive a response from RTD regarding this complaint.

92. Mr. Howey enrolled in and has graduated from CCDC’s Advocacy class.

93. Mr. Howey has attended numerous meetings regarding RTD transportation issues with CCDC mentors Jose Torres-Vega and Gary Van Dorn and on his own.

94. These meetings include the ADA Paratransit Advisory Committee (“APAC”), and the Denver Regional Mobility Access Council Transit and Accessibility Task Force (“DRMAC/TATF”).

95. Each of these committees convene meetings that allow interested members of the public to provide input regarding disability related and access issues about RTD.

96. Routinely, at these meetings, Mr. Howey has explained his concerns regarding RTD's failure to ensure access to the securement locations on buses for passengers who use mobility devices.

97. At the August 7, 2013 meeting of the DRMAC/TATF, Mr. Howey provided the attendees with a proposed policy entitled "RTD Stroller Policy and Guidelines."

- a. Mr. Howey's policy, *inter alia*, provided a definition of "large objects" that RTD should prohibit from being brought on its buses.
- b. Mr. Howey's policy also provided the following:

**Maximum Stroller Size, Collapsing and Stowage**

Maximum size for an uncollapsed stroller is 48" long by 36" wide. The dimensions are measured the front to the rear handles and include any objects protruding from the stroller. A stroller must be equipped with an operable brake and **must** be capable of being stowed **out of the aisle**. Strollers that are not being occupied by children **must be collapsed and stowed** and never block the aisle. If a bus or train is full (90% of seats occupied), all strollers must be collapsed and stowed at the rear of the bus and never block the aisle. Stroller owner and stroller must never be separated.<sup>4</sup>

**Using priority seating and securement areas**

If the stroller fits within size requirements, then passengers may potentially occupy the priority seating and wheelchair securement area. However, if a disabled or elderly passenger boards, or the bus is full (90% of seats occupied), or may become full, then stroller owners **must move** to the rear of the bus or train, and **stow away the stroller** and never block the aisle. Again, stroller owner and stroller must never be separated. Individuals with disabilities, who cannot carry their children, and children with disabilities, who need to remain in a stroller, may remain seated in the priority seating and wheelchair securement area. Please respect the perspective listed above. (Emphasis in original.)

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<sup>4</sup> RTD's stroller policy on its website lists the same dimensions. *See* paragraph 20.

98. Mr. Howey attended the September 4, 2013 meeting of the DRMAC/TATF.
- a. The last ten minutes of this meeting were devoted to discussions regarding RTD serving individuals with disabilities that require the use of mobility devices.
  - b. Mr. Howey raised his concern that RTD allows non-disabled individuals with large objects to use the securement locations without requesting that they move from those areas when a passenger who uses a mobility device requires the use of the securement area.
  - c. Mr. Howey heard Alice Osner say, “RTD is not going to disenfranchise poor people simply because they have a large object,” and “RTD is the only way that a poor person can get their stuff down the road.”
  - d. At this meeting Mr. Howey said that bus operators do not notify passengers who bring large objects on the bus at the time they board that they might need to move with their large objects to the rear of the bus.
  - e. Mr. Howey heard Ms. Osner respond, “Of course not! We are not going to tell people they cannot get on the bus! And you should know that there are many strollers that cannot collapse!”
  - f. In a letter dated September 10, 2013, sent by email, Ms. Osner responded to Mr. Howey’s comments.
  - g. Ms. Osner stated:

I’m assuming you are referencing a conversation at the RTD ADA Task Force meeting that you cite as justification for your statement “I was told by RTD this

week the reason behind the driver expecting that I in my wheelchair NOT board his bus: RTD will not disenfranchise the poor simply because they have large objects that they cannot get from point a to point b without public transportation.”

f. Ms. Osner stated that Mr. Howey’s characterization of the conversation was “taken out of context[.]”

g. Ms. Osner also stated that Mr. Howey’s comments were not an accurate account of the conversation.

99. At each of the Transit Alliance East Corridor Citizens’ Academy that convened Saturdays in September 7, 14, 21, and 28 of 2013, Mr. Howey raised issues of the lack of access to securement locations for people with disabilities who use wheelchairs and mobility devices with RTD employees and with RTD Board members.

100. At the CDOT State Coordinating Council, September 17, 2013, Mr. Howey raised issues about disability and public transit.

101. At each of the RTD Board Meetings and Committee Meetings most every Tuesday night from May to August of 2013, Mr. Howey attended and raised issues of the lack of access to securement locations for people with disabilities who use wheelchairs and mobility devices.

CCDC Member Marilyn Paulson

102. CCDC Member Marilyn Paulson is a person with a disability who uses a mobility device.

a. Ms. Paulson experienced discrimination by RTD.

- b. On information and belief, on June 27, 2013, Ms. Paulson was waiting for the route 3 bus.
- c. Ms. Paulson had already been waiting for over an hour when the bus arrived.
- d. When the bus arrived, the bus operator informed Ms. Paulson that there was no room on the bus and she would have to wait for another bus.
- e. Ms. Paulson could see that there were strollers in the securement area.
- f. Ms. Paulson informed the bus operator that she had already been waiting for an hour.
- g. The bus operator responded that all he could do was call dispatch after he left.
- h. Ms. Paulson was not offered a transfer or any other travel accommodations by RTD.
- i. While Ms. Paulson was waiting for the next bus, she called the RTD Customer Service Line and complained regarding the incident described in this paragraph.
- j. Ms. Paulson did not receive a response from RTD.

Responses to Colorado Open Records Act Request

103. As a result of the complaints made by CCDC members to RTD, on July 23, 2013, CCDC sent RTD a request for records pursuant to CORA.

104. In this request, CCDC requested, *inter alia*, copies of “all records related to complaints received regarding wheelchair locations and securement locations being occupied by anything other than a passenger using a wheelchair or other mobility aid” from the past five years.

105. On August 13, 2013, CCDC received from RTD 184 “Customer Service Reports” in response to the CORA request.

106. On August 21, 2013, CCDC received from RTD an additional twenty-one “Customer Service Reports” in response to the CORA request.

107. One hundred of these Customer Service Reports described instances of RTD denying passengers who use mobility devices access to the bus because of strollers or other large objects located in the securement area.

108. Because CCDC believed some of RTD’s responses were not sufficient under CORA and because RTD had failed to provide recordings requested by CCDC members under the CORA as described in this Complaint, on September 24, 2013, CCDC sent RTD a Notice Regarding Application to Show Cause Pursuant to Colo. Rev. Stat. § 24-72-204(5) (“Notice”).

109. As a result of this Notice, RTD sent CCDC, *inter alia*, some of the recordings requested by CCDC members under CORA.

110. Of the six recordings RTD provided in response to CCDC members’ requests, RTD reported that three of the recordings were inoperable.

111. RTD is very aware of the problems its securement area policies or lack of enforcement have caused, but they have not taken adequate or appropriate steps to address the issue.

CCDC's Experiences Demonstrate RTD's Failure to Provide Equal Access to Passengers Who Use Mobility Devices

112. Although RTD claims it has created and implemented policies, practices, and procedures to ensure equal access to its buses for passengers who use mobility devices, as is required under the ADA and Section 504, it is clear those policies, practices, and procedures are failing.

113. As made apparent by the discriminatory treatment CCDC members who use mobility devices have experienced described herein, RTD bus operators have not been adequately trained in RTD's alleged 2007, 2010, 2012, or 2013 policies.

114. As made apparent by the discriminatory treatment CCDC members who use mobility devices have experienced described herein, RTD has not implemented properly the policies that it alleges it implemented in 2007, 2010, 2012, and 2013.

115. During the time of the complaints described herein, RTD has provided CCDC with new versions of policies it claims it will implement or has implemented to ensure passengers who use mobility devices will have access to the securement locations.

116. RTD's purported new policies also fail to ensure passengers who use mobility devices will have access to the securement locations.

117. CCDC has conducted research regarding how other transportation providers address the issue of ensuring passengers who use mobility devices will have access to the securement locations.

118. Other transportation providers ensure passengers who use mobility devices will have access to the securement areas. For example:

- a. Washington Metropolitan Area Transit Authority: “If you have a stroller, take your child out of the stroller, fold the stroller, and if possible, stow the stroller out of the way.”<sup>5</sup>
- b. Lewiston-Auburn Transit Committee: “Fold strollers and carriages before boarding and do not block the aisle with personal items.”<sup>6</sup>
- c. New York Metropolitan Transit Authority: “When traveling with an infant and a baby stroller, the stroller should be folded before entering the bus and should remain folded for the duration of the trip.”<sup>7</sup>
- d. City of Madison Metro Transit: “For the safety of all passengers, including children in strollers, please remove child and fold strollers during the ride.”<sup>8</sup>

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5 <http://www.wmata.com/bus/busrules.cfm>

6 <http://www.avcog.org/index.aspx?NID=913>

7 [http://www.mta.info/nyct/bus/howto\\_bus.htm](http://www.mta.info/nyct/bus/howto_bus.htm)

8 <http://www.cityofmadison.com/metro/strollers/index.cfm>

- e. City of Madison Metro Transit: “Strollers should not block aisles and must be moved to make room for seniors and those with disabilities.”
- f. City of Madison Metro Transit: “If a stroller is in a wheelchair securement area and a wheelchair passenger boards, your driver will ask to you fold and store your stroller out of the aisle.”
- g. City of Madison Metro Transit: “Passengers unwilling to fold their strollers may not be allowed to ride.”
- h. Los Angeles County Metropolitan Transit Authority: “Commercial or large size carts, or dollies and strollers are prohibited on Metro vehicles, unless collapsed.”<sup>9</sup>
- i. Los Angeles County Metropolitan Transit Authority: “During crowded conditions or peak hours, remove children from strollers and materials from carts, and collapse, or wait for the next Metro vehicle that has room for the cart or stroller.”
- j. San Francisco Municipal Transportation Agency: “Strollers may not block the wheelchair securement locations or interfere with passenger movement.”<sup>10</sup>

**FIRST CLAIM FOR RELIEF**  
(Violation of the Americans with Disabilities Act)

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<sup>9</sup> [http://media.metro.net/about\\_us/ethics/images/Customer-Code-of-Conduct-rev.pdf](http://media.metro.net/about_us/ethics/images/Customer-Code-of-Conduct-rev.pdf)

<sup>10</sup> <http://sfmta.com/getting-around/transit/how-ride/how-ride-buses>

119. Plaintiff re-alleges and incorporates by reference the allegations set forth in paragraphs 1 - 118 above as if fully set forth herein.

120. Title II of the ADA prohibits public entities from denying, on the basis of disability, the benefits of the services, programs, or activities of the public entity, and from subjecting persons with disabilities to discrimination. 42 U.S.C. § 12131 *et seq.*; 28 C.F.R. Part 35.

121. Further, it is considered discrimination for purposes of the ADA “for a public entity to fail to operate a designated public transportation program . . . so that, when viewed in the entirety, the program or activity is readily accessible to and usable by individuals with disabilities.” 42 U.S.C. § 12148; 49 C.F.R. Parts 37 and 38.

122. Defendant has violated the ADA by failing to make its public transportation system readily accessible to and usable by Plaintiff’s members with disabilities who use mobility devices.

123. Defendant has violated the ADA by denying Plaintiff’s members and other individuals with disabilities, including without limitation CCDC staff, the benefits of its services, programs, and activities, as more fully set forth above.

124. Defendant is a public entity under the ADA. 42 U.S.C. § 12131(1)(B) (any department, agency, special purpose district, or other instrumentality of a State or States or local government).

125. Title II of the ADA addresses public transportation provided by public entities. 42 U.S.C. § 12161, *et seq.*, and the statute empowers the Secretary of Transportation to issue regulations necessary to carry out the statute. 42 U.S.C. § 12164.

126. Those regulations are found at 49 C.F.R., pts. 37 and 38.

127. Public entities shall not discriminate against individuals with disabilities who use mobility devices in connection with provision of transportation service. 49 C.F.R. § 37.5(a).

128. RTD has prevented passengers with disabilities who use mobility devices from using its buses.

129. RTD has subjected passengers with disabilities who use mobility devices using its buses to discriminatory treatment.

130. Pursuant to 49 C.F.R. § 37.167(j)(1):

When an individual with a disability enters a vehicle, and because of a disability, the individual needs to sit in a seat or occupy a wheelchair securement location, the entity shall ask the following persons to move in order to allow the individual with a disability to occupy the seat or securement location:

(i) Individuals, except other individuals with a disability or elderly persons, sitting in a location designated as priority seating for elderly and handicapped persons (or other seat as necessary);

(ii) Individuals sitting in or a fold-down or other movable seat in a wheelchair securement location.

(2) This requirement applies to light rail, rapid rail, and commuter rail systems only to the extent practicable.

(3) The entity is not required to enforce the request that other passengers move from priority seating areas or wheelchair securement locations.

(4) In all signage designating priority seating areas for elderly persons and

persons with disabilities, or designating wheelchair securement areas, the entity shall include language informing persons sitting in these locations that they should comply with requests by transit provider personnel to vacate their seats to make room for an individual with a disability. This requirement applies to all fixed route vehicles when they are acquired by the entity or to new or replacement signage in the entity's existing fixed route vehicles.

131. RTD has failed to ensure that its bus operators ask persons to move from the securement locations.

132. RTD bus operators have told passengers who have strollers occupying the securement locations that they are not required to move when a passenger with a mobility device attempted to board the bus without asking the person with the stroller to move.

133. Passengers who require the use of mobility devices have had to engage in conversation with bus operators and request that they inspect the securement locations in order to gain access to the bus.

134. RTD “shall ensure that personnel are trained to proficiency, as appropriate to their duties, so that they operate vehicles and equipment safely and properly assist and treat individuals with disabilities who use the service in a respectful and courteous way[.]” 49 C.F.R. § 37.173.

135. RTD has failed to ensure its bus operators are trained to proficiency to ensure passengers with disabilities who use mobility devices have access to the securement locations.

136. RTD has failed to ensure its bus operators are trained to proficiency to treat individuals with disabilities who use the service in a respectful and courteous way.

137. According to the Department of Transportation’s interpretive guidance to Part 37 of Title 49, Code of Federal Regulations,

if a wheelchair or its attachments extends beyond the 30 x 48 inch footprint found in part 38’s design standards but fits onto the lift and into the wheelchair securement area of the vehicle, the transportation provider would have to accommodate the wheelchair. However, if such a wheelchair was of a size that would block an aisle and interfere with the safe evacuation of passengers in an emergency, the operator could deny carriage of that wheelchair. 49 C.F.R. § 37, app. D.

138. RTD’S policies concerning strollers and other items that may be brought on the bus permit them to be placed in the aisles.

139. RTD policies permit passengers to bring items on the bus that block access to the aisles.

140. RTD refuses to allow passengers who use wheelchairs to block aisles on the bus.

141. “When a public entity enters into a contractual or other arrangement (including, but not limited to, a grant, subgrant, or cooperative agreement) or relationship with a private entity to operate fixed route or demand responsive service, the public entity shall ensure that the private entity meets the requirements of this part that would apply to the public entity if the public entity itself provided the service.” 49 C.F.R. § 37.23(a).

142. RTD contracts with private entities to provide transportation.

143. RTD fails to ensure those private entities comply with the ADA.

144. RTD fails to ensure that those private entities provide access to the securement locations for individuals who use mobility devices.

145. In engaging in the conduct described above, RTD has either intentionally discriminated against Plaintiff or has been deliberately indifferent to the strong likelihood that pursuit of its policies would result in violations of federally protected rights.

146. Defendant's violations of the ADA have harmed and will continue to harm Plaintiff in the future.

**SECOND CLAIM FOR RELIEF**  
(Violation of the Rehabilitation Act of 1973)

147. Plaintiff re-alleges and incorporates by reference the allegations set forth in paragraphs 1 – 146 above as if fully set forth herein.

148. The Rehabilitation Act prohibits recipients of federal Financial assistance from denying to persons with disabilities, on the basis of disability, the benefits provided by the recipient or from subjecting persons with disabilities to discrimination. 29 U.S.C. § 794; 49 C.F.R., pt. 27.

149. Defendant receives federal financial assistance.

150. Under Section 504, a recipient of federal financial assistance, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability:

- a. Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;
- b. Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not substantially equal to that

afforded persons who are not handicapped;

c. Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as persons who are not handicapped;

d. Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

151. Defendant has violated the Rehabilitation Act by denying CCDC members with disabilities who use mobility devices equal access to its public transportation system, as more fully set forth above.

152. Recipients of federal financial assistance covered by Section 504 “shall comply with all applicable requirements” of Title II of the ADA and its implementing regulations. 49 C.F.R. § 27.19(a).

153. RTD has violated Section 504 by violating Title II of the ADA as described in this Complaint.

154. In engaging in the conduct described above, Defendant has either intentionally discriminated against CCDC members with disabilities who use mobility devices or been deliberately indifferent to the strong likelihood that pursuit of its policies would result in violations of federally protected rights.

155. Defendant's violations of the Rehabilitation Act have harmed and will continue to harm Plaintiff in the future.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully prays:

1. That this Court assume jurisdiction.
2. That this Court declare Defendant to be in violation of the ADA and the Rehabilitation Act.
3. That this Court issue an injunction ordering Defendant to comply with the ADA and the Rehabilitation Act by making its public transportation system readily accessible to and usable by CCDC members with disabilities who use mobility devices.
4. That this Court award compensatory damages to Plaintiff.
5. That this Court award Plaintiff's reasonable attorneys' fees and costs.
6. That this Court award such additional or alternative relief as may be just, proper and equitable.

**JURY DEMAND:** Plaintiff demands a jury on all issues which can be heard by a jury.

Dated: October 10, 2013

Respectfully submitted,

/s/ Kevin W. Williams

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