

**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 THE 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.

**DEFENDANT COLORADO BALLET COMPANY'S
ANSWER TO SECOND AMENDED COMPLAINT**

Defendant, the Colorado Ballet Company ("the Ballet"), through its attorneys, Holme
Roberts & Owen LLP, respond to Plaintiffs' Second Amended Complaint ("Complaint") as
follows:

INTRODUCTION

1. The Ballet denies the allegations of paragraph 1 of the Complaint.

2. The Ballet admits that the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12101, *et seq.*, is a civil rights law that was enacted in July 1990.

3. The Ballet admits that 42 U.S.C. § 12101(b) outlines the purposes of the ADA as cited in paragraph 3 of the Complaint.

4. The allegations of paragraph 4 of the Complaint do not relate to the Ballet and therefore do not require an answer from the Ballet. To the extent that an answer would be required, the Ballet states that the ADA speaks for itself.

5. The Ballet denies all allegations of paragraph 5 of the Complaint that relate to the Ballet. The Ballet is without information as to the truth of the allegations against other defendants in this matter.

6. The Ballet denies all allegations of paragraph 6 of the Complaint that relate to the Ballet. The Ballet is without information as to the truth of the allegations against other defendants in this matter.

7. The Ballet denies all allegations of paragraph 7 of the Complaint that relate to the Ballet. The Ballet is without information as to the truth of the allegations against other defendants in this matter.

JURISDICTION

8. The Ballet admits that this Court has subject matter jurisdiction over this action.

9. The Ballet admits that venue is proper.

PARTIES

10. The Ballet is without information as to the truth of the allegations of paragraph 10 of the Complaint and therefore denies all the allegations of paragraph 10.

11. The Ballet is without information as to the truth of the allegations of paragraph 11 of the Complaint and therefore denies all the allegations of paragraph 11.

12. The Ballet is without information as to the truth of the allegations of paragraph 12 of the Complaint and therefore denies all the allegations of paragraph 12.

13. The Ballet is without information as to the truth of the allegations of paragraph 13 of the Complaint and therefore denies all the allegations of paragraph 13.

14. The Ballet is without information as to the truth of the allegations of paragraph 14 of the Complaint and therefore denies all the allegations of paragraph 14.

15. The Ballet is without information as to the truth of the allegations of paragraph 15 of the Complaint and therefore denies all the allegations of paragraph 15.

16. The Ballet is without information as to the truth of the allegations of paragraph 16 of the Complaint and therefore denies all the allegations of paragraph 16.

17. As the allegations of paragraph 17 of the Complaint relate to a defendant other than the Ballet, they do not require an answer from the Ballet. To the extent that an answer is required all allegations are denied.

18. As the allegations of paragraph 18 of the Complaint relate to a defendant other than the Ballet, they do not require an answer from the Ballet. To the extent that an answer is required all allegations are denied.

19. As the allegations of paragraph 19 of the Complaint relate to a defendant other than the Ballet, they do not require an answer from the Ballet. To the extent that an answer is required all allegations are denied.

20. The Ballet admits that it is a Colorado non-profit organization. The Ballet further admits that it schedules, promotes and sells tickets for ballet performances at the Performing Arts Complex, that it is a lessee of the City, has performed in the Opera House and the Buell Theatre, and that it operates a website with the URL address www.coloradoballet.org. The Ballet denies all other allegations of paragraph 20 of the Complaint.

21. As the allegations of paragraph 21 of the Complaint relate to a defendant other than the Ballet, they do not require an answer from the Ballet. To the extent that an answer is required all allegations are denied.

GENERAL ALLEGATIONS

22. The Ballet admits the allegations in paragraph 22 of the Complaint.

23. As the allegations of paragraph 23 of the Complaint relate to a defendant other than the Ballet, they do not require an answer from the Ballet. To the extent that an answer is required all allegations are denied.

24. The Ballet admits that the Performing Arts Complex is located at 14th and Curtis streets. The Ballet further admits that the Ellie Caulkins Opera House, Boettcher Concert Hall, the Temple Hoyne Buell Theatre, the Garner Galleria Theatre, and the Helen Bonfils Theatre Complex, which includes The Stage, Space, Ricketson and Jones theaters and the Donald R. Seawell Grand Ballroom, are located in the Performing Arts Complex. The Ballet admits that

there is a parking garage within the Performing Arts Complex. The Ballet admits that the Performing Arts Complex is an approximately 4-block site owned and operated by the City and County of Denver. The Ballet has insufficient information as to whether the DCPA is a primary tenant of the Performing Arts Complex. The Ballet admits that the Colorado Ballet conduct performances in venues within the Complex. The Ballet denies the remaining allegations of paragraph 24 of the Complaint.

25. The allegations of paragraph 25 of the Complaint relate to defendants other than the Ballet and therefore do not require an answer from the Ballet. To the extent that an answer is required the allegations are denied.

26. The allegations of paragraph 26 of the Complaint relate to defendants other than the Ballet and therefore do not require an answer from the Ballet. To the extent that an answer is required the allegations are denied.

27. The Ballet admits that the Colorado Ballet and Opera Colorado hold performances at the Opera House. All other allegations of paragraph 27 of the Complaint are denied.

28 – 56. The Ballet is without information as to the truth of the allegations of paragraphs 28 - 56 of the Complaint and therefore denies the allegations of paragraphs 28-56.

57. The Ballet admits that the Buell Theatre was constructed in 1991. The Ballet is without information as to the truth of the remaining allegations of paragraph 57 and therefore denies the allegations of paragraph 57.

58 – 81. The Ballet is without information as to the truth of the allegations of paragraphs 58-81 of the Complaint and therefore denies the allegations of paragraphs 58-81.

82 – 86. As the allegations of paragraphs 82-86 of the Complaint do no relate to the Ballet, they do not require an answer from the Ballet. To the extent the allegations require an answer, the allegations are denied.

87 – 93. The Ballet is without information as to the truth of the allegations of paragraphs 87-93 of the Complaint and therefore denies the allegations of paragraphs 87-93.

94. The Ballet admits that its website provides no TTY number for reserving tickets.

95 – 103. The Ballet is without information as to the truth of the allegations of paragraphs 95-103 of the Complaint and therefore denies the allegations of paragraphs 95-103.

104. The Ballet denies that its website is not accessible to people with visual disabilities who use screen reading or screen enhancement software.

105. The Ballet admits that its website provides information to the public including dates and times of performances at the Opera House, a description of the Ellie Caulkins Opera House, and a means for purchasing tickets for performances at the Opera House.

106 – 127. The Ballet is without information as to the truth of the allegations of paragraphs 106-127 of the Complaint and therefore denies the allegations of paragraphs 106-127.

128. The Ballet denies all of the allegations of paragraph 28.

129 – 136. The Ballet is without information as to the truth of the allegations of paragraphs 129-136 of the Complaint and therefore denies the allegations of paragraphs 129-136.

FIRST and SECOND CLAIMS FOR RELIEF

137 - 146. Plaintiffs' First and Second Claims for Relief 137 through 146 are claims against a defendant other than the Ballet and therefore do not require an answer by the Ballet.

THIRD CLAIM FOR RELIEF

147. The Ballet incorporates by reference its responses to paragraph 1-146 as though fully set forth herein.

148. Paragraph 148 of the Complaint merely contains a statement of law and does not require an answer by the Ballet. To the extent an answer is required, the Ballet denies any allegations contained in paragraph 148.

149. The Ballet denies the allegations contained in paragraph 149 of the Complaint.

150. The Ballet denies the allegations contained in paragraph 150 of the Complaint.

151. The Ballet denies the allegations of paragraph 151 of the Complaint insofar as such allegations are against the Ballet.

FOURTH CLAIM FOR RELIEF

152. The Ballet incorporates by reference its responses to paragraphs 1-151 of the Complaint as though fully set forth herein.

153. Paragraph 153 of the Complaint merely contains a statement of law and therefore does not require an answer by the Ballet. To the extent an answer is required, the Ballet denies any allegations contained in paragraph 155.

154. The allegations contained in paragraph 154 are legal conclusions and therefore do not require an answer by the Ballet. To the extent an answer is required, the Ballet denies any allegations contained in paragraph 155.

155. Paragraph 155 of the Complaint merely contains a statement of law and therefore does not require an answer by the Ballet. To the extent an answer is required, the Ballet denies any allegations contained in paragraph 155.

156. The Ballet denies the allegations of paragraph 156 of the Complaint insofar as such allegations are against the Ballet. The Ballet is without information as to the truth of the allegations against other defendants in this matter; therefore the Ballet denies any such allegations and any remaining allegations of paragraph 156.

157. Paragraph 157 of the Complaint merely contains a statement of law and therefore does not require an answer by the Ballet. To the extent an answer is required, the Ballet denies any allegations contained in paragraph 157.

158. The Ballet denies the allegations of paragraph 158 of the Complaint insofar as such allegations are against the Ballet. The Ballet is without information as to the truth of the allegations against other defendants in this matter and therefore denies any such allegations and any remaining allegations of paragraph 158.

FIFTH CLAIM FOR RELIEF

159. The Ballet incorporates by reference its responses to paragraphs 1-158 of the Complaint as though fully set forth herein.

160 – 168. Plaintiffs' Fifth Claim for Relief, paragraphs 160-168, are claims against a defendant other than the Ballet and therefore do not require an answer by the Ballet.

AFFIRMATIVE DEFENSES

1. First Affirmative Defense. The Ballet states that the allegations of the Complaint fails to state a claim upon which relief can be granted.

2. Second Affirmative Defense. Plaintiffs have failed to minimize or mitigate their damages, if any.

3. Third Affirmative Defense. Plaintiffs' claimed damages, if any, were caused by their own acts or omissions, or were caused by the acts or omissions of third parties over whom the Ballet had no control or right of control.

4. Fourth Affirmative Defense. Plaintiffs' claims are not ripe.

5. Fifth Affirmative Defense. One or more of the Plaintiffs are not proper parties or real parties in interest as to all claims for relief asserted in Plaintiffs' Complaint.

6. Sixth Affirmative Defense. One or more of the Plaintiffs lack standing.

7. Seventh Affirmative Defense. Plaintiffs' claims for injunctive relief are moot.

8. Eighth Affirmative Defense. Plaintiffs' claims are barred by the doctrines of undue burden, necessity and fundamental alteration.

9. Ninth Affirmative Defense. Plaintiffs' claims are barred by the doctrines of waiver, estoppel, ratification and laches.

10. Tenth Affirmative Defense. The Ballet complied with all applicable laws, statutes and regulations.

11. Eleventh Affirmative Defense. Plaintiffs' claims are barred by applicable statutory limitations, exceptions and exemptions.

12. Twelfth Affirmative Defense. Plaintiffs' claims are barred due to their failure to exhaust remedies.

WHEREFORE, the Ballet, having fully responded to Plaintiffs' Complaint, requests that this Court dismiss Plaintiffs' Complaint against the Ballet with prejudice, that Plaintiffs take nothing by their Complaint, and that the Ballet be granted its costs and attorney fees in this matter.

RESPECTFULLY SUBMITTED this 8th day of September, 2006.

HOLME ROBERTS & OWEN LLP

s/James Ruh

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ATTORNEYS FOR DEFENDANT
COLORADO BALLET COMPANY

CERTIFICATE OF SERVICE

I hereby certify that on September 8, 2006, I electronically filed the foregoing DEFENDANT COLORADO BALLET COMPANY'S ANSWER TO SECOND AMENDED COMPLAINT with the Clerk of the Court, District of Colorado using the ECF System, which will send notification to the following registered participants of the ECF System as listed on the Court's Notice of Electronic Filing: Ashley Elizabeth Arroyo, Timothy Patrick Fox; John C. Lowrie; colleen Meyers Rea; Martin Semple, Kevin William Williams.

s/ Kate Douglas
