

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 06-cv-00865-LTB-BNB

COLORADO CROSS-DISABILITY COALITION, a Colorado non-profit Corporation,
LAURA HERSHEY,
ROBIN STEPHENS,
CARRIE ANN LUCAS,
HEATHER REBEKAH RENEE LUCAS, by and through her parent and next friend, CARRIE
ANN LUCAS
ADRIANNE EMILY MONIQUE LUCAS, by and through her parent and next friend, CARRIE
ANN LUCAS, and
DANIEL WILSON,

Plaintiffs,

v.

THE CITY AND COUNTY OF DENVER, COLORADO,
DENVER CENTER FOR PERFORMING ARTS, a Colorado non-profit Corporation,
OPERA COLORADO, a Colorado non-profit Corporation,
COLORADO BALLET COMPANY, a Colorado non-profit Corporation, and
COLORADO SYMPHONY ASSOCIATION, a Colorado non-profit organization,

Defendants.

SECOND AMENDED COMPLAINT

Plaintiffs, Colorado Cross-Disability Coalition, Laura Hershey, Robin Stephens, Carrie Ann Lucas, Heather Rebekah Renee Lucas, Adrienne Emily Monique Lucas, and Daniel Wilson, by and through their attorneys, Kevin W. Williams, Legal Program Director of the Colorado Cross-Disability Coalition, and Fox & Robertson, P.C., hereby submit their Second Amended Complaint for violations of the Americans with Disabilities Act, the Rehabilitation Act, the Colorado Anti-Discrimination Act, and the Colorado Consumer Protection Act.

INTRODUCTION

1. Over fifteen years after Congress passed our nation's landmark civil rights law for people with disabilities, Defendants -- which either own and/or operate performance venues at the Denver Performing Arts Complex and/or control ticket sales for wheelchair seating there -- continue to discriminate against persons who use wheelchairs and other mobility devices.

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

3. Congress explicitly stated that among the purposes of the ADA are:

- a. "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;"
- b. "to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities, . . .;" and
- c. "to invoke the sweep of congressional authority, including the power to enforce the 14th Amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities."

42 U.S.C. § 12101(b).

4. The ADA further clarified the Rehabilitation Act of 1973, which applies to the City, because it receives federal financial assistance.

5. In spite of this abundant lead time and the extensive publicity the ADA has received since 1990 and many more years after the passage of the Rehabilitation Act, Defendants continue to discriminate against people who use wheelchairs in ways that include but are not limited to failing to provide accessible seating to persons who use wheelchairs and other mobility devices and failing to properly train and educate their employees in the requirements of the ADA and related issues.

6. Unlike non-disabled patrons of the Performing Arts Complex who can select their seating location in the price range they desire in advance, individuals who use wheelchairs are subjected to, among other problems, the following:

- a. being told wheelchair seats are unavailable, when, in fact, they are;
- b. being sold tickets for seats that don't exist or are blocked by equipment;
- c. being sold wheelchair seats that are inaccessible;
- d. being subjected to lengthy delays getting to their seats or not being able to get there at all due to malfunctioning wheelchair lifts.

7. Defendants also discriminate against individuals with hearing and visual impairments by:

- a. failing to provide interpreters for certain performances;
- b. failing to make their web sites accessible.

JURISDICTION

8. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343 and pursuant to its pendent jurisdiction over claims brought under the laws of the State of Colorado.

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

PARTIES

10. Colorado Cross-Disability Coalition (“CCDC”) is a Colorado non-profit corporation whose members are persons with disabilities and their non-disabled allies.

11. Laura Hershey is and was at all times material hereto a resident of Colorado residing at 1466 South Lincoln Street, Denver, Colorado 80210. Ms. Hershey is substantially limited in several major life activities, including walking and breathing, and requires the use of a motorized wheelchair for mobility. Laura Hershey is a CCDC member.

12. Robin Stephens is and was at all times material hereto a resident of Colorado residing at 1466 South Lincoln Street, Denver, Colorado 80210. Ms. Stephens is substantially limited in several major life activities, including walking and speaking, and requires the use of a motorized wheelchair for mobility. Robin Stephens is a CCDC member.

13. Carrie Ann Lucas is and was at all times material hereto a resident of Colorado residing at 5601 East Yale Avenue, Denver, Colorado 80222. Ms. Lucas is substantially limited in several major life activities, including walking, hearing, breathing and seeing. She requires the use of a motorized wheelchair for mobility, sign language interpreters for effective communication and screen enhancement software for reading. Carrie Lucas is a CCDC member.

14. Plaintiff Heather Rebekah Renee Lucas is substantially impaired in several major life activities, including walking, speaking, seeing and hearing, and requires the use of a wheelchair for mobility. At all times material hereto, Miss Lucas was a resident of Colorado. She is fifteen years old and participates in this lawsuit by and through her parent and next friend, her mother Carrie Ann Lucas. Heather Rebekah Renee Lucas is a CCDC member.

15. Plaintiff Adrienne Emily Monique Lucas is substantially impaired in several major life activities, including walking and speaking, and requires the use of a wheelchair for mobility. At all times material hereto, Miss Lucas was a resident of Colorado. She is seven years old and participates in this lawsuit by and through her parent and next friend, her mother Carrie Ann Lucas. Adrienne Emily Monique Lucas is a CCDC member.

16. Daniel Wilson is and was at all times material hereto a resident of Colorado residing at 3700 East Jewel Avenue, Denver, Colorado 80210. Mr. Wilson is substantially limited in the major life activity of walking, and requires the use of a motorized scooter for mobility. Daniel Wilson is a CCDC member.

17. Defendant City and County of Denver (“City”) owns and operates facilities in the Denver Performing Arts Complex (“Performing Arts Complex”), and leases space in the Performing Arts Complex to the other Defendants in this case. The City, through contractual, leasing and licensing arrangements, rents venues and portions of the Performing Arts Complex to private entities for the presentation of various types of theatrical, musical and other events. The City, through contractual, leasing and licensing arrangements with the other Defendants in this case, provides tickets for wheelchair and companion seating at the venues at the Performing

Arts Complex. On information and belief, the City also operates a web site, with the URL address, www.artscomplex.com.

18. Defendant Denver Center for the Performing Arts (“DCPA”) is a Colorado nonprofit corporation, which, through contractual, leasing and other arrangements, provides theatrical, musical and other performances to the public at the Performing Arts Complex. DCPA is a lessee of the City and operates certain venues at the Performing Arts Complex. DCPA operates under two trade names, Denver Center Attractions (“DCA”) and Denver Centre Theatre Company (“DCTC”). DCPA, in conjunction with the City, is responsible for and controls ticketing policies for some of the venues at the Performing Arts Complex for the performances it provides. DCPA operates a web site, with the URL address, www.denvercenter.org.

19. Defendant Opera Colorado is a Colorado non-profit organization, incorporated to promote opera in Colorado. Through lease arrangements with the City, Opera Colorado promotes its operas in the Ellie Caulkins Opera House (“Opera House”). Prior to the opening of the Opera House, Opera Colorado leased the Temple Hoyne Buell Theatre (“Buell Theatre”) and Boettcher Concert Hall for its operas. Opera Colorado is a lessee of the City and operates certain venues at the Performing Arts Complex. Opera Colorado and the City are responsible for making wheelchair seating and companion seating for operas at the Performing Arts Complex available to the public and providing tickets therefor. Opera Colorado operates a web site, with the URL address, www.operacolorado.org.

20. Defendant Colorado Ballet Company (“Colorado Ballet”) is a Colorado non-profit organization, which schedules, promotes and sells tickets for ballet performances at the

Performing Arts Complex. Most ballet performances are now held in the Opera House, but previous ballets have been held in the Buell Theatre and the Boettcher Concert Hall. Colorado Ballet is a lessee of the City and operates certain venues at the Performing Arts Complex. Colorado Ballet and the City are responsible for making wheelchair seating and companion seating for ballets at the Performing Arts Complex available to the public and providing tickets therefor. Colorado Ballet operates a web site, with the URL address, www.coloradoballet.org.

21. Colorado Symphony Association is a Colorado non-profit organization, which schedules, promotes and sells tickets for symphony performances at the Performing Arts Complex. Most symphony performances are held in the Boettcher Concert Hall, but, on information and belief, symphony performances have been held in other venues at the Performing Arts Complex. Colorado Symphony Association is a lessee of the City and operates certain venues at the Performing Arts Complex. Colorado Symphony Association and the City are responsible for making wheelchair seating and companion seating for symphony performances at the Performing Arts Complex available to the public and providing tickets therefor. Colorado Symphony Association operates a web site with the URL address, www.coloradosymphony.org.

GENERAL ALLEGATIONS

22. The City & County of Denver's Theatres and Arenas Division owns and operates the three largest theatres in the Performing Arts Complex, the Ellie Caulkins Opera House, Boettcher Concert Hall and the Temple Hoyne Buell Theatre. The Performing Arts Complex also encompasses the cabaret-style Garner Galleria Theatre, the Tramway Theatre and the Helen

Bonfils Theatre Complex, housing The Stage, Space, Ricketson and Jones theatres as well as the Donald R. Seawell Grand Ballroom - all managed and booked by The Denver Center for the Performing Arts.

23. According to its website, www.denvercenter.org, the DCPA was founded in 1972 and “is a showcase for live theatre, a nurturing ground for new plays, a preferred stop on the Broadway touring circuit, an award-winning multi-media production facility, a national training school for actors, and the site of a voice clinic and research facility.” The DCPA is the largest tenant of the Performing Arts Complex. DCPA’s primary focus is the presentation of live theatrical productions. It also houses film and television, voice research and education divisions.

24. The Performing Arts Complex is located at 14th and Curtis Streets and houses, among other theatres and auditoria, the Opera House, the Buell Theatre, the Boettcher Concert Hall, the Space Theatre, the Jones Theatre, the Stage Theatre, the Ricketson Theatre, and the Garner Galleria Theatre. The Performing Arts Complex also provides a parking garage and access to the parking garage for the Colorado Convention Center. The Performing Arts Complex is 4-square-block site owned and operated by the City and County of Denver that offers 11,260 seats in 11 performance venues. The DCPA is the primary user of the theatres in the Complex, although several arts organizations, such as the Colorado Symphony, Opera Colorado and The Colorado Ballet also call the Complex home.

25. The City was responsible for some of the design and construction of the theaters and auditoria at the Performing Arts Complex.

26. The City was also responsible for renovations to the buildings at the Performing Arts Complex. For example:

- a. In or about 1990, the City was responsible for the design and construction of the Temple Hoyne Buell Theatre.
- b. In or about 2005, the City was responsible for the complete renovation of the Quigg Newton Denver Municipal Auditorium into what is now the Ellie Caulkins Opera House.
- c. On information and belief, the City was responsible for making renovations to the Boettcher Concert Hall after 1992.

27. The Opera House is the venue at which Opera Colorado and the Colorado Ballet hold performances.

28. The Opera House was designed and constructed in 2004-2005 and opened its doors to the public in or about October of 2005.

29. The Opera House is housed inside the Quigg Newton Denver Municipal Auditorium ("Auditorium"). The entire inside of the Auditorium was renovated and reconstructed. Only the exterior shell of the Auditorium remains.

30. The Opera House provides approximately 2,268 seats on five levels for viewing of performances. From the stage upward, there is the Orchestra level, the Parterre level (raised section behind the orchestra), the Mezzanine level (first balcony), the Loge level (second balcony), and the Balcony level (third balcony). The Opera House has designated wheelchair seating in the orchestra section that is on a slope and is not level. It is unknown how many

wheelchair and companion seats are available, because the location and availability of wheelchair seating has changed since the opening of the facility and some seats are removable, making them potential wheelchair seating locations.

31. The Opera House provides some wheelchair seating locations that are segregated from their respective companion seats.

32. Because the location of wheelchair seating locations has continued to change at the Opera House, it is difficult or impossible for patrons who need these seats to know what is available.

33. People who use wheelchairs have ordered tickets for specific wheelchair seating locations at Opera House and when they arrived at the performance, found those seats did not exist or were moved to another location.

34. The only access to the orchestra level of the Opera House for people who use wheelchairs or mobility devices is via a wheelchair lift. The lifts are hard to find, very cramped and malfunction repeatedly.

35. On information and belief, there is not adequate emergency egress at the Opera House for individuals who use wheelchairs from the orchestra level.

36. During a tour of the Opera House in the fall of 2005, one of the lifts malfunctioned, and Ms. Lucas was stuck in it for approximately fifteen minutes.

37. In or about October of 2005, Ms. Lucas and her two daughters attended a performance of the ballet, "Sleeping Beauty" at the Opera House. It took at least twenty minutes for all three of them to use the lift to access their seats in the orchestra level. When they arrived

at their seats, the seating locations were not level and on a steep slope. During the performance, Ms. Lucas kept sliding out of her wheelchair. Adrienne Lucas was choking on the strap to hold her in her wheelchair because of the slope.

38. Ms. Lucas complained to a manager who attempted to have her and her children moved to wheelchair seats farther from the stage. Ms. Lucas and her daughter have visual impairments, which require them to be close to the stage to see. They reserved seats close to the stage for this reason. The manager then tried to have them move to another seating section where they would be lined up in a row, each behind the other. Ms. Lucas would not have been able to attend to or communicate with her daughters and the seats they wanted Ms. Lucas and her daughters to move to did not have adequate maneuvering clearances to get in and out of the seats.

39. At intermission, Ms. Lucas and her daughters attempted to access one of the lifts. Ms. Lucas pressed the call button. Lights went off, but the lift did not come. She tried seven times, but the lift did not come until an usher went up to retrieve it. This took approximately eight minutes. Ms. Lucas got in the lift, waited for the doors to close, and pushed the button. The lights on the button inside the lift came on, but the lift didn't move. After several minutes all the button lights flashed, then the doors opened. Ms. Lucas decided to get out. Not wanting to be trapped in the lift as she was before, Ms. Lucas decided to try the lift on the other side.

40. The route leading from one lift to the other was not level, and Ms. Lucas' wheelchair slid into the backs of the seats to her left (toward the stage) due to the excessive cross slope of the aisle.

41. The other lift worked, but by the time Ms. Lucas and her daughters all got up the lift, intermission was over, and there was no time to return. They left without seeing the second act.

42. In or about December of 2005, Ms. Lucas and her two daughters attended a performance of "The Nutcracker" at the Opera House. They were not able sit in the wheelchair seats they purchased. The configuration of wheelchair seating was different from when she attended before and from the seating plan from which she chose her seats. There was no longer a route between the two lifts. There were seats blocking access between the lifts.

43. When Ms. Lucas attended the December 27, 2005 performance of "The Nutcracker," she needed to pick up tickets at the "will call" window. The "will call" window was not accessible to Ms. Lucas.

44. In or about November of 2005, Daniel Wilson purchased wheelchair and companion seating tickets for the opera "Carmen" at the Opera House. When Mr. Wilson and his companion arrived, they discovered their seats were separated by a pillar. Mr. Wilson did not want to sit separated from his companion. They were able to change seating locations and be able to sit next to each other because there was an unsold seat. When Mr. Wilson transferred from his scooter to a seat, and without Mr. Wilson's permission, an employee took his scooter from him.

45. Mr. Wilson has been deterred from ordering tickets for wheelchair seats in the orchestra level because of the presence of the malfunctioning wheelchair lifts.

46. Plaintiff Laura Hershey attempted to purchase tickets for the Opera “Carmen” at the Opera House for her and her mother for her mother’s birthday. Initially, she was told the only wheelchair seats that were available were in the orchestra level, the most expensive section. At that time, she wanted seats in a less expensive section. Ms. Hershey was given different information regarding the availability of wheelchair seating each time she called Opera Colorado. She eventually was able to purchase seats in the orchestra level.

47. Ms. Hershey, her mother and brother attended the opera “Carmen” at the Ellie Caulkins Opera House in or about November of 2005.

48. When she arrived, Ms. Hershey was unable to find the lifts to the orchestra level because of inadequate signage or usher assistance.

49. When she finally got to the lift, Ms. Hershey could not access the lift because of the flow of patrons moving down the stairs.

50. When Ms. Hershey finally entered the lift, it was cramped, and she could not operate the controls. Her brother was able to climb into the lift with her, but there was very little room. Her mother took the stairs.

51. An usher in the orchestra level showed Ms. Hershey to where her ticketed seats were, but there was no Figaro system (screens that provide translation of the opera libretto) that she could see from her seating location. She asked for a manager. When the manager arrived, he said they were not in the wheelchair seating section, although Ms. Hershey’s tickets were for these seats, and the tickets had the word “accessible” printed on them. The manager suggested

that they move to another set of accessible seats. Fortunately, these seats were not sold, and Ms. Hershey was able to sit with her family.

52. Ms. Hershey's mother, who was seated in a companion seat, had difficulty seeing the Figaro screen from her companion seat.

53. Wheelchair seating violations of the ADA at the Ellie include, without limitation, the following:

- a. the Orchestra level is "raked," meaning that the seats, including the wheelchair seating locations are on a slope and are not level;
- b. some wheelchair seating locations are separated from companion seats by pillars;
- c. the orchestra level is not accessible to individuals who use wheelchairs via an elevator; instead, the only access to the orchestra level for individuals who use wheelchairs is via two lifts on either side of the orchestra level, which malfunction often and take too long to operate;
- d. there is no accessible route connecting wheelchair seating locations to the lifts in the orchestra level;
- e. the lifts will not accommodate some individuals who use wheelchairs and mobility devices, rendering the orchestra level inaccessible to them;
- f. the lifts are difficult to operate and provide no instruction;
- g. the controls on the lifts are not operable by some individuals who use wheelchairs or mobility devices;

- h. the lifts are difficult to find; on information and belief, there is not appropriate signage to indicate to individuals who use wheelchairs or mobility devices where they are located;
- i. depending on the size of the wheelchair or mobility device, there is insufficient room in the lift for any other passengers;
- j. the new lifts have malfunctioned repeatedly when CCDC members who use wheelchairs have attempted to use them;
- k. the lifts are difficult to enter for individuals who use wheelchairs, because one must turn around an obstruction to enter them and because of the pedestrian traffic flow on the stairs adjacent to the lifts;
- l. the lifts are so slow that individuals who use wheelchairs cannot leave the orchestra level and return during intermissions before the performance begins;
- m. wheelchair seats have been sold to individuals who use wheelchairs that have no captioning screens, known as “Figaros;”
- n. individuals who use wheelchairs have had to change seating locations because they were sold “Accessible” seats that were not actually wheelchair seating locations;
- o. companion seating in some wheelchair seating sections does not offer an equivalent view of the “Figaro” captioning screens;

- p. the aisle leading to the front row of the orchestra level where wheelchair seating locations is designated is narrow, and there is no turn around space for an individual who uses a wheelchair;
- q. people who use wheelchairs are unable to sit in the seats they have chosen and purchased.

54. On information and belief, Defendants or their agents have made some improvements to wheelchair seating in the orchestra level, but many of the problems listed above still exist.

55. Tickets for performances at the Opera House are sold through Opera Colorado, Colorado Ballet, Ticketmaster, Ticketwest, and other ticket-selling outlets. Defendants responsible for providing wheelchair and companion seating tickets for the Opera House have failed to convey the information necessary to enable individuals who use wheelchairs and their companions to have similar choices for seating to the non-disabled public, resulting in patrons who use wheelchairs being sold the wrong seats or not being able to select their seats in advance.

56. CCDC has attempted to educate the City about the accessibility problems at the Opera House and to reach an amicable solution. Those attempts have not been successful.

57. The Buell Theatre was constructed in 1991. It has approximately 2,884 seats. Of these, approximately 109 removable seats are “designated” as accessible to persons who use wheelchairs.

58. Some of the sections designated for use by persons who use wheelchairs at the Buell Theatre are routinely blocked by camera, sound and lighting equipment.

59. Some of the best seating sections designated for use by persons who use wheelchairs at the Buell Theatre are routinely blocked by camera, sound and lighting equipment.

60. CCDC members who use wheelchairs have attempted to purchase wheelchair seats at the Buell Theatre and, upon arrival at the theater, discovered those seats were unavailable because of camera, sound or lighting equipment blocking the section.

61. On or about October 24, 2004, Carrie Ann Lucas bought tickets for the ballet "Dracula" for the matinee performance for herself, her daughter and an attendant, which was presented at the Buell Theatre. Ms. Lucas called TicketMaster on Saturday to make sure tickets were available. She found out there were wheelchair seats available on the orchestra level. Ms. Lucas went to the Buell Theatre box office on Sunday before the performance to purchase tickets. There were numerous barriers to access.

62. When Ms. Lucas went to purchase tickets, there was a carpet and red velvet ropes blocking access to the window where tickets are purchased. Ms. Lucas had to have someone remove the ropes in order to access the window.

63. When Ms. Lucas requested tickets in the wheelchair seating sections in the orchestra level, she was told none were available. She wanted to sit in the orchestra level seats, but was denied this opportunity. The ticketing agent first said she was having difficulty finding any accessible seats. She was unable to get accessible seating tickets to print. Ms. Lucas was never able to purchase tickets in the orchestra level. Instead, the ticketing agent gave Ms. Lucas tickets, but they were for the mezzanine level.

64. When Ms. Lucas and her companions entered the Buell Theatre, Ms. Lucas discovered that there was no one sitting in the orchestra level, section B wheelchair seating box. They went to their seats on the mezzanine level. When they arrived at their seats, Ms. Lucas was unable to sit in her assigned seat because there was an instrument panel there. They had to sit elsewhere.

65. Ms. Lucas experienced problems with access when she, her daughter and an attendant went to see the ballet "Peter Pan" at the Buell Theatre during the previous spring as well. Ms. Lucas purchased wheelchair seats on the orchestra level, but the boxes in orchestra sections B and D are not long enough from front to back to accommodate Ms. Lucas' wheelchair. She could not fit inside the box. As a result, she requested to be moved. The ushers did move Ms. Lucas' party into a box in the orchestra C section, but that box had camera equipment in it. As a result, the box itself and views from it were obstructed.

66. Other CCDC members have had difficulty discerning what wheelchair seating locations are available at the Buell Theatre and obtaining the wheelchair seating locations they would like.

67. On information and belief, the Buell Theatre routinely blocks off wheelchair seating areas with sound, lighting, and other equipment, even though those seating locations are advertised as available for sale.

68. Defendants who are responsible for providing tickets for wheelchair seats at the Buell Theatre have failed to provide adequate access to those seats, have sold tickets for seats that were blocked and otherwise have discriminated in their ticketing policies.

69. On or about May 5, 2006, Ms. Lucas, who is deaf and enjoys performances using a sign language interpreter, called the DCPA box office using a TTY to inquire about tickets to the performance of "Movin' Out" at the Buell Theatre. She requested wheelchair accessible seats and a sign language interpreter. The box office employee informed her that there was "no signed performance" of "Movin' Out." The box office employee asked Ms. Lucas if she was looking for tickets for herself and an interpreter. Ms. Lucas informed that she was requesting that DCPA provide an interpreter. The employee informed that the DCPA does not provide interpreters, that this was up to the individual Broadway touring shows, and this production chose not to provide an interpreter. Ms. Lucas requested that a supervisor call her. She never received a call back. "Movin' Out" is no longer playing.

70. On or about June 29, 2006, Carrie Ann Lucas called the DCPA to inquire about having DCPA provide a qualified sign language interpreter for the November 11, 2006 performance of "Lion King." Ms. Lucas has tickets for the November 11, 2006, performance for herself, her three daughters, two nephews and her sister. Ms. Lucas' seats (for herself and two of her daughters who use wheelchairs) are in the orchestra level wheelchair seating Row S, Section E, and the rest of her family have seats elsewhere. She was instructed to call the box office. She did so and spoke with a woman named Shana. Ms. Lucas requested a qualified sign language interpreter who would be stationed at or near the front of the box where her seats are. Because of Ms. Lucas' visual disability, she cannot see an interpreter on the stage from this seating location. Shana informed Ms. Lucas that there is already one performance that had interpreters and gave her the date, October 22, 2006. Ms. Lucas explained that she could not attend that

interpreted performance because she and her family will be out of town, and because she and her daughter need an interpreter four to six feet away for effective communication, an interpreter on the stage would not work.

71. While they were on the phone, Shana informed Ms. Lucas that her manager was trying to contact an interpreting agency DCPA uses, Very Special Arts, to see if someone was available for that performance. She told Ms. Lucas that she could not guarantee that DCPA would provide an interpreter or that they could have the interpreter be between four and six feet from Ms. Lucas during the performance. Shana informed Ms. Lucas, "All we can do is the best we can do."

72. Later during this telephone call, a man who identified himself as Don Burge, a manager, spoke to Ms. Lucas. He said her request would take some time, and the box office would need to call her back. Ms. Lucas repeated the details of her request for accommodation. Ms. Lucas spent approximately forty minutes on the phone with the DCPA box office.

73. Later on June 29, 2006, Don Burge left Ms. Lucas a voice mail message. He informed her that DCPA will not provide an interpreter on November 11 (the performance for which she has tickets) and instead, Mr. Burge suggested she go to the October 22, 2006 matinee performance. He also said that during the performance, characters come out into the audience, which he believes will interfere with putting an interpreter in the orchestra level where Ms. Lucas can see the interpreter.

74. CCDC has attempted to educate the City about the accessibility problems at the Buell Theatre and to reach an amicable solution. Those attempts have not been successful.

75. Boettcher Concert Hall was constructed in approximately 1978 and has approximately 2,679 seats. It provides only seven wheelchair and seven companion seats at the highest level of the Concert Hall, although there are conflicting reports about the precise number and location. Boettcher Concert Hall hosts the Colorado Symphony.

76. In January, 2006, Plaintiffs Hershey and Stephens attempted to get tickets for an April 5, 2006 Itzhak Perlman concert at Boettcher Concert Hall. On January 11, 2006, after receiving a special promotional e-mail with the Symphony's electronic newsletter, Ms. Hershey called to order tickets. (This was two days before tickets went on sale to the general public on January 13, 2006.) She was told by a person at the Boettcher Concert Hall box office that seats were available, but all of the wheelchair seats had been sold to season ticket holders. Ms. Hershey requested that the City investigate whether they would inquire of the seven subscribers who had purchased those seats if they actually needed those seats. The box office did not do so.

77. On January 13, 2006, the day that tickets went on sale to the general public for the Itzhak Perlman concert, Ms. Hershey again called the Boettcher Concert Hall box office to inquire about purchasing tickets. Again, she was told that while some tickets were still available, none of these were for wheelchair-accessible seats. Knowing that the entire concert would sell out quickly, Ms. Hershey requested a reasonable accommodation: She purchased two non-wheelchair seats in the highest price range and asked the City to find two wheelchair seating locations. The City refused.

78. Later, additional seating was added to Boettcher Concert Hall in an area where wheelchair seats have been provided at other events, known as the "crossover aisles," but none

of the added seats were wheelchair accessible. Ms. Hershey requested wheelchair seats in the added seating section, but the City refused.

79. Individuals who use wheelchairs have sat in the crossover aisles in the past.

80. After several letters were exchanged with CCDC, Ms. Hershey and Ms. Stephens eventually were accommodated.

81. When Ms. Hershey and Ms. Stephens attended the Itzhak Perlman concert, they were seated in a section that the City previously had informed them would cause a fire code violation. There were other people in wheelchairs seated in the same section.

82. On or about October 25, 2005, Carrie Ann Lucas attended the Colorado Bar swearing-in ceremony at the Boettcher Concert Hall. All new lawyers who had been admitted to the practice of law in Colorado after the July, 2005 bar exam were invited to attend as well as friends, family and other members of the bar.

83. Employees at the ceremony told Ms. Lucas she was required to sit in the wheelchair seating section high above where the rest of the inductees were seated. She disagreed.

84. Ms. Lucas was seated on the crossover aisle in between orchestra 1 and orchestra 2, *see* Exh. 1 attached hereto, alone with her sign language interpreter. She was segregated from her peers. Ms. Lucas had to argue for a very long time to have her interpreter seated in front of her, rather than seated directly next to her where Ms. Lucas would have been unable to see her.

85. Other inductees were permitted to sit with their friends and family, but Ms. Lucas was not allowed to. She could not sit with her children.

86. All of the people attending the event were seated in rows closest to the stage, except people attending the event who use wheelchairs who were relegated to the very top rows of the Concert Hall. They were segregated from the rest of the audience by many empty rows of seats, and it was difficult to hear.

87. CCDC has attempted to educate the City about the accessibility problems at the Boettcher Concert Hall and to reach an amicable solution. Through correspondence, the City informed CCDC that it cannot expand wheelchair seating into the crossover aisle because it would create fire safety issues, although seating for non-disabled patrons has been provided there. On or about April 26, 2006, CCDC received a letter, informing that the City intends to install additional wheelchair seating at the Boettcher Concert Hall in the crossover aisles. The precise deadline is unknown. However, rather than installing the wheelchair and companion seating areas in the crossover aisle between orchestra 1 and orchestra 2, the City proposes to install them in the crossover aisle between orchestra 2 and orchestra 3. As can be seen in Exh. 1, the crossover aisle between orchestra 2 and orchestra 3 is much farther from the stage. On information and belief, the City can install wheelchair and companion seating on the crossover aisle between orchestra 1 and orchestra 2, providing people who use wheelchairs a better view of the stage and differing choices of admission prices than will be provided from the crossover aisle between orchestra 2 and orchestra 3. CCDC requested that the City do this; the City has not yet responded.

88. On information and belief, the Stage Theatre provides more than fifty seats. On information and belief, there is an insufficient number of wheelchair and companion seats available in the Stage Theatre.

89. On information and belief, there is inadequate wheelchair seating in other theatres in the Performing Arts Complex.

90. In or about 2005, DCPA closed its 14th Street box office and moved it to a location inside the Helen Bonfils Theatre Complex inside the Performing Arts Complex. The service counter at this box office is far too high for persons in wheelchairs to use.

91. The Performing Arts Complex parking garage provides accessible parking spaces and van accessible parking spaces on the third, fourth and fifth levels. Van accessible parking is only available on the sixth level. There is not adequate signage directing people with disabilities to these levels. On information and belief, upon entry into the garage prior to performances, employees direct drivers to park on the top level first. This level has no accessible parking. The City owns the garage and contracts with another entity, which operates the garage.

92. The general public may purchase tickets for any performance sponsored by the DCPA on the internet. Those needing wheelchair seating are required to contact the DCPA box office. The DCPA has made wheelchair seating available on its web site for one production, "PHAMALy Presents the Wiz." On information and belief, the DCPA can make wheelchair seating tickets for all of its productions available on its web site.

93. The City provides no TTY number on its web site for reserving tickets.

94. Colorado Ballet provides no TTY number on its web site for reserving tickets.

95. Opera Colorado provides no TTY number on its web site for reserving tickets.

96. Colorado Symphony Association provides no TTY number on its web site for reserving tickets.

97. On information and belief, the City itself, or through contractual and/or licensing agreements with others, operates a web site, www.artscomplex.com. This web site advertises that, “Ellie Caulkins Opera House, the Buell Theatre and Boettcher Concert Hall make every effort to offer a wonderful experience for our patrons with disabilities,” and, “There are ADA seating locations in all three venues. Patrons should request ADA seating when booking their seats with the ticketing agency.” The City’s web site provides information to the public including, without limitation, the following: dates and times of performances, a description of the Performing Arts Complex and each of its venues, directions to the facilities and parking. The web site is a service, program or activity of the City.

98. The City’s web site is not accessible to people with visual disabilities who use screen reading or screen enhancement software.

99. The DCPA web site, <http://denvercenter.org/page.cfm?id=23683064>, advertised, “The Denver Center for Performing Arts is fully accessible to persons of all abilities and offers services for patrons in wheelchairs and with hearing and sight impairments.” Since the filing of the original complaint in this action, the word “fully” has been removed.

100. The DCPA web site is not accessible to people with visual disabilities who use screen reading or screen enhancement software.

101. The DCPA web site provides information to the public including, without limitation, the following: dates and times of performances at DCPA-operated/leased venues, a description of the venues DCPA operates/leases at the Performing Arts Complex, directions to the venues DCPA operates/leases, seating charts for the venues DCPA operates/leases, a means for purchasing tickets for performances at the venues DCPA operates/leases.

102. The Opera Colorado web site is not accessible to people with visual disabilities who use screen reading or screen enhancement software.

103. The Opera Colorado web site provides information to the public including, without limitation, the following: dates and times of performances, a description of the Ellie Caulkins Opera House, directions to the Opera House, a means for purchasing tickets for performances at the Opera House.

104. The Colorado Ballet Company web site is not accessible to people with visual disabilities who use screen reading or screen enhancement software.

105. The Colorado Ballet Company web site provides information to the public including, without limitation, the following: dates and times of performances at the Opera House, a description of the Ellie Caulkins Opera House, directions to the Opera House, a means for purchasing tickets for performances at the Opera House.

106. The Colorado Symphony Association web site is not accessible to people with visual disabilities who use screen reading or screen enhancement software.

107. The Colorado Symphony Association web site provides information to the public including, without limitation, the following: dates and times of performances at Boettcher

Concert Hall, directions to the Boettcher Concert Hall, a means for purchasing tickets for performances at the Boettcher Concert Hall.

108. Laura Hershey has attended performances at the Performing Arts Complex and would like to attend future performances there if the accessibility problems described herein are resolved. Ms. Hershey has experienced accessibility problems described herein. Defendants' conduct has deterred Ms. Hershey from attending future performances until the accessibility problems described herein are resolved.

109. Laura Hershey suffered damages as a result of Defendants' conduct.

110. Robin Stephens has attended performances at the Performing Arts Complex and would like to attend future performances there if the accessibility problems described herein are resolved. Ms. Stephens has experienced accessibility problems described herein. Defendants' conduct has deterred Ms. Stephens from attending future performances until the accessibility problems described herein are resolved.

111. Robin Stephens suffered damages as a result of Defendants' conduct.

112. Carrie Lucas has attended performances at the Performing Arts Complex and would like to attend future performances there if the accessibility problems described herein are resolved. Ms. Lucas has experienced accessibility problems described herein. Ms. Lucas has tried viewing all of Defendants' web sites with her screen reading software and has been unable to access much of the information on all of Defendants' web sites. Defendants' conduct has deterred Ms. Lucas from attending past and future performances until the accessibility problems described herein are resolved.

113. Carrie Ann Lucas suffered damages as a result of Defendants' conduct.

114. Heather Rebekah Renee Lucas has attended performances at the Performing Arts Complex and would like to attend future performances there if the accessibility problems described herein are resolved. Miss Lucas has experienced accessibility problems described herein. Defendants' conduct has deterred Miss Lucas from attending future performances until the accessibility problems described herein are resolved.

115. Heather Rebekah Renee Lucas suffered damages as a result of Defendants' conduct.

116. Adrienne Emily Monique Lucas has attended performances at the Performing Arts complex and would like to attend future performances there if the accessibility problems described herein are resolved. Miss Lucas has experienced accessibility problems described herein. Defendants' conduct has deterred Miss Lucas from attending future performances until the accessibility problems described herein are resolved.

117. Adrienne Emily Monique Lucas suffered damages as a result of Defendants' conduct.

118. Daniel Wilson has attended performances at the Performing Arts Complex and would like to attend future performances there if the accessibility problems described herein are resolved. Daniel Wilson has experienced accessibility problems described herein. Defendants' conduct has deterred Mr. Wilson from attending future performances until the accessibility problems described herein are resolved.

119. Daniel James Wilson suffered damages as a result of Defendants' conduct.

120. On information and belief, other CCDC members have attended performances at the Performing Arts Complex and would like to attend future performances there if the accessibility problems described herein are resolved. On information and belief, these other CCDC members have experienced accessibility problems described herein. On information and belief, Defendants' conduct has deterred other CCDC members from attending future performances until the accessibility problems described herein are resolved.

121. On information and belief, other CCDC members have suffered damages as a result of Defendants' conduct.

122. Plaintiff CCDC has members who attend performances at the Performing Arts Complex and who would like to attend performances at the Performing Arts Complex.

123. CCDC's purpose is to work for systemic change that promotes independence, self-reliance, and full inclusion for people with disabilities in the entire community. As part of that purpose, CCDC seeks to ensure that persons with disabilities have access to -- and do not encounter discrimination in -- the goods, services, facilities, privileges, advantages, or accommodations provided by public venues and theatres, like those owned and operated by Defendants.

124. 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 Defendants' violations of the laws cited herein.

125. Defendants' actions have caused and continue to cause distinct, palpable, and perceptible injury to CCDC.

126. CCDC has devoted resources, which could have been devoted to its other outreach, advocacy, and educational efforts, to communicating with the City in an attempt to secure non-discriminatory conditions at the Performing Arts Complex.

127. CCDC has devoted resources, which could have been devoted to its other outreach, advocacy, and educational efforts, to counseling members and others who have been injured by Defendants' discrimination.

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

- a. parts of the Performing Arts Complex are inaccessible to individuals who use wheelchairs;
- b. individuals who use wheelchairs are denied the opportunity to choose and purchase seats;
- c. individuals who use wheelchairs are afforded lesser accommodations and services than the non-disabled;
- d. individuals who use wheelchairs must argue with Defendants' employees to obtain seating;
- e. individuals with visual and hearing impairments are denied access to ticketing information;

- f. individuals with hearing impairments are denied access to effective communication.

129. Defendants' actions deter some persons with disabilities from attending events at the Performing Arts Complex,

130. Defendants' discrimination has required and continues to require CCDC to make a greater effort -- and to allocate significant resources -- to educate the public that such discrimination is wrong and otherwise to counteract the adverse impact of such discrimination. This perceptibly impairs CCDC's counseling, advocacy, educational, and training missions.

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

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

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

134. The elimination of discrimination, such as that of Defendants, and the integration of persons with disabilities into all aspects of community life are at the core of CCDC's organizational purpose.

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

136. Defendants acted intentionally or with reckless or callous indifference to the federally protected rights of others.

FIRST CLAIM FOR RELIEF

(Against City and County of Denver: Violation of the Americans with Disabilities Act)

137. Plaintiffs reallege and incorporate by reference the allegations set forth above as if fully set forth herein.

138. Title II of the ADA prohibits public entities from denying, on the basis of disability, the benefits of the services, programs, or activities of the public entity, or from subjecting persons with disabilities to discrimination. 42 U.S.C. § 12132.

139. The City and County of Denver is a public entity covered by the ADA. 42 U.S.C. § 12131(1).

140. Defendant has violated the ADA by denying Plaintiffs and other persons with disabilities the benefits of the Performing Arts Complex through, without limitation, failing to provide appropriate wheelchair seating spaces, failing to properly train employees, lessees and licensees, failing to provide effective ticketing methods for wheelchair seating, failing to provide access to its facilities, failing to make the information on its web site accessible, and failing to provide effective means of communication.

141. Defendant's violations of the ADA have harmed Plaintiffs.

SECOND CLAIM FOR RELIEF

(Against City and County of Denver: Violation of Rehabilitation Act)

142. Plaintiffs reallege and incorporate by reference the allegations set forth above as if fully set forth herein.

143. The Rehabilitation Act prohibits recipients of federal financial assistance from denying, on the basis of disability, the benefits provided by the recipient, or from subjecting persons with disabilities to discrimination. 29 U.S.C. § 794.

144. On information and belief, Defendant receives federal financial assistance.

145. Defendant has violated the Rehabilitation Act by denying Plaintiffs and other persons with disabilities the benefits of the Performing Arts Complex through, without limitation, failing to provide appropriate wheelchair seating spaces, failing to properly train employees, lessees and licensees, failing to provide effective ticketing methods for wheelchair seating, failing to make the information on its web site accessible, failing to provide access to its facilities, and failing to provide effective means of communication.

146. Defendant's violations of the Rehabilitation Act have harmed Plaintiffs.

THIRD CLAIM FOR RELIEF

(Against Denver Center for Performing Arts, Opera Colorado, Colorado Ballet Company, Colorado Symphony Association: Americans with Disabilities Act)

147. Plaintiffs reallege and incorporate by reference the allegations set forth above as if fully set forth herein.

148. Title III of the ADA prohibits discrimination 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.

149. Defendants Denver Center for Performing Arts, Opera Colorado, Colorado Ballet Company, Colorado Symphony Association all lease (or lease to), or operate places of public accommodation.

150. Defendants have violated the Americans with Disabilities Act by denying Plaintiffs and other persons with disabilities the benefits of the Performing Arts Complex through, without limitation, failing to provide appropriate wheelchair seating spaces, failing to properly train employees, failing to provide effective ticketing methods for wheelchair seating, failing to provide access to its facilities, failing to provide accessible web sites, and failing to provide effective means of communication.

151. Defendants' violations of the Americans with Disabilities Act have harmed Plaintiffs.

FOURTH CLAIM FOR RELIEF

(Against all Defendants: Colorado Anti-Discrimination Act)

152. Plaintiffs reallege and incorporate by reference the allegations set forth above as if fully set forth herein.

153. The Colorado Anti-Discrimination Act prohibits any public facility of any kind from denying an individual or a group on the basis of disability equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations. Colo. Rev. Stat. § 24-34-601.

154. Defendants -- in their ownership and/or operation of facilities at the Performing Arts Complex -- are all places of public accommodation as that term is defined in Colo. Rev. Stat. § 24-34-601(1).

155. The Colorado Anti-Discrimination Act is to be construed consistently with the ADA and other federal civil rights statutes. 3 Colo. Code. Reg. 708.60.1(c).

156. Defendants have violated the Colorado Anti-Discrimination Act by denying individuals with disabilities the benefits of the Performing Arts Complex through, without limitation, failing to provide appropriate wheelchair seating spaces, failing to properly train employees, failing to provide effective ticketing methods for wheelchair seating, failing to provide access to their facilities, failing to make the information on their web sites accessible, and failing to provide effective means of communication.

157. Under the Colorado Anti-Discrimination Act, for every offense committed by each Defendant, each shall forfeit and pay a sum of not less than fifty dollars nor more than five hundred dollars to the persons aggrieved thereby. Colo. Rev. Stat. § 24-34-602.

158. Defendants' violations of the Colorado Anti-Discrimination Act have harmed Plaintiffs and CCDC's members who have attempted to patronize the Performing Arts Complex.

FIFTH CLAIM FOR RELIEF

(Against the City and County of Denver and the Denver Center for Performing Arts: Colorado Consumer Protection Act)

159. Plaintiffs reallege and incorporate by reference the allegations set forth above as if fully set forth herein.

160. The Colorado Consumer Protection Act ("CCPA") requires that "[e]xcept in a class action, any person who, in a private civil action, is found to have engaged in or caused another to engage in any deceptive trade practice . . . shall be liable in the amount equal to the sum of . . . [t]hree times the actual damages sustained or two hundred and fifty dollars, whichever

is greater; and . . . [i]n the case of a successful action to enforce said liability the costs of the action together with reasonable attorney fees as determined by the court.”

161. Plaintiffs Laura Hershey, Robin Stephens, Carrie Ann Lucas, and Daniel Wilson seek recovery under the CCPA.

162. In addition, the CCPA provides, “[a]ny person who violates or causes another to violate any provision of [the CCPA] shall forfeit and pay to the general fund of this state a civil penalty of not more than two thousand dollars for each such violation [;] a violation of any provision shall constitute a separate violation with respect to each consumer or transaction involved; except that the maximum civil penalty shall not exceed one hundred thousand dollars for any related series of violations.” Colo. Rev. Stat. § 6-1-112(1).

163. Section 6-1-112 is enforceable by a plaintiff in a private cause of action.

164. Under the CCPA, “[a] person engages in a deceptive trade practice when, in the course of such person’s business . . . such person:”

- a. “[k]nowingly makes a false representation as to the characteristics . . . uses, alterations, or quantities of . . . services . . . ;
- b. “[r]epresents that . . . services . . . are of a particular standard, quality or grade . . . if he knows or should know that they are of another;”
- c. “[a]dvertises . . . services with intent not to sell them as advertised;”
- d. “[a]dvertises . . . services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;”

- e. “[e]mploys ‘bait and switch’ advertising, which is advertising accompanied by an effort to sell . . . services . . . other than those advertised or on terms other than those advertised and which is also accompanied by [the] following practice . . . demonstrating defective . . . services which are unusable or impractical for the purposes set forth in the advertisement; and
- f. “[f]ails to disclose material information concerning . . . services . . . which information was known at the time of an advertisement or sale if such failure to disclose such information was intended to induce the consumer to enter into a transaction.

Colo. Rev. Stat. § 6-1-105(1).

165. Defendants the City and DCPA are responsible for advertising the availability of wheelchair seating at the Performing Arts Complex venues.

166. The City and DCPA, through promotional brochures, Internet websites, and representations of box office personnel, advertise and/or claim that DCPA provides “wheelchair seating” or “accessible seating” and depict the wheelchair seating areas in various maps and diagrams and have advertised that the Performing Arts Complex is “fully accessible” or “accessible” to individuals with disabilities.

167. The DCPA box office is Defendants’ agent with regard to the sales of tickets for concerts at DCPA.

168. Defendants continue to advertise that they sell tickets for “wheelchair seating” or “accessible seating” in the designated areas. The City has been placed on notice that it has been falsely advertising that wheelchair or accessible seating is available in the advertised locations at Performing Arts Complex venues; nevertheless, Defendants continue to advertise the availability of wheelchair seating with full knowledge that such seating will be unavailable at the concert, often as a result of Defendants’ actions. Like all reserved seating ticket holders, Plaintiffs Laura Hershey, Robin Stephens, Carrie Lucas, Heather Rebekah Renee Lucas, Adrienne Emily Monique Lucas, and Daniel Wilson were led to believe and did believe that there would be a level seating areas, with appropriate companion seating, that could be accessed in a reasonable amount of time, that were of appropriate size and that were the seats they actually reserved. Upon arrival, Plaintiffs did not receive the seats they were promised.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray:

1. That this Court assume jurisdiction.
2. That this Court issue an injunction ordering Defendants to comply with the ADA, the Rehabilitation Act, the Colorado Anti-Discrimination Act and the CCPA by providing appropriate, designated accessible wheelchair and companion seating locations in all of their venues, providing ticketing policies that ensure people who use wheelchairs get the seats they select, providing training to their employees on access issues, providing access to ticketing services, and otherwise bringing their services and facilities into compliance.
3. That this Court award compensatory damages to Plaintiffs.

4. That this Court award reasonable attorneys' fees and costs.
5. That this Court award such additional or alternative relief as may be just, proper and equitable.

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

Dated: July 12, 2006

Respectfully submitted,

/s Kevin W. Williams
Kevin W. Williams
Legal Program Director
Colorado Cross-Disability Coalition
655 Broadway, Suite 775
Denver, CO 80203
Voice: 303.839.1775
TTY: 303.839.0015
Facsimile: 303.839.1782
E-mail: kwilliams@ccdconline.org

Timothy P. Fox
Amy F. Robertson
Fox & Robertson, P.C.
910 - 16th Street, Suite 610
Denver, CO 80202
Voice: 303.595.9700
TTY: 303.595.9703
Facsimile: 303.595.9705
E-mail: arob@foxrob.com

Address of Plaintiff Colorado Cross-Disability Coalition

655 Broadway, Suite 775
Denver, CO 80203