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,
DIANA MILNE,
TINA MCDONALD,
JOSÉ TORRES-VEGA,
RANDY KILBOURN,
JOHN BABCOCK, and
COLORADO CROSS-DISABILITY COALITION, a Colorado non-profit corporation,

Plaintiffs,

v.

REGIONAL TRANSPORTATION DISTRICT, a/k/a RTD, a political subdivision of the State of Colorado

Defendant.

DEFENDANT'S REPLY IN SUPPORT OF MOTION FOR PARTIAL DISMISSAL

Defendant Regional Transportation District ("RTD") submits the following reply in support of its Motion for Partial Dismissal under Fed. R. Civ. P. 12(b)(6), ECF No. 39.

INTRODUCTION

Relying primarily on the non-monetary terms of the Settlement Agreement, executed less than nine months before this present case was initiated, Plaintiffs urge the Court to adopt an untenable and narrow interpretation of the term "fixed-route" that excludes RTD's light rail service. Plaintiffs have misdirected the Court's attention. RTD

agrees with Plaintiffs that the non-monetary terms of the Settlement Agreement apply only to buses. *See* Defendant RTD's Mot. for Partial Dismissal, ECF No. 39, at 6. However, the operable provision barring these claims is not Paragraph 3 (the non-monetary terms), but rather, Paragraph 4 (the general release) executed, at the advice of sophisticated counsel, by Plaintiffs CCDC, Reiskin, Howey, and Lewis.

The plain language of the release is unambiguous and accurately reflects the parties' intent to resolve all potential disputes related to RTD's fixed-route system. These Plaintiffs received valuable consideration, both monetary and non-monetary, in exchange for releasing claims, "of every kind and nature related to RTD's fixed-route services", which includes claims related to RTD's bus and light rail services. Ex. A, Settlement Agreement and Release ("Agreement"), ECF. No. 39-1, at ¶ 4. RTD's motion seeks to properly narrow the parties and claims for a more efficient case. Plaintiffs CCDC, Reiskin, Howey, and Lewis should not represent the putative class and are not entitled to any relief, including attorneys' fees, because their claims are barred by the release. Although RTD fully intends to satisfy its obligations to provide accessible service under the disability rights laws, for this motion, RTD also has a vested interest in defending the integrity of that Agreement.

As such, the First and Second claims brought by Plaintiffs CCDC, Reiskin, Howey, and Lewis are barred by the release in the Agreement and should be dismissed with prejudice. Additionally, the Third claim should be dismissed to as to all plaintiffs for failure to state a claim.

ARUGMENT

I. The First And Second Claims Brought By Plaintiffs CCDC, Reiskin, Howey, And Lewis Are Barred By The Release.

A. The plain language of the release is clear and unambiguous.

The First and Second claims by CCDC, Reiskin, Howey, and Lewis should be dismissed because the release in the Agreement is clear and unambiguous. The standard principles of contract interpretation apply. *Troung v. Smith*, 28 F. Supp. 2d 626, 630 (D. Colo. 1998). When interpreting an agreement, "courts should not rewrite the provisions of an unambiguous document", but must give effect to the plain and ordinary meaning of its terms. *USI Properties E., Inc. v. Simpson*, 938 P.2d 168, 173 (Colo. 1997). "In ascertaining whether certain provisions of an agreement are ambiguous, the instrument's language must be examined and construed in harmony with the plain and generally accepted meaning of the words employed." *Id.* Absent an ambiguity courts should not "look beyond the four corners of the agreement to determine the meaning intended by the parties." *Ad Two, Inc. v. City & Cnty. of Denver ex rel. Manager of Aviation,* 9 P.3d 373, 376-77 (Colo. 2000). Merely because the parties "have different opinions regarding the interpretation of the contract does not itself create an ambiguity in the contract." *Id. at 377.*

Here, Plaintiffs fail to adequately address RTD's argument that the controlling language is in the release and warranty provisions of the Agreement. The Court does not need to look beyond the four corners of the Agreement to determine that these Plaintiffs released all claims that may have been raised based on their use of RTD's fixed-route services, which includes bus and light rail service. The plain language of the

release is clear and unambiguous. "CCDC, Julie Reiskin, Douglas Howey . . . and Jon Jamie Lewis . . . hereby voluntarily, intentionally, and knowingly fully release and discharge RTD . . . from any and all past, present or future claims . . . of every kind and nature related to RTD's fixed route-services." Agreement, at ¶ 4. The Released Claims specifically included claims "which arise out of, relate to or are based upon: (i) use of RTD's fixed-route services." *Id*.

To construe the release provision's language narrowly, as the Plaintiffs incorrectly urge, would not only defy the plain and ordinary meaning of the term "fixed-route" but would render the benefit RTD negotiated and received under the Agreement utterly nonexistent. *See Radiology Prof'l Corp. v. Trinidad Area Health Ass'n, Inc.*, 577 P.2d 748, 750 (Colo. 1978) (Stating that an instrument's language must be construed in harmony with reference to all the provisions of the agreement). Nor should the Court adopt the Plaintiffs' tortured interpretation of the release provision, based on a signatory's assertion that he or she perceived the Agreement's terms differently. See *Bledsoe Land Co. LLLP v. Forest Oil Corp.*, 277 P.3d 838, 843 (Colo. App. 2011) (Stating that a court may not consider the parties' own extrinsic expression of intent when determining whether an ambiguity exists in the agreement). CCDC, Reiskin, Howey, and Lewis are experienced litigants, represented by sophisticated counsel. Evidence of their intent is inadmissible and should be disregarded by the Court, because the plain language of the release is unambiguous. Therefore, Plaintiffs CCDC, Reiskin, Howey, and Lewis's First and Second claims are barred by the release in the Agreement and should be dismissed by this Court with prejudice.

B. Plaintiffs' strained interpretation of the term "fixed-route" defies the term's plain and ordinary meaning.

This Court should not endorse Plaintiffs' faulty and misguided interpretation of the term "fixed-route". An agreement's language "must be examined and construed in harmony with the plain and generally accepted meaning of the words employed." *USI Properties,* 938 P.2d at 173.

Plaintiffs mistakenly claim that the term "fixed-route" is a term of art and "[n]o one would dream of using the term 'fixed route' with respect to rail service." Pl.' Resp. to Def.'s Mot. For Partial Dismissal ("Response"), ECF No. 47, at 2, 11. The term "fixed-route" is not only explicitly defined in Title II of the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.* ("ADA") and in the ADA's implementing regulations, but several courts interpreting ADA statutes and regulations recognize that a fixed-route system includes bus and light rail service. *See* 49 C.F.R. § 37.3, Definitions ("Fixed route system means a system of transporting individuals . . . on which a vehicle is operated along a prescribed route according to a fixed schedule."); *see also* 42 U.S.C. § 12141(3); 42 U.S.C. § 12142(a) (defining discrimination for a public entity operating a fixed-route system to include bus and light rail service); *Boose v. Tri-Cnty. Metro. Trans. Dist. of Oregon*, 587 F.3d 997, 999 (9th Cir. 2009). Even Plaintiffs recognize that light rail is a fixed-route service. Response, at 4 ("[R]ail services, which, by definition, run on a fixed route").

Plaintiffs' strained interpretation of the term "fixed-route" clearly defies the term's plain and ordinary meaning: **any** "system of transporting individuals . . . along a prescribed route according to a fixed schedule." 49 C.F.R. § 37.3, Definitions. The term

"fixed-route", as defined in Title II, the ADA regulations, and by several courts, is overtly comprehensive and comprises more than one type of transportation service. To suggest that the term "fixed-route" is merely used to modify the term bus, to distinguish between fixed-route bus service and demand responsive bus service, is in direct conflict with the term's plain and ordinary meaning, and ignores the other types of fixed-route services public transportation providers operate.

Plaintiffs also argue that the term "fixed-route" only "becomes useful when talking about RTD's obligation to provide paratransit service" as a supplement to RTD's fixed-route bus service and therefore, can only logically apply to buses. Response, at 11. Significantly, Plaintiffs' narrow interpretation of fixed-route is inconsistent with their contention that they never excluded paratransit service from the Agreement. *Id.* at 12 ("CCDC did not make such an exclusion, because it was clear to those involved that the discussion addressed fixed route bus service only, and not rail."); *Id.* at 13 ("CCDC also had claims involving RTD's paratransit service, which were specifically addressed at other meetings but not raised in the Agreement.").

The plain and ordinary meaning of the term "fixed-route" encompasses all of the systems that operate on a fixed-route, including bus and light rail services. Therefore, when these Plaintiffs released all claims "related to RTD's fixed-route services" they were releasing all potential claims that existed at that time related to RTD's fixed-route bus and light rail services. Agreement, ¶ 4.

C. Plaintiffs' extraneous evidence is inadmissible to prove intent.

"The primary goal of contract interpretation is to determine and give effect to the intent of the parties." *Ad Two*, 9 P.3d at 376. The intent of the parties should be "determined primarily from the language of the instrument itself." *Id.* "Extraneous evidence is only admissible to prove intent where there is an ambiguity in the terms of the contract." *Id.*

Here, no ambiguity exists in the Agreement. The clear intent of the parties, as evidenced by the four corners of the Agreement, was to resolve all claims related to RTD's fixed-route services. The plain and specific language of the release chosen by the parties reflects this intent. If the parties chose to resolve solely claims related to RTD's fixed-route bus service, as opposed to all of RTD's fixed-route services, why is the modifier "bus" specifically omitted from the release provision's language? In comparison to the non-monetary terms of the Agreement, which contains one reference to the term "fixed-route bus service" and eight references to the term "fixed route bus(es)", the release provision does not even use the term "bus". *See* Agreement, ¶ 3-4.

Moreover, Plaintiffs fail to explain why the parties would explicitly choose to use the plural form of the term "fixed-route service" – "fixed-route *services*" – in the release language if the parties only intended for these plaintiffs to release claims related to RTD's fixed-route bus service. If the term "fixed-route" is only applicable to one type of service, as Plaintiffs suggest, then why not use the language "related to RTD's fixed-route service" in the release provision? The only logical conclusion is that the Plaintiffs' interpretation of the release provision is improper.

Plaintiffs' alleged misunderstanding of the plain language of the Agreement is irrelevant. *See discussion supra* p. 4. These plaintiffs are sophisticated litigants. *See* Declaration of Julie Reiskin, ECF No. 47-1, ¶¶ 5, 7; *Completed Legal Cases*, CCDC, http://www.ccdconline.org/program/legal/closed (last visited Apr. 6, 2015) (of the ninety-eight cases listed on CCDC's website, approximately fifty-nine settled). Further, Plaintiffs are represented by experienced counsel and expressly warranted in the Agreement that they were given an opportunity to consult with legal counsel. Agreement, ¶ 9.b. Based on the plain and specific language chosen by the parties, without exceeding the four corners of the Agreement, it is clear that the release bars all claims related to RTD's fixed-route services, which includes light rail service. The release provision is unambiguous. Therefore, any extraneous evidence of these plaintiffs' intent is inadmissible and should be disregarded by the Court.

D. Plaintiffs received valuable consideration in exchange for releasing all claims related to or based upon "use of RTD's fixed-route services."

Courts dismiss claims based on a general release when the purpose was to settle all legal claims that might arise between the parties, regardless of whether the consideration provided was related to the claims barred by the release. *See e.g., Fisher v. Owens-Corning Fiberglass Corp*., 868 F.2d 1175, 1176-77 (10th Cir. 1989). Although resolution of pending claims is a primary motivation for a settlement, when the release makes clear that it is not limited to the kinds of claims raised in that case, it will bar later, unrelated claims that existed at that time. *McKissick v. Yuen*, 618 F.3d 1177, 1186 (10th Cir. 2010).

Plaintiffs erroneously assert that RTD seeks to "benefit from a bargain to which it never agreed", Response at 16, and that Plaintiffs CCDC, Reiskin, Howey, and Lewis never received valuable consideration in exchange for releasing their light rail claims. *Id.* at 12. First, Plaintiffs have acknowledged that there is good and sufficient consideration for the Agreement. *See* Agreement, "Warranties", at ¶ 9.g. Secondly, Plaintiffs CCDC, Reiskin, Howey, and Lewis **did** receive valuable consideration, both monetary and non-monetary, in exchange for releasing all claims related to use of RTD's fixed-route services. *See id.* at ¶¶ 2, 3 ("In consideration of the Agreement, CCDC's full and complete release of all known and unknown claims . . . RTD agrees to . . .").

It is undisputed that the Agreement derived from the parties' desire to resolve a prior dispute involving disabled passengers accessing the wheelchair area of buses. Further, RTD concedes that the non-monetary terms of the Agreement apply only to buses. There was a consensus among the parties that the same systematic concerns with buses did not exist with light rail. As such, Plaintiffs CCDC, Reiskin, Howey, and Lewis agreed to release all claims related to RTD's fixed-route services in exchange for $75,000 and extensive non-monetary actions by RTD. In return, RTD received an assurance that it had resolved all pending disputes concerning RTD's fixed-route services with these Plaintiffs.

Plaintiffs CCDC, Reiskin, Howey, and Lewis have received valuable consideration for releasing all claims related to RTD's fixed-route services. Therefore, based on the plain and specific language chosen by the parties, the general release provision in the Agreement bars these Plaintiffs' First and Second claims.

II. Plaintiffs' response fails to address the third claim for relief and should be dismissed for failure to state a claim.

Plaintiffs' response fails to address RTD's argument that a claim pursuant to C.R.S. § 13-17-101 cannot be brought as a substantive claim. As a result, the Third Claim should be dismissed as to all Plaintiffs.

CONCLUSION

The plain language of the release is unambiguous and accurately reflects the parties' intent to resolve all potential disputes related to RTD's fixed-route system, which includes bus and light rail service. The Plaintiffs' strained interpretation of the term "fixed-route" not only defies the term's ordinary and generally accepted meaning, but would render the benefit RTD received under the Agreement nonexistent. Accordingly, Plaintiffs CCDC, Reiskin, Howey, and Lewis's First and Second claims are barred by the general release in the Agreement and should be dismissed by this Court with prejudice. In addition, the Third Claim should be dismissed as to all Plaintiffs because the Colorado statute does not provide a substantive claim for relief. For the reasons set forth above and pursuant to Fed. R. Civ. P. 12(b)(6), RTD respectfully requests that the claims identified in its motion be dismissed with prejudice.

Respectfully submitted this 8th day of April 2015.

REGIONAL TRANSPORTATION DISTRICT

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing REPLY IN SUPPORT OF MOTION FOR PARTIAL DISMISSAL was served on April 8, 2015 via email addressed to:

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Colorado Cross-Disability Coalition

/s/ Mindy Marie Swaney
Mindy Marie Swaney
This document was filed electronically. The original document and signature are on file in the undersigned attorney's office.