

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.: _____

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

Plaintiffs,

v.

REGIONAL TRANSPORTATION DISTRICT,

Defendant.

CLASS ACTION COMPLAINT

Plaintiffs, Julie Reiskin, Jon Jaime Lewis, William Joe Beaver, Douglas Howey and the Colorado Cross-Disability Coalition, on behalf of themselves and all others similarly situated, by and through undersigned counsel, hereby bring this Class Action Complaint against the Regional Transportation District for violations of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12101, *et seq.*, and Section 504 of the Rehabilitation Act of 1973 (“Section 504”), 29 U.S.C. § 794, *et seq.*

Introduction

1. In 1973, Congress enacted Section 504 of the Vocational Rehabilitation Act (“Section 504”). 29 U.S.C. § 794 *et seq.* 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. On July 26, 1990, more than twenty years ago, the ADA was passed, establishing the most important civil rights law for people with disabilities in the nation’s history.

3. The ADA was passed to ensure people with disabilities are not discriminated against by, among other entities, public entities like the Regional Transportation District (“RTD”). 42 U.S.C. § 12101, *et seq.*

4. 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).

5. One of the purposes of the ADA is “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.” 42 U.S.C. § 12101(b)(1).

6. Title II of the ADA specifically applies to public transportation provided by RTD. 42 U.S.C. § 12141 *et seq.*

7. Pursuant to the ADA mandate, in 1991, the Department of Transportation (“DOT”) issued regulations to ensure that light rail trains, such as those acquired by RTD, were readily accessible to and usable by passengers who use wheelchairs. 42 U.S.C. § 12164; 49 C.F.R. § 38.71 *et seq.*

8. According to RTD’s website, the groundbreaking for RTD’s light rail service occurred on January 21, 1997. The first light rail line, the Southwest Light Rail Line open to the public on July 14, 2000.

9. The light rail trains acquired and used by RTD do not meet the minimum accessible requirements set forth by the DOT.

10. As a result, light rail trains are not readily accessible to and usable by passengers who use wheelchairs.

11. RTD passengers who use wheelchairs and other mobility devices have been and continue to be discriminated against because of the inaccessibility of RTD’s light rail trains.

12. As set forth more fully below, RTD discriminates against Plaintiffs Julie Reiskin, Jon Jamie Lewis, William Joe Beaver, Douglas Howey and the Colorado Cross-Disability Coalition, and all other RTD light rail passengers who use wheelchairs and other mobility devices on the basis of disability by refusing to provide adequate wheelchair seating areas, allowing passengers who do not need wheelchair seating areas to occupy the spaces designated for wheelchair seating and forcing passengers who use wheelchairs to have to move from their seating locations when other passengers get on and off light rail trains.

13. In some cases, passengers who use wheelchairs have been denied transportation on RTD's light rail train system because train operators refuse to ask people with strollers and other large objects to move from the designated wheelchair seating area.

14. Plaintiffs seek a court order compelling RTD to comply with the ADA, and Section 504 and the recovery of their reasonable attorneys' fees and costs.

Jurisdiction and Venue

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

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

Parties

17. Plaintiff Julie Reiskin is and was at all times material hereto a resident of Colorado.

18. Plaintiff Julie Reiskin is the Executive Director of and a member of the Colorado Cross-Disability Coalition.

19. Plaintiff Jon Jamie Lewis is and was at all times material hereto a resident of Colorado.

20. Plaintiff Jon Jamie Lewis works for and is a member of the Colorado Cross-Disability Coalition.

21. Plaintiff William Joe Beaver is and was at all times material hereto a resident of Colorado.

22. Plaintiff William Joe Beaver works for and is a member of the Colorado Cross-Disability Coalition.

23. Plaintiff Douglas Howey is and was at all times material hereto a resident of Colorado.

24. Plaintiff Douglas Howey is a member of the Colorado Cross-Disability Coalition.

25. Plaintiff Colorado Cross-Disability Coalition (“CCDC”) is a non-profit corporation and a membership organization whose members are persons with disabilities and their nondisabled allies.

26. 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).

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

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

29. RTD receives federal financial assistance within the meaning of 29 U.S.C. § 794, *et seq.*, and its implementing regulations. *See* 49 C.F.R. § 27.5.

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

31. In addition to other types of transportation systems and services, RTD operates a light rail train system within the meaning of 49 C.F.R. § 37.3.

Facts

32. Plaintiff Julie Reiskin is a regular user of RTD's light rail service.

33. As a result of multiple sclerosis, Plaintiff Reiskin is substantially limited in several major life activities, including walking, and requires the use of a motorized wheelchair for mobility.

34. Plaintiff Reiskin uses RTD's light rail system, on average, three to four times each week.

35. Plaintiff Reiskin does not have a vehicle for any other means of transportation, and RTD's public transportation service is her regular and usual means of transportation in and around the City and County of Denver and its suburbs.

36. Plaintiff Reiskin will continue to use RTD's light rail service on a regular basis.

37. Plaintiff Jon Jamie Lewis is a regular user of RTD's light rail service.

38. As a result of polio and infantile paralysis, Plaintiff Lewis is substantially limited in several major life activities, including walking, and requires the use of a motorized wheelchair for mobility.

39. Plaintiff Lewis uses RTD's light rail system, on average, ten times per month.

40. Plaintiff Lewis does not have a vehicle for any other means of transportation, and RTD's public transportation service is his regular and usual means of transportation in and around the City and County of Denver and its suburbs.

41. Plaintiff Lewis will continue to use RTD's light rail service on a regular basis.

42. Plaintiff William Joe Beaver is a regular user of RTD's light rail service.

43. As a result of post-polio syndrome, Plaintiff Beaver is substantially limited in several major life activities, including walking, and requires the use of a motorized wheelchair for mobility.

44. Plaintiff Beaver uses RTD's light rail system, on average, eight times per week.

45. Plaintiff Beaver does not have a vehicle for any other means of transportation, and RTD's public transportation service is his regular and usual means of transportation in and around the City and County of Denver and its suburbs.

46. Plaintiff Beaver will continue to use RTD's light rail service on a regular basis.

47. Plaintiff Douglas Howey is a regular user of RTD's light rail service.

48. As a result of injuries sustained from a car accident, Plaintiff Howey is substantially limited in several major life activities, including walking, and requires the use of a manual or motorized wheelchair for mobility.

49. Plaintiff Howey uses RTD's light rail system, on average, one to two times per month.

50. Plaintiff Howey does not have a vehicle for any other means of transportation, and RTD's public transportation service is his regular and usual means of transportation in and around the City and County of Denver and its suburbs.

51. Plaintiff Howey will continue to use RTD's light rail service on a regular basis.

52. Defendant RTD acquired vehicles for its light rail service after January 25, 1992.

53. Passengers who use wheelchairs must board RTD's light rail trains using a ramp that leads to the front door of the first car of each light rail train.

54. When a passenger who uses a wheelchair boards or exits an RTD light rail train, the train operator must get up from his or her seat, open the driver cabin door and manually flip down a bridge plate that enables the passenger uses a wheelchair to enter or exit the train.

55. RTD designates two specific areas as wheelchair locations for passengers who use wheelchairs. RTD designates these two areas with signs saying they are wheelchair locations.

56. The two areas RTD designates as wheelchair locations are located in the front row of seating on the left and right sides of the train.

57. These locations are equipped with two passenger seats, one of which flips up for the purpose of providing sufficient width to allow a passenger who uses a wheelchair or other mobility device to maneuver into the space.

58. In order for there to be sufficient room for an individual who uses a wheelchair or other mobility device to maneuver into the designated wheelchair locations, one of the two seats must be flipped up.

59. RTD's light rail trains fail to provide sufficient room, as required by the DOT ADA implementing regulations, for at least two individuals who use wheelchairs or other mobility devices to move from the doorway to the designated wheelchair seating.

60. RTD's light rail trains fail to provide sufficient room for at least two individuals who use wheelchairs or other mobility devices to move from the doorway to the designated wheelchair seating locations and allow other persons entering and exiting the train using the front doors to have sufficient room to do so.

61. RTD posts signs in the first row of seating on the right and left sides in the front car of each of its light rail trains that say that those seats are priority seats for persons with disabilities and that other passengers should make those seats available to those who wish to use them. In the same seating location adjacent to or near the signs described in the previous sentence, RTD posts signs that say those locations are designated wheelchair seating locations and advise passengers of the need to permit wheelchair users to occupy them.

62. RTD signs on light rail trains fail to distinguish between priority seating for persons with disabilities and designated wheelchair seating.

63. Passengers who use wheelchairs and other mobility devices have only the following options for locations where they can ride light rail trains using their wheelchairs or

mobility devices: (1) the two front designated wheelchair and mobility device seating locations if one of the two seats is flipped up; (2) in the aisle between the seats; or (3) in the front of the train between the doors that allow passengers who use wheelchairs and other mobility devices to get on and off the train.

64. Because RTD post signs making these front seats available as priority seating for persons with disabilities other than those who use wheelchairs and other mobility devices and also as the designated wheelchair locations, these front row seats are often occupied by persons who do not use wheelchairs or other mobility devices, making them unavailable for passengers who use wheelchairs and other mobility devices.

65. RTD allows passengers who do not have disabilities who bring strollers on light rail trains to use the wheelchair ramps at the front of the light rail train to board and exit the train, and allows those passengers to occupy the front row designated wheelchair seating locations, making those designated wheelchair locations unavailable for passengers who use wheelchairs and other mobility devices.

66. If passengers who use wheelchairs and other mobility devices cannot access the designated wheelchair locations on RTD's light rail trains, the only options they have for riding the train are to sit in the aisle between the seats or to sit in the front of the train between the two sets of doors that allow access and egress to and from the train by use of the wheelchair ramps.

67. During those times when passengers who use wheelchairs must sit in the aisle in between the seats or in the area in the front of the train between the two sets of doors that allow

access and egress to and from the wheelchair ramps, they are forced to block access and egress of other individuals trying to board or exit the train.

68. During those times when passengers who use wheelchairs or other mobility devices must sit in the aisle in the area in the front of the train between the two sets of doors, they are forced to move every time a passenger needs to board or exit the train using the front doors.

69. During those times when passengers who use wheelchairs or other mobility devices must sit in the aisle area in the front of the train between the two sets of doors, they are forced to move to allow the light rail train operator to enter and exit from the cabin to flip the bridge plate down to allow passengers who use wheelchairs or other mobility devices and others RTD allows to use the front doors in the wheelchair ramps (e.g., those who use strollers) to get on and off the train.

70. Depending on the size of the wheelchair, mobility device or stroller entering or exiting the light rail train, those passengers who use wheelchairs and other mobility devices and who must sit in the aisle or in the area between the front doors are forced to exit and re-enter the train to allow access to or egress from the train by the person attempting to board or exit.

71. Passengers who do not use wheelchairs or other mobility devices may simply board the train, select the open seat of their choosing and remain in that seat during the duration of their trip.

72. Passengers who do not use wheelchairs or other mobility devices are usually not required to move from their seating locations to enable other passengers to board the train or exit the train.

73. RTD has signs that indicate passengers with bicycles who wish to board with their bicycles must not use the front of the train, which is the only area where passengers who use wheelchairs can board.

74. Despite these signs requiring passengers with bicycles not use the front area of the train, some light rail operators allow passengers with bicycles to board the light rail trains using the wheelchair ramp and to keep their bicycles in the front of the light rail train, which is the only place passengers who use wheelchairs can board and exit.

75. When passengers with bicycles are located in the front of the light rail train, which is the only place passengers who use wheelchairs can board and exit, they are in the way of passengers who use wheelchairs boarding or departing from the train, which unduly restricts the movement of passengers who use wheelchairs who are attempting to get on or get off a light rail train.

76. Plaintiff Reiskin has been prevented from using the designated wheelchair seating areas because they were occupied by persons who do not use wheelchairs or other mobility devices.

77. When Plaintiff Reiskin has been prevented from using the designated wheelchair seating areas because they were occupied by persons who do not use wheelchairs, light rail

operators did not request the people seated in the designated wheelchair seating areas move to another seat.

78. Plaintiff Reiskin has been forced to sit in her wheelchair in the aisle between the seats or in the area of the front of the train in between the two doors that allow passengers who use wheelchairs or other mobility devices to board and exit train.

79. When Plaintiff Reiskin has been forced to sit in her wheelchair in the aisle between the seats or in the area of the front of the train in between the two doors that allow passengers who use wheelchairs board and exit train, Plaintiff Reiskin has been forced to move out of the way to allow passengers who use strollers to board and/or exit the train.

80. Plaintiff Reiskin has been denied transportation on light rail trains because RTD has allowed passengers who do not use wheelchairs or other mobility devices to occupy the designated wheelchair seating sections and/or the aisle between the front seats and/or the area between the two front doors.

81. Plaintiff Lewis has been prevented from using the designated wheelchair seating areas because they were occupied by persons who do not use wheelchairs or other mobility devices.

82. Plaintiff Lewis has been forced to move out of the way to allow passengers who use strollers to board and/or exit the train.

83. Plaintiff Lewis has been forced to exit the train to allow other passengers to board or exit the train.

84. Plaintiff Lewis has been denied transportation on light rail trains because the RTD has allowed passengers who do not use wheelchairs or other mobility devices to occupy the wheelchair seating sections and/or the aisle between the front seats and/or the area between the two front doors.

85. Plaintiff Lewis' access on and off light rail trains has been inhibited by passengers with bicycles blocking access to the front of the train.

86. Plaintiff Beaver has witnessed a passenger who uses a wheelchair being prevented access to a light rail train because there was a bicycle with a child carrier occupying the area in the front of the train on the first car between the two doors.

87. Plaintiff Beaver has been forced to move out of the way to allow passengers who use strollers to board and/or exit the train.

88. Plaintiff Beaver has been forced to exit the train to allow other passengers to board or exit the train.

89. Plaintiff Howey has been prevented from using the designated wheelchair seating areas because they were occupied by persons who do not use wheelchairs or other mobility devices.

90. Plaintiff Howey has been forced to move out of the way to allow passengers who use strollers to board and/or exit the train.

91. Plaintiff Howey has been forced to exit and re-enter the train to allow other passengers to board or exit the train.

92. Plaintiff Howey has been denied transportation on light rail trains because the RTD has allowed passengers who do not use wheelchairs or other mobility devices to occupy the wheelchair seating sections and/or the aisle between the front seats and/or the area between the two front doors.

93. Plaintiff Howey's access on and off light rail trains has been inhibited by passengers with bicycles blocking access to the front of the train.

94. Each of the Named Plaintiffs has been denied access to light rail trains when there was room on the train to board them.

95. Other CCDC members who use wheelchairs have experienced the same unlawful discrimination described in this Class Action Complaint because RTD's light rail trains do not comply with the regulations regarding maneuvering clearances, and because of RTD's policies, practices and procedures which allow people who do not have disabilities to occupy the only spaces on the train where a person who uses a wheelchair or other mobility device can sit, preventing the person who uses a wheelchair or other mobility device from boarding.

96. CCDC is a membership organization having members who use wheelchairs and other mobility devices throughout the RTD's light rail service area.

97. CCDC has members, including the Named Plaintiffs, who use wheelchairs or other mobility devices who have experienced and/or are likely to experience the same barriers to accessibility using the RTD's light rail service as described in this Class Action Complaint.

98. 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 use wheelchairs and other mobility devices have equal access to -- and do not encounter discrimination in -- the use of public transportation.

99. 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 the RTD's violations of the laws cited herein.

100. As set forth in this Class Action Complaint, RTD'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 non-discrimination for persons with disabilities.

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

102. The elimination of discrimination, such as that of the RTD is at the core of CCDC's organizational purpose.

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

Class Action Allegations

104. RTD has discriminated against and continues to discriminate against passengers who use wheelchairs and other mobility devices as set forth more fully in this Complaint.

105. RTD trains do not comply with the applicable regulatory dimensional requirements, and therefore RTD discriminates against all passengers who use wheelchairs and other mobility devices.

106. RTD's placement of signage prevents passengers who use wheelchairs and other mobility devices from having legally required access to seating areas.

107. Because RTD's trains are designed so that passengers who use wheelchairs and other mobility devices must frequently sit either in the aisle between the front seats or in the front area between the two doors, only passengers who use wheelchairs and other mobility devices are required to move each time someone boards or exits through the front doors.

108. RTD's policies, practices and procedures regarding allowing people who use strollers to sit in the designated wheelchair seating areas and preventing people who use

wheelchairs and other mobility devices from sitting there discriminate against all passengers who use wheelchairs and other mobility devices.

109. RTD's policies, practices and procedures allowing bicycles in the front of trains, which is the only access area for passengers use wheelchairs, discriminate against all passengers who use wheelchairs and other mobility devices.

110. Plaintiffs seek to maintain this action as a class pursuant to Rule 23(b)(2), Federal Rules of Civil Procedure.

111. The class consists of all individuals who use wheelchairs and other mobility devices who have been discriminated against by RTD because the design of RTD's light rail trains does not comply with the ADA's regulations and because policies, practices and procedures of RTD concerning seating of passengers use wheelchairs and other mobility devices denies passengers who use wheelchairs and other mobility devices access to its light rail trains as is required under the ADA and its implementing regulations.

First Claim for Relief
(Violations of the ADA)

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

113. Title II of the ADA provides in pertinent part: "[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination

by any such entity.” 42 U.S.C. § 12132. *See also* 49 C.F.R. § 37.5(a) (“No entity shall discriminate against an individual with a disability in connection with the provision of transportation service.”).

114. Under the ADA, the term “disability” means an individual who has an impairment that substantially limits one or more major life activities. 42 U.S.C. § 12102.

115. Individual Plaintiffs are all individuals with disabilities within the meaning of the ADA.

116. In addition, under Title II, “[i]t shall be considered discrimination for purposes of section 12132 of this title and section 794 of Title 29 for a public entity which operates a fixed route system to purchase or lease . . . a new light rail vehicle, or any other new vehicle to be used on such system, if the solicitation for such purchase or lease is made after the 30th day following July 26, 1990, and if such . . . rail vehicle, or other vehicle is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. 42 U.S.C. § 12142(a) (emphasis added); 49 C.F.R. §37.79 (“Each public entity operating a . . . light rail system making a solicitation after August 25, 1990, to purchase or lease a new . . . light rail vehicle for use on the system shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.” (Emphasis added.)) *See also* 49 C.F.R. §38.71(a) (“New . . . light rail vehicles, to be considered accessible by regulations of part 37 of this title shall comply with this subpart [part 38].)”

117. “[A] vehicle shall be considered to be readily accessible to and usable by individuals with disabilities if it meets the requirements of this part [37] and the standards set forth in part 38 of this title.” 49 C.F.R. § 37.7(a).

118. Light rail vehicles and systems are covered in part 38, subpart D, section 38.71 through section 38.87.

119. “[A]t each entrance accessible by lift, ramp, bridge plate or other suitable means, . . . passenger seats . . . shall be located so as to allow a route at least 32 inches wide so that at least two wheelchair or mobility aid users can enter the vehicle and position the wheelchairs or mobility aids in areas, each having a minimum clear space of 48 inches by 30 inches, which do not unduly restrict movement of other passengers. Space to accommodate wheelchairs and mobility aids may be provided within the normal area used by standees and designation of specific spaces is not required. Particular attention shall be given to ensuring maximum maneuverability immediately inside doors.” 49 C.F.R. § 38.77(c).

120. RTD designates two specific wheelchair seating locations, which are indicated by signage located in the first row seats nearest the accessible entrance. These areas are the first row of seats nearest to the accessible entrance and require folding up one of the two passenger seats to make room for a person who uses a wheelchair to maneuver the wheelchair into the space.

121. The RTD’s designated wheelchair seating locations do not provide a minimum clear space of 48 inches by 30 inches.

122. RTD's designated wheelchair seating locations do not provide sufficient room so that they do not unduly restrict movement of other passengers.

123. "Each vehicle shall contain sign(s) which indicate that certain seats are priority seats for persons with disabilities, and that other passengers should make such seats available to those who wish to use them." 49 C.F.R. § 38.75(a).

124. In addition, "[w]here designated wheelchair or mobility aid seating locations are provided, signs shall indicate the location and advise other passengers of the need to permit wheelchair and mobility aid users to occupy them." 49 C.F.R. § 38.75(b).

125. The two specific wheelchair seating locations on RTD's light rail trains are marked with signs that make the same seating areas both priority seating for people with disabilities who do not use wheelchairs or other mobility devices, and the designated wheelchair seating locations.

126. Because RTD allows persons with disabilities who do not require the use of wheelchairs or other mobility devices to sit in these front seat designated wheelchair seating areas, passengers who use wheelchairs or other mobility devices are precluded from sitting there if people with other disabilities are already seated there.

127. Passengers with other disabilities that do not required the use of wheelchairs or other mobility devices could sit in the seats immediately behind the seats RTD designates for passengers who use wheelchairs, making the designated seating areas for passengers who use wheelchairs and other mobility devices available for passengers use wheelchairs and other mobility devices.

128. RTD allows passengers who have strollers to board light rail trains using the wheelchair ramp and allows such passengers with their strollers to use the designated wheelchair seating areas.

129. RTD's policies, practices and procedures allowing those who use strollers to sit in the designated wheelchair seating sections discriminate against passengers use wheelchairs and other mobility devices.

130. RTD light rail operators have failed to ask passengers with strollers to move from the designated wheelchair seating areas when passengers who use wheelchairs or other mobility devices attempt to board light rail trains.

131. Passengers who use wheelchairs or other mobility devices have been prevented from using the designated wheelchair seating areas when passengers with strollers are seated there.

132. Passengers who use wheelchairs or other mobility devices have been told they could not board light rail trains by RTD light rail train operators who have refused to ask passengers with strollers to move from the designated wheelchair locations.

133. RTD does permit passengers who use wheelchairs and other mobility devices to sit in the aisle between the first row of seats and/or in the area between the front accessible doors; however, when a person who uses a wheelchair or other mobility device is located in these areas, maneuverability is limited inside the doors, and passengers who use wheelchairs and other mobility devices must move when a person boards or exits the train through the front doors.

134. RTD's policy of allowing passengers with bicycles to occupy the space of the front of the light rail train, which is the only place where passengers who use wheelchairs or other mobility devices can board, limits maneuverability inside the doors and makes it very difficult for passengers who use wheelchairs to board or exit the train.

135. RTD's policies, practices and procedures require passengers who use wheelchairs or other mobility devices to have to move from their seating locations and/or exit the train to allow other passengers to board when no other passenger who does not use a wheelchair or other mobility device is required to do the same.

136. In the absence of the injunction sought, Plaintiffs and others who use wheelchairs will continue to be subjected to the discriminatory design of RTD's light rail trains.

137. In the absence of the injunction sought, Plaintiffs and others who use wheelchairs will continue to be subjected to RTD's discriminatory policies, practices and procedures as described in this Complaint.

Second Claim for Relief
(Violations of Section 504)

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

139. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794(a), provides in pertinent part:

No otherwise qualified individual with a disability in the United States . . . 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.

140. RTD accepts Federal financial assistance.

141. “No qualified person with a disability shall, solely by reason of his disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance administered by the Department of Transportation.” 49 C.F.R. § 27.7(a).

142. RTD operates programs and activities that receive Federal financial assistance from the Department of Transportation.

143. Discriminatory actions prohibited under Section 504 include, *inter alia*, making it unlawful for a recipient of Federal financial assistance to do the following:

- i. Deny a qualified person with a disability the opportunity to participate in or benefit from the aid, benefit, or service;
- ii. Afford a qualified person with a disability 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 disabled;
- iii. Provide a qualified person with a disability 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 disabled[.]

49 C.F.R. § 27.7(b)(1)(i)-(iii).

144. Plaintiffs and other RTD passengers who use wheelchairs and other mobility devices are qualified individuals with disabilities and have been subjected to discrimination by

RTD as described in this Complaint solely on the basis of their disabilities, including RTD's failure to provide light rail trains that are readily accessible to and usable by passengers who use wheelchairs, and by continuing to engage in policies, practices and procedures that discriminate against passengers who use wheelchairs and other mobility devices.

145. Under the Section 504 regulations,

Recipients [of Federal financial assistance] . . . shall comply with all applicable requirements of the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. 12101-12213) including the Department's ADA regulations (49 CFR parts 37 and 38), the regulations of the Department of Justice implementing Title[] II . . . of the ADA (28 CFR part[] 35 . . .).

49 C.F.R. § 27.19(a).

146. As set forth above, RTD light rail trains and policies, practices and procedures do not comply with the ADA.

147. Plaintiffs and others who use wheelchairs and other mobility devices have been, and will continue to be, injured, damaged and aggrieved by RTD's discrimination.

148. RTD acted intentionally and with a reckless disregard for Plaintiffs' civil rights and the civil rights of passengers who use wheelchairs and other mobility devices.

149. In the absence of the injunction sought herein, Plaintiffs and others who use wheelchairs and other mobility devices are likely to encounter RTD's same discriminatory light rail trains.

Prayer for Relief

WHEREFORE, Plaintiffs respectfully pray:

1. That this Court assume jurisdiction;
2. That this Court issue an Order declaring RTD to be in violation of Title II of the ADA and Section 504;
3. That this Court issue an injunction ordering the RTD to provide compliant wheelchair seating locations on all of its light rail trains and implement policies, practices and procedures that prohibit passengers who use wheelchairs from being discriminated against in using the compliant wheelchair seating locations on its light rail trains once they are provided;
4. That this Court certify a class as set forth in this Complaint;
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 the Court.

November 18, 2014

Respectfully Submitted,

/s/ Kevin W Williams

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