IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.: 14-cv-03111-REB-KLM

JULIE REISKIN,
JON JAIME LEWIS,
WILLIAM JOE BEAVER,
DOUGLAS HOWEY, and
COLORADO CROSS-DISABILITY COALITION, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

REGIONAL TRANSPORTATION DISTRICT,

Defendant.

PLAINTIFFS' MOTION FOR LEAVE TO FILE AMENDED CLASS ACTION COMPLAINT

Plaintiffs, by and through the undersigned counsel, hereby submit this Motion for Leave to File Amended Class Action Complaint, and in support thereof state:

CERTIFICATE OF COMPLIANCE WITH D.C.COLOLCivR 7.1A

Undersigned counsel conferred with RTD's counsel during the parties' Rule 26(f) conference on January 21, 2015, during which Defendant's counsel informed undersigned counsel that Defendant intended to file either a motion to dismiss or counterclaim related to the prior settlement agreement at issue in Defendant's motion, and undersigned counsel explaining the reasons why doing so would be useless and would simply prolong this litigation unnecessarily. Undersigned counsel also sent counsel for the Defendant an email message email

(*see* Ex. A filed with this motion) on February 12, 2015. RTD never responded and, therefore, Plaintiffs assume Defendant opposes this motion.

BACKGROUND

On February 6, 2015, RTD filed its **Motion to Dismiss or, in the Alternative, for Summary Judgment** (the "Motion") [#19]. The Motion mainly addresses the idea that because four of the five Plaintiffs in the present lawsuit,[1] which strictly involves RTD's light rail service, were also signatories to a release of claims in a different case, which strictly involved RTD's fixed route bus service. There are numerous reasons to deny RTD's Motion, which will be addressed in Plaintiffs' response to the Motion, which are also being addressed here in case Defendant seeks to file another motion to dismiss in response to the Amended Class Action Complaint if this court grants Plaintiffs leave to file that Amended Class Action Complaint. Most importantly, on February 17, 2015, Plaintiffs filed their Motion for Leave to File Amended Class Action Complaint, seeking to add five additional plaintiffs who are not involved in the prior lawsuit issue, but who allege they have experienced very similar forms of discrimination by using, RTD's light rail service. If that motion is granted, it will render the prior Motion by Defendant RTD moot; and (2) as will be demonstrated, the prior settlement agreement in which RTD claims four of the five plaintiffs released claims related to its light rail service does no such

[1] Plaintiffs Colorado Cross Disability Coalition, Julie Reiskin, Douglas Howey, and Jon Jamie Lewis were signatories to the prior settlement agreement, the case at issue in **Defendant's Motion to Dismiss, or, in the Alternative, Motion for Summary Judgment** [#19], which refers to a settlement reached in a different case, *Colorado Cross-Disability Coalition et al. v. .Regional Transportation District*, Civil Action No. 13-cv-02760-PAB-MJW. *See* [19-1] at p.11-12. In that prior lawsuit, Marilyn Paulson, Pamela Carter and Paul Stewart were also, plaintiffs and signatories to the settlement agreement. *See id.* In the instant lawsuit, Civil Action No. 14-cv-03111-REB-KLM, William Joe Beaver, who was not a signatory to the prior settlement agreement, is a plaintiff in this case.

thing. As is plain from the agreement itself, it instead releases claims from prior to that agreement that are related to RTD's "fixed route bus service." In addition, the fact that Plaintiffs now seek to add five additional individuals who allege that they experience the same unlawful, discriminatory problems on light rail, coupled with the fact that one of the individuals named in the original complaint, William Joe Beaver, was not a signatory to the settlement agreement means that even if RTD is successful in its Motion (which Plaintiffs argue it should not be), this case will still go forward. One of the named Plaintiffs in the original Class Action Complaint in the case at bar [#1] will still have standing to bring allegations against the light rail service.[2] . Furthermore, as is obvious from the case caption, Plaintiffs seek ultimately to certify a class action in this case. Only one plaintiff is required to serve as a class representative. *See, e.g., Colorado Cross Disability Coal. v. Abercrombie & Fitch Co.*, 765 F.3d 1205, 1216-17 (10th Cir. 2014) (analyzing the claims of one individual who uses a wheelchair in determining that one individual could represent a class if all of the elements of Rule 23 are met). Rule 23(a) itself states the following:

> One or more members of a class may sue or be sued as representative parties on behalf of all members only if: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a) (emphasis added).

[2] RTD also filed a Counterclaim, along with its **Answer to CCDC's Class Action Complaint and Counterclaim** [#20]. In its Counterclaim, RTD alleges the same breach of contract by the same four out of five plaintiffs named in this action. Plaintiffs respond to the Counterclaim separately.

In addition, even if RTD is correct, the settlement agreement at issue only pertains to claims up to and including the time of the settlement agreement, and not any claims occurring after that time. The settlement agreement itself says that the plaintiffs in that agreement released claims from the beginning of time through the date CCDC executes this agreement." [19-1] at p. 8. *See also Wright v. Sw. Bell Tel. Co.*, 925 F.2d 1288, 1293 (10th Cir. 1991) (release is insufficient to release future claims about which neither party knew). RTD acknowledges and is agreement the settlement agreement was executed in February 2014. [19-1] at p. 13.

As is set forth in Plaintiffs' proposed amended complaint, each of the signatories to the prior settlement agreement, and most of the individuals Plaintiffs seek to add allege they have encountered discrimination on RTD's light rail trains after the date of the settlement agreement, February 20, 2014. RTD is wasting this Court's time with this frivolous motion and needlessly expanding and prolonging this litigation by requiring Plaintiffs to respond to the Motion and Counterclaim when doing so will do nothing to prevent the case from going forward. For those reasons, if this Court entertains supplemental jurisdiction over Defendant's state law claims, Plaintiffs seek their reasonable attorneys' fees and costs for having to respond to this Motion.

> The court shall assess attorney fees if the court . . . finds that an attorney or party brought or defended an action, or any part thereof, that lacked substantial justification or that the action, or any part thereof, was interposed for delay or harassment or if it finds that an attorney or party unnecessarily expanded the proceeding by other improper conduct . . . .

Colo. Rev. Stat. § 13-17-102(4).

In addition to the fact that Plaintiffs have filed a Motion for Leave to Amend the Class Action Complaint, the settlement agreement and its exhibits address buses, not light rail. In the settlement agreement at issue, the word "bus" appears 38 times [#19-1]. The words "light rail"

do not appear at all. In addition, the words "Securement Area" appear ten times in the settlement agreement and throughout Exhibit A to the settlement agreement and are a defined term. [#19-1]. There are no securement areas on light rail trains, only on buses. Looking at the settlement agreement and Exhibit A to that agreement, it is clear that securement areas, which are required on fixed route buses and vans, 49 C.F.R. § 38.23(a), are specifically not required under the regulations pertaining to access for passengers who use wheelchairs and mobility aids to the wheelchair securement areas on buses figured prominently in the agreement [#19-1].

In Exhibit A to the settlement agreement [#19-1], RTD sets forth its new policy concerning how it will change its bus system. As it says in the settlement agreement, "The Policy will apply to all bus operators, bus operator training staff, street supervisors, dispatchers and safety and customer service representatives. [#19-1] at p. 3 (emphasis added). With respect to training, the agreement says, "The Policy will apply to all bus operators, bus operator training staff, street supervisors, dispatchers and safety and customer service representatives. *Id.* Nowhere in the training section are light rail operators mentioned that all, and there is no such thing as a "street supervisor" involved in the light rail operation process. In its ADA Refresher Training, the agreement repeats the same references to bus operators, bus operator training staff, bus operator manager, etc. *Id*. at p. 4. The agreement also includes CCDC in the training of its bus operators, and other employees related to bus operations. "CCDC Involvement. Within 30 calendar days following the Effective Date, the RTD Bus Operator Training Manager will meet with a CCDC staff member with the purpose of collaborating on the curriculum for the ADA Training and ADA Refresher Training." *Id.* Because there is no mention of light rail anywhere in the agreement, it stands to reason that there is no mention of meeting with the light rail training

manager anywhere in the agreement. In fact, "the RTD Bus Operator Training Manager will meet with the CCDC staff member with the purpose of collaborating on the curriculum for the ADA Training and ADA Refresher Training." *Id*. (Emphasis added.) There is no mention of ongoing meetings with the light rail training manager or anyone else involved with the operation of the light rail service. For CCDC's efforts at assisting RTD with training of bus operators, "CCDC must submit an invoice for payment to RTD Bus Operator Training. *Id.* (Emphasis added.)

The settlement agreement references "Signage on Buses," and goes into great detail about what obligations RTD has with respect to placing signs on its buses, but it doesn't reference light rail signs at all. The same is true with respect to video recording equipment:

> Video System Update. The vehicle specifications in the next two requests for proposals to procure buses for RTD's fixed route bus fleet will include video cameras to be installed inside the vehicles that meet the minimum specifications substantially as described in Exhibit C ("Video Specifications"). RTD will retrofit the remaining vehicles in its fixed-route bus fleet to meet the minimum specifications of the Video Specifications as funding becomes available.

Id. pp 4-5 (emphasis added). Nothing at all is mentioned about video cameras on light rail trains.

When looking at Exhibit A to the settlement agreement, RTD's new policy, entitled "Boarding Individuals with Disabilities who Use Mobility Aids to Ensure Access Policy," the first section reads as follows: "1. Purpose RTD will ensure individuals who use Mobility Aids, including Wheelchairs, have equal access to its buses and to the Securement Areas. This policy is effective on March 24, 2014." [#19-1] at p. 1 § 1 (emphasis added). Throughout the Definitions section, this policy refers to the Securement Area, a defined term of the agreement. As noted, securement areas do not even exist on light rail trains. They only exist on buses.

In the next section of the settlement agreement: "3. Good Customer Service," the parties agreed, "Passengers using Wheelchairs or other Mobility Aids may be particularly vulnerable if left stranded at a bus stop." *Id.* at p. 1 § 3 (emphasis added). It mentions nothing about what happens at light rail stops. The next part of the settlement agreement, entitled "4. Boarding Strollers and Other Large Items," the following language appears:

> Articles permitted on the bus must not interfere with the vehicle operation or any other passenger. Grocery carts must be folded or positioned so that they do not block the aisle of the bus. Whatever a passenger brings on the bus must be readily movable. When a passenger with a stroller boards the bus, require the passenger to collapse the stroller prior to boarding.

Id. at p. 1 § 4 (emphasis added). Again, there is no mention of what RTD's policies are with respect to bringing grocery carts and other items on light rail trains.

Section 5 of the policy makes it very clear the agreement and claims released apply to buses and not light rail trains. This section, entitled, "5. Boarding an Individual with a Disability who uses a Mobility Aid," discusses what bus operators are to do "[i]n order to ensure an Individual with a Disability who uses a Mobility Aid will have access to the bus when the Securement Areas are occupied." *Id.* at p. 2, § 5 (emphasis added). Again, there is no reference to light rail trains, and securement areas do not exist on light rail trains. Each and every subparagraph in section 5 makes clear that the bus operators' obligations are with respect to buses and securement areas, not light rail. *Id.* at p. 2 § 5, subsections (1)-(7). Nowhere is there any direction as to what to do when boarding a person who uses a wheelchair or mobility device on a light rail train. One of the subsections even refers to "deploy[ment] of the lift." *Id.* at p. 2 § 5, subsection (5). There are no wheelchair lifts on light rail trains. There are ramps and fold-down bridge plates that allow access for customers use wheelchairs and other mobility devices.

Sections 6 and 7 are equally telling as to the parties' intent with respect to the meaning of the settlement agreement and release. These entire sections address the question of "When an Individual in the Wheelchair Securement Area Does Not Move" from the securement area and what bus operators are to do "When the Securement Areas are Occupied by Individuals with Disabilities who use Mobility Aids." Once again, there are no securement areas on light rail trains, so there is no reason to address a situation when someone refuses to move from the securement area if the agreement was intended to address light rail train operations.

The settlement agreement also references the use of the ADA PAX PASS UP button by bus operators in cases where a person who uses a wheelchair or mobility device is passed up by a bus. On information and belief, no such device exists on light rail train. The settlement agreement also contemplates a public outreach campaign:

> Public Outreach. Within 90 calendar days following the Effective Date, RTD will prepare a public outreach campaign with the purpose of (i) encouraging non-disabled passengers to make room for passengers using wheelchairs who need to use the securement area to board the bus . . . .

[#19-1] at p. 6 (emphasis added). Exhibit E to the settlement agreement is a Joint Statement reached by the parties concerning "RTD's Wheelchair Securement Area and Priority Seating Policy" ("Joint Statement"). In the first sentence of the mutually agreed-upon Joint Statement, it says the following:

> On February 19, 2014, the Colorado Cross-Disability Coalition ("CCDC") and the Regional Transportation District ("RTD") entered into an agreement that both believe will greatly enhance fixed route bus service for passengers who use mobility devices, including wheelchairs.

Id. at 42 (emphasis added). The entire Joint Statement references buses, bus operators, and securement areas. Nothing in the Joint Statement, which the parties both sent out to the media

jointly, mentions light rail trains. Yet, RTD asks this court to believe that the settlement agreement and release addressed issues related to its light rail service, as well as to its fixed route bus service.

Moreover, RTD has demonstrated that it takes an even more narrow view of the term "fixed-route" in the settlement agreement. According to the training material RTD developed pursuant to the settlement agreement, RTD does not believe that the policy change at the heart of the settlement agreement applies to its Free Mall Ride and Free Metro Ride routes, which are buses that operate on a route that is fixed. Rather, RTD operates those fixed-route buses securement seating locations on a first come, first served basis.[3]

In its Motion, RTD claims that, CCDC and other individuals are "alleging virtually the same issues the parties reasonably understood were resolved less than one year ago," but nothing could be further from the truth. The operation of the light rail system is very different from the operation of the bus system. In the present lawsuit, Plaintiffs complain that RTD does not provide sufficient space for passengers who use wheelchairs and other similar mobility devices. That issue did not exist in the prior lawsuit.

The entire settlement agreement focuses on RTD's bus service and bus operator bus operator behavior. Also, Plaintiffs cannot release claims that have not happened yet. The agreement was signed in February 2014. As is noted throughout the proposed Amended Class Action Complaint, all of these individuals listed have experienced what they allege were

[3] Not only does this illustrate Defendant's narrow view of the term "fixed-route" in the settlement agreement, but it also, Plaintiffs believe, constitutes a breach of the unambiguous express language of the agreement. *See* 49 C.F.R. § 37.167(j)(1)(i)-(iv) (the section of the regulations that explains what obligations a bus operator has when an individual with a disability enters the vehicle and, because of a disability, the individual needs to sit in the wheelchair securement location).

discriminatory incidents that have occurred on light rail since February 2014. Again, this means this case should go forward, regardless of whether Defendant is successful on its Motion, with the four Plaintiffs about whom RTD complains in its Motion. Even if this Court does not grant Plaintiffs leave to amend, Plaintiffs, who were signatories to the prior agreement, should be allowed to proceed with this case and demonstrate they have experienced discrimination since February 2014 while using the light rail service. Furthermore, RTD's Motion cannot extinguish those additional plaintiffs' claims, which will simply cause this litigation to move forward.

ARGUMENT

Under Rule 15, Federal Rules of Civil Procedure, Plaintiffs may amend their Complaint once as a matter of course within 21 days of serving it, or 21 days after service of a responsive pleading or a motion under Rule 12(b), (e), or (f), whichever is earlier. Fed. R. Civ. P. 15(a)(1). "In all other cases, a party may amend its pleadings only with the opposing party's written consent or the court's leave." Fed. R. Civ. P. 15(a)(2); *see also Foman v. Davis*, 371 U.S. 178,182 (1962) ("Rule 15(a) declares that leave to amend 'shall be freely given when justice so requires'; this mandate is to be heeded.").

Twenty-one days have passed since Plaintiffs served their original Complaint. Defendant filed its Motion later than that. In this matter, RTD has refused to consent to the Amendment sought herein; therefore, Plaintiffs must seek this Court's leave to amend their Class Action Complaint.

I. **Leave to Amend**

As said, leave to amend "should [be] freely give[n] when justice so requires." *Id.*

> The Court must heed Rule 15's mandate that leave is to be "freely given when justice so requires." Fed. R. Civ. P. 15(a); *Foman*, 371 U.S. at 182; *Duncan*

> *[v. Manager, Dept. of Safety, City and County of Denver*, 397 F.3d 1300, 1315 (10th Cir. 2005]. "If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits." *Foman*, 371 U.S. at 182. Leave to amend should be refused "only on a showing of undue delay, undue prejudice to the opposing party, bad faith or dilatory motive, failure to cure deficiencies by amendments previously allowed, or futility of amendment." *Duncan*, 397 F.3d at 1315; *see Foman*, 371 U.S. at 182.

S.E.C. v. Misner, No. CIV. 07-CV-01640-REB, 2008 WL 638387, at *2 (D. Colo. Mar. 5, 2008) (approving Magistrate Judge Hegarty's recommendation that complaint be amended in part); *see also MKBS, LLC v. Fin. Associates, Inc.*, No. 10-CV-01326-REB-KLM, 2010 WL 4929028, at *1 (D. Colo. Nov. 30, 2010) (Magistrate Judge Mix, applying *Foman*, allows Plaintiff's Second Amended Complaint over motion to dismiss challenge). As noted above, those individuals who were signatories to the prior agreement have claims that have occurred since that agreement was signed, and the additional individuals seeking to join this lawsuit as plaintiffs, as well as one currently named Plaintiff, were not signatories to the agreement at all. This Court need not "delve deeply into the merits of Plaintiff's claim at this stage of the proceedings. *MKBS, LLC*, 2010 WL 4929028, at *2. "At this stage, it is simply not appropriate for the Court to weigh the facts and evidence to resolve any disputes between the parties." *Id.* (citing *Sutton v. Utah State Sch. for the Deaf & Blind*, 173 F.3d 1226, 1236 (10th Cir.1999)). "The Court's sole function now is to determine whether Plaintiff has provided a plausible basis for liability if its version of the facts is assumed to be true." *Id.*

"Under Fed. R. Civ. P. 15(a)(2), '[r]efusing leave to amend is generally only justified upon a showing of undue delay, undue prejudice to the opposing party, bad faith or dilatory motive, failure to cure deficiencies by amendments previously allowed, or futility of the amendment.'" *Whitington v. Ortiz*, 307 Fed. Appx. 179, 196 (10th Cir. 2009) (citing *Frank v.*

U.S. West, Inc., 3 F.3d 1357, 1365 (10th Cir. 1993)). Absent such a showing by the party opposing amendment, denial of a motion for leave to file an amended complaint constitutes an abuse of discretion. *See Whitington*, 307 Fed. Appx. at 196; *Anderson v. Suiters*, 499 F.3d 1228, 1238 (10th Cir. 2007). "The purpose of the Rule is to provide litigants 'the maximum opportunity for each claim to be decided on its merits rather than on procedural niceties." *Minter v. Prime Equip. Co.*, 451 F.3d 1196, 1204 (10th Cir. 2006).

II. Undue Prejudice

"[P]rejudice under Rule 15 'means undue difficulty in prosecuting [or defending] a lawsuit as a result of a change of tactics or theories on the part of the other party[,]'" *Texas Instruments, Inc. v. BIAX Corp.*, 2009 WL 3158155, No. 07-cv-02370-WDM-MEH, at *3 (D. Colo. September 28, 2009), and is "the most important . . . factor in deciding a motion to amend the pleadings[.]" *Gorsuch, Ltd. v. Wells Fargo Nat'l Bank Ass'n*, No. 11-cv-00970-PAB-MEH, 2013 WL 6925132 *14 (D. Colo. Dec. 13, 2013). "Perhaps the most important factor listed by the Court and the most frequent reason for denying leave to amend is that the opposing party will be prejudiced if the movant is permitted to alter his pleading." 6 Wright, Miller & Kane, Federal Practice and Procedure § 1487 (2d ed. 1990).

There is no prejudice to the Defendant here. The referenced agreement clearly was about buses and not light rail trains. Even if Defendant is successful in its Motion and Counterclaim, the case will go forward and the Defendant will have to go through the exact same process. Defendant's Motion to Dismiss cannot and does not extinguish the claims of the individuals seeking to join this lawsuit as plaintiffs.

This case is in its very early stages. The parties have not yet had their Scheduling Conference. In fact, the Rule 26(a)(1) disclosure deadline for Plaintiffs is February 20, 2015. Defendant is fully aware that William Joe Beaver, a Plaintiff in the current lawsuit, was not one of the signatories to the original agreement. Many of the light rail complaints of the signatories to the settlement agreement in question occurred after the settlement agreement, making those claims viable for the individuals who were signatories to the prior settlement agreement, even if Defendant is successful on its Motion and Counterclaim. If Plaintiffs' motion for leave is granted, numerous CCDC members who are not signatories to the original agreement will be allowed to proceed with their materially similar claims involving light rail.

Furthermore, Defendant is fully aware that the language of the transportation statutes pertaining to buses (whether "fixed route" or "demand responsive" and "light rail' differ dramatically. *See* 49 C.F.R., pt. 37, subpt. D (comparing the differences and obligations of public entities with respect to acquiring vehicles for fixed route services versus demand responsive services).

In addition, language of the agreement itself says that, "This Agreement shall be interpreted and construed in accordance with the laws of the State of Colorado." According to Tenth Circuit Court of Appeals case law, this Court should look to the law of the state in which the settlement agreement, a contract, was created to determine the guiding principles of contract law. *See Headwaters Res., Inc. v. Illinois Union Ins. Co.,* 770 F.3d 885, 891 (10th Cir. 2014); *Gates Corp. v. Bando Chem. Indus., Ltd.*, 4 F. App'x 676, 682 (10th Cir. 2001). "Issues involving the formation and construction of a purported settlement agreement are resolved by applying state contract law even when there are federal causes of action in the underlying

litigation.") Construction of contract claims will be addressed in full in Plaintiffs' response to the Motion.

III. Undue Delay, and Bad Faith or Dilatory Motive

In *Foman*, the Supreme Court listed "undue delay" as one of the justifications for denying a motion to amend. *Foman,* at 182. While "[p]rejudice and timeliness are obviously closely related," *Minter v. Prime Equipment Co*., 451 F.3d 1196, 1205 (10th Cir. 2006), they are analytically distinct. There is no bad faith here; simply, additional CCDC members wish to join the lawsuit as named plaintiffs. As explained above, the prior settlement agreement dealt specifically with buses and not light rail trains, and the signatories to the original agreement Claims against light rail that occurred after the signing of that agreement.

Also, given the posture of the case -- prior to the beginning stages of discovery -- Plaintiffs have not caused, and do not seek to cause, delay, undue or otherwise.

IV. Futility

Amendment of a complaint may also be denied if the amendment sought would be futile. *Frank,* 3 F.3d at 1365; *Anderson v. Suiters*, 499 F.3d 1228, 1238 (10th Cir. 2007) (*citing Lind v. Aetna Health, Inc*., 466 F.3d 1195, 1199 (10th Cir. 2006)). "A district court is clearly justified in denying a motion to amend as futile only if the proposed amendment cannot withstand a motion to dismiss or otherwise fails to state a claim." *Darris v. Pugliese*, No. 08-cv-02624-PAB-KMT, 2009 WL 3162630 *2 (D. Colo. Sept. 30, 2009). Here, Plaintiffs' proposed Amended Class Action Complaint seeks to add individuals who, like the plaintiffs in the original complaint, allege that they had experienced unlawful discrimination by RTD on the basis of their disabilities in the provision of RTD's light rail service. Plaintiffs' proposed Amended Class Action

Complaint also adds allegations discussing issues that occurred since the filing of the original Complaint for the four signatories to the settlement agreement from the prior case.

V. Failure to Cure Deficiencies by Amendments Previously Allowed

Amendment may also be denied if the party seeking to amend fails by amendment to cure deficiencies in the complaint previously allowed. *Frank*, 3 F.3d at 1365. This justification for denying leave to amend does not apply in this case.

VI Joinder of Parties

Pursuant to Fed. R. Civ. P. 20(a)(1), "Persons may join in one action as plaintiffs if . . . they assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and . . . any question of law or fact common to all plaintiffs will arise in the action. That is exactly what Plaintiffs seek to do here: join individuals who assert rights under the ADA and section 504 of the Rehabilitation Act that arise out of RTD's alleged failures to comply with the regulations pertaining to light rail service, and the questions of law or fact the new Plaintiffs allege have arisen during the course of this action.

CONCLUSION

None of the reasons for denying leave to amend under Rule 15(a)(2), United States Supreme Court precedent and Tenth Circuit precedent exist in this case, and, therefore, leave to amend should be granted. In addition, the claims sought to be brought by the five new plaintiffs involve the same factual and legal issues as those brought by the original Plaintiffs. Pursuant to Fed. R. Civ. P. 20(a)(1), this Court should join these individuals in this action and allow them to test these claims before this Court.

WHEREFORE, Plaintiffs respectfully request that this Court grant this Motion for Leave to File Amended Class Action Complaint, accept the Amended Class Action Complaint (filed with this motion) for filing, and order any other relief that this Court deems necessary, proper and just.

DATED: February 17, 2015

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 17, 2015, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will provide electronic service to the following:

Jenifer Ross-Amato
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Mindy Marie Swaney
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/s/ Kevin W. Williams
Colorado Cross-Disability Coalition
Legal Program Director