

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.: _____

COLORADO CROSS-DISABILITY COALITION,
PETER KURLANDER, on behalf of himself and as parent and next friend of JAX
KURLANDER, and
KIRSTIN KURLANDER, on behalf of herself and as parent and next friend of JAX
KURLANDER,

Plaintiffs,

v.

BEHAVIOR SERVICES OF THE ROCKIES,

Defendant.

COMPLAINT

Plaintiffs Colorado Cross-Disability Coalition (“CCDC”), Peter Kurlander, on behalf of himself and as parent and next friend of Jax Kurlander, and Kirstin Kurlander, on behalf of herself and as parent and next friend of Jax Kurlander, by and through undersigned counsel, hereby bring this Complaint against Behavior Services of the Rockies (“BSOTR”) for violations of Title III of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12181, *et seq.*, Section 504 of the Rehabilitation Act (“Section 504”), 29 U.S.C. § 794 and the Colorado Anti-Discrimination Act (“CADA”), Colo. Rev. Stat. §§ 24-34-601, *et seq.* and 801 *et seq.*

Introduction

1. Section 504 was passed in 1973 to ensure that any recipient of federal financial assistance is prohibited from discriminating against any individual on the basis of disability.

Most medical providers, like BSOTR, are recipients of federal financial assistance.

2. On July 26, 1990, nearly twenty-five years ago, the ADA was passed, establishing the most important civil rights law for people with disabilities in the nation's history.

3. The CADA has been in existence even longer than the ADA and Section 504. It requires that places of public accommodation, which include entities like Defendant's business, not discriminate against individuals with disabilities, and it allows for the recovery of monetary damages when discrimination is found. Just last year, the CADA was amended to allow up to \$3,500.00 in statutory penalties for findings of discrimination.

4. The ADA was passed to ensure people with disabilities are not discriminated against by employers, public entities, or public accommodations, which include medical and behavioral health service providers.

5. One of the purposes of the ADA is ensuring that deaf or hard-of-hearing individuals receive qualified sign language interpreter services or other appropriate auxiliary aids and services to ensure effective communication.

6. Not only are places of public accommodation like behavioral health service providers required to provide such services to individuals who are deaf, but they are also required to provide qualified sign language interpreters, when appropriate, to the deaf companions and family members of individuals when those individuals' participation is necessary to the service being provided.

7. As set forth more fully below, Defendant discriminated against Kirstin Kurlander on the basis of her disability, deafness, by refusing to provide appropriate auxiliary aids and services necessary to ensure effective communication -- in this case a qualified sign language

interpreter -- when Kirstin Kurlander is the mother of a boy with autism who was receiving services from the Defendant.

8. Effective communication with the parent is critical to formulate a plan for providing services to a minor child.

9. Effective communication with the parent is critical to formulate a plan for providing services to a minor child with a disability.

10. Plaintiffs seek a court order compelling Defendant to comply with the ADA, Section 504 and CADA, compensatory services to make up for the loss of time when Jax should have been receiving services but wasn't, monetary damages and the recovery of their reasonable attorneys' fees and costs as permitted by these statutes.

Jurisdiction and Venue

11. This Court has jurisdiction over the federal claims in this action pursuant to 28 U.S.C. §§ 1331 and 1343.

12. This Court has supplemental jurisdiction over the state claims in this action pursuant to 28 U.S.C. § 1367.

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

Parties

14. Plaintiff Peter Kurlander is and was at all times material hereto a resident of Colorado.

15. Plaintiff Peter Kurlander is the husband of Plaintiff Kirstin Kurlander and the father of Jax Kurlander.

16. Plaintiff Peter Kurlander is a CCDC member.

17. Plaintiff Kirstin Kurlander is and was at all times material hereto a resident of Colorado.

18. Plaintiff Kirstin Kurlander is the wife of Plaintiff Peter Kurlander, and the mother of Jax Kurlander.

19. Plaintiff Kirstin Kurlander is deaf.

20. Plaintiff Kirstin Kurlander is a CCDC member.

21. Plaintiff Jax Kurlander is a minor and is the son of Plaintiffs Peter and Kirstin Kurlander.

22. Plaintiff Jax Kurlander is and was at all times material hereto a resident of Colorado.

23. Plaintiff Jax Kurlander is a qualified individual with a disability for services from BSOTR.

24. Plaintiff CCDC is a non-profit, disability rights advocacy organization. It is a membership organization composed of members who have disabilities and their friends and allies.

25. BSOTR is a Colorado corporation with its principal place of business at 1406 Centaur Circle, Lafayette, Colorado 80026.

Facts

26. Plaintiff Kirstin Kurlander is deaf and communicates primarily in American Sign Language (“ASL”).

27. ASL is a separate and distinct language from English, which uses its own unique phrases, descriptions, syntax and grammatical rules.

28. Plaintiff Jax Kurlander has been diagnosed as having autism spectrum disorder.

29. As a result, Plaintiff Jax Kurlander is substantially limited in several major life activities.

30. Plaintiff Jax Kurlander receives Medicaid.

31. Plaintiff Jax Kurlander is qualified for Medicaid-funded behavioral services through the Home and Community-Based Services Children's Extensive Support ("HCBS-CES") waiver.

32. In or about July of 2014, Jax Kurlander's parents, Plaintiffs Peter and Kirstin Kurlander, began working with their Community Centered Board ("CCB"), Developmental Pathways, to find services for Plaintiff Jax Kurlander.

33. CCBs are private non-profit organizations designated in Colorado statute as the single entry point into the long-term service and support system for persons with developmental disabilities. The State contracts with twenty CCBs to deliver community-based services. Each CCB has a non-overlapping geographic service region of one to ten counties. CCBs are responsible for case management services, including intake, eligibility determination, service plan development, arrangement for services, delivery of services (either directly and/or through purchase), monitoring, and many other functions. Additionally, CCBs are responsible for assessing service needs and developing plans to meet those needs of their local service area.

34. In August of 2014, Developmental Pathways referred the Kurlanders to BSOTR to obtain services for Jax Kurlander.

35. In August of 2014, Developmental Pathways entered into a contract with BSOTR to provide behavioral health services to Jax Kurlander.

36. At the time of the filing of this lawsuit, according to its website, Defendant BSOTR “is a group of dedicated behavior analytic practitioners located in Colorado. We strive to deliver the best quality behavior supports to improve the independence, inclusion, and overall quality of life for our clients by providing evidence-based, pragmatic treatment, consultation and teaching based on the principles of Applied Behavior Analysis (ABA). Our goal is to transfer and teach skills to clients and caregivers, and to develop top-quality practitioners to expand the availability of high quality services throughout Colorado.”

37. As of the date of this Complaint, the BSOTR website claims it serves “over 750 extremely satisfied clients and families!”

38. As of the date of this Complaint, the BSOTR claims to serve three counties, to serve 973 clients and to have 21 funding streams.

39. As of the date of this Complaint, the BSOTR website shows that it has 47 staff members.

40. Beginning in August of 2014, BSOTR began providing assessment services in the Kurlander home, sending therapists to work with Jax Kurlander.

41. A Functional Behavior Assessment dated August 29, 2014, prepared by a BSOTR employee and therapist, Bridget McKenna, in a section called “Special Considerations,” states that Jax’s mother is deaf and communicated with Jax using sign language, although the family wanted Jax to verbalize as well.

42. Both verbally and by email, Kirstin and Peter Kurlander requested of BSOTR staff that sign language interpreters be provided for some sessions.

43. Specifically, in an email dated September 11, 2014, Kirstin Kurlander emailed

Bridget McKenna, a BSOTR therapist, requesting a sign language interpreter for a meeting “next week when we go over the plan and discuss our goals in detail. Can you arrange this?”

44. In an email message from Bridget McKenna back to Kirstin Kurlander, Ms. McKenna said, “Finally, I have followed up with my supervisor regarding a translator and we are looking into it now. I will keep you posted!!”

45. A meeting was scheduled with the BSOTR therapist and the Kurlanders for September 19, 2014. This was the meeting for which Mrs. Kurlander requested a sign language interpreter.

46. On September 18, 2014, Bridget McKenna emailed Kirstin Kurlander and let her know, “My supervisors and Kylan are currently trying to work out a way to have a translator, but it does not look like we can have one in the home tomorrow.”

47. In an email message from Peter Kurlander to Bridget McKenna dated September 18, 2014, Mr. Kurlander said the following: “If an interpreter can not be provided tomorrow, I would like to reschedule the meeting to a time where an interpreter will be available. Normally a week should be plenty of notice for any interpreting agency. If you need agency suggestions let me know and I can provide them. As far as billing goes, the interpreter fees should not count towards our CES waiver funds. If there is any question about that please let me know, but our services should not be reduced in any way based on our need for an interpreter. I’ll look forward to getting some alternative dates from you.”

48. On September 19, 2014, Bridget McKenna emailed Peter Kurlander with a copy to Kirstin Kurlander, requesting that they send some sign language interpreting agency suggestions.

49. On September 19, 2014, Peter Kurlander sent Bridget McKenna a list of interpreting agency suggestions.

50. On September 26, 2014, Bridget McKenna emailed Kirstin Kurlander and Peter Kurlander, saying the following, “I am super sorry to have to tell you this but after speaking with my supervisor, we are unfortunately unable to provide an interpreter. I am so sorry that it got this far without us communicating around the need for an interpreter earlier. I am awaiting information from one of my coworkers, who is not fluent but proficient in sign, to see if she is available to come onto the case. However, I am not sure what her schedule looks like and I have yet to hear back from her as she's out on vacation. Given this error we will gladly look and find a company that can meet your needs and provide an interpreter or somebody who is already fluent. Please let me know how you would like to proceed. Again, I apologize for the huge inconvenience this causes.”

51. On September 26, 2014, Kirstin Kurlander emailed Kylan Pinkelman, the Kurlanders’ caseworker with Developmental Pathways, saying that she was “shocked” that BSOTR denied an interpreter and informing Ms. Pinkelman that doing so was a “direct violation of federal and state law[.]”

52. By email dated September 29, 2014, Kylan Pinkelman informed the Kurlanders that she would follow up with her supervisor regarding BSOTR not providing an interpreter. Ms. Pinkelman informed the Kurlanders that she would send out a new request for proposals to other behavioral services providers in the meantime. In a separate email from Ms. Pinkelman to the Kurlanders dated September 30, 2014, Ms. Pinkelman informed the Kurlanders that she had sent out another request for proposals. In that same email, she let the Kurlanders know that BSOTR

would be sending out a termination letter and 15 day notice and that the Kurlanders have the right to appeal the decision to terminate services.

53. On October 2, 2014, Bridget McKenna sent Kirstin Kurlander and Peter Kurlander an email saying the following: “Attached you will find a notice of termination, dispute resolution instructions, and a discharge summary for Jax. After speaking with the co-worker I mentioned last weekend in an email, it appears that she is available, at best, every other week. Additionally, she states that while she can get by with signs and hold a basic conversation with others who are patient, she is not proficient enough to interpret for others. Unfortunately, we do not have another lead or senior fluent in sign and are unable to provide an interpreter. We will do everything in our power to identify another company that can provide you with this. I apologize for the huge inconvenience this causes and should you want, we will gladly work with you all in whatever capacity we can, without the use of an interpreter, until 11/1 (or thereafter, if you should wish). Please let me know how you would like to proceed and if there is anything else you need.”

54. On October 2, 2014, Peter Kurlander emailed Bridget McKenna the following: “Behavior Services of the Rockies is in clear violation of the American Disabilities Act (ADA). If you do not have in-house interpreters, there are many agencies that can provide such services for your company at your cost. We will be requesting that Developmental Pathway remove Behavior Services of the Rockies as an approved vendor as we believe they have a strict non-discrimination policy. In addition, we are debating whether to pursue legal action against Behavior Services of the Rockies for blatant violation of the ADA and state disability laws. It’s quite disappointing to see a company which works with children with disabilities to be so

completely unaware of their obligations to provide equal access for their clients. To save some time, please let us know who your legal counsel is.”

55. BSOTR did send the Kurlanders a Notice of Termination of Program Services and Notice of Appeal Rights dated October 2, 2014. The termination notice said it would be effective on November 4, 2014.

56. In a section of the October 2, 2014 termination letter entitled “Basis for Decision,” the letter said, “We are terminating your Behavioral Services with BSOTR, due to lack of necessary communication supports being provided, (specifically, a sign language interpreter). We will do everything we can to assist you in finding another provider who may be able to provide these necessary communication supports.. [sic]”

57. In an email message from Travis Blevins to Peter Kurlander dated October 3, 2014, Mr. Blevins said the following: “Hello Peter, Communication supports indicated in the ip are to be provided by the community centered board. Not the individual behavioral PASA’s. This necessary support was not provided. As soon as this was not provided we are seeking to transfer services to a provider who can support your needs. All correspondence from all of my staff will now cease as you seem to wish to litigate. You can have your attorney mail all further communication to our office. It is a shame jax [sic] will not receive support transitioning to another provider. I hope he does not get lost in your attempts to litigate. I and Bsotr are completely aware of equal access that is why we are terminating services. Best regards, Travis
Travis Blevins, MS, BCBA 303-709-9292[.]”

58. BSOTR specifically denied Kirstin Kurlander’s request for a qualified sign language interpreter for a meeting to discuss the details of her son’s behavioral health

assessment.

59. BSOTR denied Kirstin Kurlander's request for a qualified sign language interpreter and terminated her son's services specifically because BSOTR refused to arrange for and pay for a qualified sign language interpreter for Mrs. Kurlander.

60. BSOTR relied on family members to interpret for Mrs. Kurlander.

61. BSOTR attempted to rely on unqualified staff to interpret for Mrs. Kurlander.

62. After BSOTR terminated Jax Kurlander's services, the Kurlanders requested their records from BSOTR.

63. The Kurlanders would use the services of BSOTR if BSOTR provided qualified sign language interpreters as needed for meetings with Mrs. Kurlander.

64. The Kurlander's were pleased with the services of the therapist and the fact that BSOTR provided services in the home.

65. 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 who are deaf and their companions and family members who are deaf have access to qualified sign language interpreters when needed for effective communication.

66. 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 BSOTR's violations of the ADA, Section 504 and the CADA.

67. Defendant's actions have caused and continue to cause distinct, palpable, and

perceptible injury to CCDC.

68. BSOTR'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.

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

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

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

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

First Claim for Relief

(Violations of Title III of the ADA, 42 U.S.C. § 12181 *et seq.*)

73. Title III of the ADA applies to places of public accommodation, which specifically includes the "professional office of a health care provider . . . or other service establishment[.]" 42 U.S.C. § 12181(7)(F).

74. BSOTR is a health care provider and, therefore, is a place of public accommodation. *Id.*

75. Mrs. Kurlander is substantially limited in the major life activity of hearing and, therefore, is an individual with a disability. *See* 42 U.S.C. § 12102.

76. Mr. Kurlander and Jax Kurlanders are individuals BSOTR knew were related to and associated with Mrs. Kurlander.

77. Under Title III, “[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.” 42 U.S.C. § 12182(a).

78. Specific to the provision of qualified sign language interpreters:

[D]iscrimination includes . . . a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden[.]

42 U.S.C. § 12182(b)(2)(A)(iii).

79. Pursuant to the statutory mandate, the United States Department of Justice (“DOJ”) has promulgated regulations implementing Title III of the ADA. 42 U.S.C. 12186(b); 28 C.F.R. pt. 36.

80. Pursuant to the DOJ regulations, “[a] public accommodation shall furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities.” 28 C.F.R. § 36.303(c)(1).

81. This includes an obligation to provide effective communication to companions who are individuals with disabilities. *Id.*

82. “For purposes of this section, ‘companion’ means a family member, friend, or associate of an individual seeking access to, or participating in, the goods, services, facilities, privileges, advantages, or accommodations of a public accommodation, who, along with such

individual, is an appropriate person with whom the public accommodation should communicate.” 28 C.F.R. § 36.303(c)(1)(i).

83. The regulations further provide that “[a] public accommodation shall not require an individual with a disability to bring another individual to interpret for him or her.” 28 C.F.R. § 36.303(c)(2).

84. The regulations continue:

The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place. A public accommodation should consult with individuals with disabilities whenever possible to determine what type of auxiliary aid is needed to ensure effective communication, but the ultimate decision as to what measures to take rests with the public accommodation, provided that the method chosen results in effective communication. In order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.

28 C.F.R. § 36.303(c)(1)(ii) (emphasis added).

85. As the DOJ commentary to the regulations explains, “[t]he guiding criterion is that the public accommodation must provide appropriate auxiliary aids and services to ensure effective communication with the individual.” 28 C.F.R. pt. 36, app. A (emphasis added).

86. With specific reference to medical communications and consultations, the DOJ regulations counsel that “interpreters should be used when the [communication] involves more complexity, such as in communication of medical history or diagnoses, in conversations about medical procedures and treatment decisions, or in communication of instructions for care at home or elsewhere.” *Id.*

87. BSOTR refused to provide Mrs. Kurlander with appropriate auxiliary aids and services, including a qualified sign language interpreter, for meetings related to her son's behavioral health assessment.

88. BSOTR refused to provide Mrs. Kurlander with any auxiliary aids and services, including a qualified sign language interpreter, for meetings related to her son's behavioral health assessment.

89. Instead, BSOTR terminated Jax Kurlander's services as a direct result of Mrs. Kurlander requesting a qualified sign language interpreter for the meeting.

90. Because of BSOTR's refusal to provide appropriate auxiliary aids and services to Mrs. Kurlander, Jax Kurlander has been denied services to which he is entitled and has been delayed in receiving those services.

91. Because of BSOTR's refusal to provide appropriate auxiliary aids and services to Mrs. Kurlander, Mrs. Kurlander has been denied the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of BSOTR.

92. BSOTR has discriminated against Mrs. Kurlander on the basis of her disability.

93. Mrs. Kurlander has been, and will continue to be, injured, damaged and aggrieved by BSOTR's discrimination.

94. In the absence of the injunction requested herein, BSOTR will continue to discriminate against Mrs. Kurlander on the basis of disability in violation of Title III of the ADA and its implementing regulations.

Second Claim for Relief.
(Violations of the ADA, 42 U.S.C. §12203)

95. Plaintiffs reallege and incorporate by reference the remainder of the allegations set forth in this Complaint as fully set forth herein.

96. Under the ADA's Prohibition against retaliation and coercion, "[n]o person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter." 42 U.S.C. § 12203(a).

97. BSOTR terminated Jax Kurlander's services specifically because Kirstin Kurlander requested an auxiliary aid or service for a meeting, an act that is specifically required under the ADA.

98. BSOTR informed the Kurlanders that all communication with its office would cease and refused to provide the Kurlanders any information until they retained a lawyer.,specifically because the Kurlanders informed BSOTR that they might seek to enforce their rights under the ADA.

99. Under the ADA, "[i]t shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this chapter." 42 U.S.C. § 12203(b).

100. BSOTR interfered with Jax Kurlander's right to receive services because Mrs. Kurlander requested an interpreter for a meeting, which was her right under the ADA.

101. "The remedies and procedures available under sections 12117, 12133, and 12188 of this title shall be available to aggrieved persons for violations of subsections (a) and (b) of this

section, with respect to subchapter I, subchapter II and subchapter III of this chapter, respectively.” 42 U.S.C. § 12203(c).

Third Claim for Relief
(Violation of Section 504, 29 U.S.C. § 794)

102. Plaintiffs reallege and incorporate by reference the remainder of the allegations set forth in this Complaint as fully set forth herein.

103. Defendant BSOTR receives federal financial assistance within the meaning of 29 U.S.C. § 794(a) *et seq.* and its implementing regulations.

104. Under section 504, “[n]o otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance[.]” 29 U.S.C. § 794(a).

105. Section 504 applies to companions and family members of individuals who are deaf and require the use of sign language interpreters. *Henrietta D. v. Bloomberg*, 331 F.3d 261, 275 (2d Cir. 2003) (“Without the interpreter, deaf parents would not have meaningful access to the service provided to non-deaf parents.”) (citing *Rothschild v. Grottenthaler*, 907 F.2d 286, 291 (2d Cir. 1990)); *Aikins v. St. Helena Hosp.*, 843 F. Supp. 1329, 1337 (N.D. Cal. 1994) (citing to 34 C.F.R. § 104.3(k) (1993)).

106. Jax Kurlander is a qualified individual with a disability under Section 504.

107. Peter Kurlander is a qualified individual under Section 504 to receive services from the Defendant.

108. Kirstin Kurlander is a qualified individual under section 504 to receive services from the Defendant.

109. Under the applicable Section 504 regulations:

(a) General. In providing health, welfare, or other social services or benefits, a recipient [of federal financial assistance] may not, on the basis of handicap:

(1) Deny a qualified handicapped person these benefits or services;

(2) Afford a qualified handicapped person an opportunity to receive benefits or services that is not equal to that offered nonhandicapped persons;

(3) Provide a qualified handicapped person with benefits or services that are not as effective (as defined in § 84.4(b)) as the benefits or services provided to others;

(4) Provide benefits or services in a manner that limits or has the effect of limiting the participation of qualified handicapped persons; or

(5) Provide different or separate benefits or services to handicapped persons except where necessary to provide qualified handicapped persons with benefits and services that are as effective as those provided to others.

...

(d) Auxiliary aids.

(1) A recipient to which this subpart applies that employs fifteen or more persons shall provide appropriate auxiliary aids to persons with impaired sensory, manual, or speaking skills, where necessary to afford such persons an equal opportunity to benefit from the service in question.

...

(3) For the purpose of this paragraph, auxiliary aids may include brailled and taped material, interpreters, and other aids for persons with impaired hearing or vision.

45 C.F.R. § 84.52.

110. Defendant BSOTR denied Jax Kurlander services based on his mother's disability.

111. Defendant BSOTR denied Peter Kurlander services based on Kirstin Kurlander's disability.

112. Defendant BSOTR denied Kirstin Kurlander services based on her disability.

113. Defendant BSOTR provided Jax Kurlander with services that were not as effective as those provided to non-disabled individuals based on Kirstin Kurlander's disability.

114. Defendant BSOTR provided Peter Kurlander with services that were not as effective as those provided to non-disabled individuals based on Kirstin Kurlander's disability.

115. Defendant BSOTR provided Kirstin Kurlander services that were not as effective as those provided to non-disabled individuals based on her disability.

116. Defendant BSOTR receives federal financial assistance.

117. Defendant BSOTR employs more than fifteen people.

118. Defendant BSOTR refused to provide appropriate auxiliary aids and services to Kirstin Kurlander to provide her with effective communication.

119. Defendant BSOTR refused to provide any auxiliary aids and services to Kirstin Kurlander to provide her with effective communication.

120. Plaintiffs were damaged, harmed, and aggrieved by Defendant's failure to comply with Section 504.

121. Defendant BSOTR intentionally discriminated against Plaintiffs.

122. Defendant BSOTR acted with a reckless disregard for the federally protected rights of Plaintiffs.

Fourth Claim for Relief

(Violation of the CADA, Colo. Rev. Stat. § 24-34-601 *et seq.*)

123. Under the CADA, “[i]t is a discriminatory practice and unlawful for a person, directly or indirectly, to refuse, withhold from, or deny to an individual or a group, because of disability . . . the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation” Colo. Rev. Stat. § 24-34-601(2)(a) (2014) (amended effective August 6, 2014).

124. “‘Person’ means one of more individuals, limited liability companies, partnerships, associations, corporations, legal representatives, trustees, receivers, or the state of Colorado and all of its political subdivisions and agencies.” Colo. Rev. Stat. § 24-34-301(5)(a)

125. Pursuant to the regulations implementing the CADA: “The Law concerning handicap and/or disability is substantially equivalent to Federal law, as set forth in the Americans with Disabilities Act, as amended, and the Fair Housing Act concerning disability.” 3 Colo. Code Regs. § 708-1:60.1A) [sic].

126. BSOTR is a place of public accommodation. Colo. Rev. Stat. § 24-34-601(1).

127. Kirstin Kurlander is an individual with a disability. Colo. Rev. Stat. § 24-34-301(2.5) (2014) (amended effective August 6, 2014).

128. Peter Kurlander has a relationship or association with Kirstin Kurlander and was discriminated against by Defendant based on Kirstin Kurlander’s disability.

129. Jax Kurlander has a relationship or association with Kirstin Kurlander, and was discriminated against by Defendant based on Kirstin Kurlander’s disability.

130. BSOTR has discriminated, and continues to discriminate, against Kirstin Kurlander on the basis of her disability, as set forth in this Complaint.

131. The Kurlanders have been, and will continue to be, injured, damaged and aggrieved by BSOTR's discrimination.

132. In the absence of the injunction sought herein, the Kurlanders are likely to encounter BSOTR's same discriminatory policies and practices.

133. The CADA further provides, "a person who violates the provisions of section 24-34-601 based on disability shall be subject to the provisions of section 24-34-802." Colo. Rev. Stat. § 24-34-602(1)(b).

134. Under the CADA:

A qualified individual with a disability, as defined in section 24-34-301(5.6), who is subject to a violation of . . . 24-34-601 . . . based on his or her disability may bring a civil suit in a court of competent jurisdiction and is entitled to any of the following remedies:

- (I) A court order requiring compliance with the provisions of the applicable section;
- (II) The recovery of actual monetary damages; or
- (III) A statutory fine not to exceed three thousand five hundred dollars.

24-34-802(2)(a).

Prayer for Relief

WHEREFORE, Plaintiffs respectfully pray:

1. That this Court assume jurisdiction of the claims;
2. That this Court issue an Order declaring Defendant to be in violation of Title III of the ADA, Section 504 and the CADA;

3. That this Court issue an injunction ordering Defendant to provide qualified sign language interpreters and other appropriate auxiliary aids or services in order to ensure effective communication with deaf and hard-of-hearing individuals, including Plaintiff Kirstin Kurlander.

4. That this Court award Plaintiffs damages;

5. That this Court award Plaintiffs their reasonable attorneys' fees and costs; and

6. That this Court award such additional or alternative relief as may be just, proper and equitable.

JURY DEMAND: Plaintiffs request this case be heard by a jury.

Respectfully Submitted,

/s/ Kevin W. Williams

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Dated: March 17, 2015

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