

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 97-Z-1586

COLORADO CROSS-DISABILITY COALITION

and

SHARON BROWN-JODOIN, LEO D. JODOIN, CAROLYN INAGAKI, COLLEEN GALLOWAY, CHARLES GALLOWAY, STEVE MERTZ, IAN WATLINGTON, SUSAN WATLINGTON, ADAM DENNIS, TERI CHRISTOPHER, KEVIN SMITH, LAUREN WINTER and KIM KELLER, for themselves and all others similarly situated,

Plaintiffs,

v.

FEY CONCERT COMPANY, a Colorado General Partnership, UNIVERSAL CONCERTS, INC., a California Corporation and General Partner of Fey Concert Company, EVERY DOG HAS ITS DAY, INC., a Colorado Corporation and General Partner of Fey Concert Company, AND THE MUSEUM OF OUTDOOR ARTS, a Colorado Nonprofit Corporation.

Defendants.

FIRST AMENDED CLASS ACTION COMPLAINT

Plaintiffs Colorado Cross-Disability Coalition, Sharon Brown-Jodoin, Leo D. Jodoin, Carolyn Inagaki, Colleen Galloway, Charles Galloway, Steve Mertz, Ian Watlington, Susan Watlington, Adam Dennis, Teri Christopher, Kevin Smith, Lauren Winter and Kim Keller, by and through their attorneys Kevin W. Williams and Fox & Robertson, P.C., hereby submit this First Amended Class Action Complaint.

INTRODUCTION

1. Over six years after Congress passed our nation's landmark civil rights law for persons with disabilities, Defendants continue to discriminate against persons who have disabilities that require them to use wheelchairs or other assistive devices for mobility and their nondisabled companions who attend concerts at Fiddler's Green Amphitheater ("Fiddler's Green"). Specifically, Defendants, who are the owners, operators, lessors and/or lessees of Fiddler's Green, have failed to provide adequate seating for persons with mobility limitations and their nondisabled companions despite being repeatedly requested to do so. Further, Defendants continue to advertise and sell tickets for seating for persons with mobility limitations and their nondisabled companions with knowledge that such spaces frequently are not available, useable, or safe, often as a result of Defendants' actions. Defendants are in violation of the Americans with Disabilities Act as well as Colorado law.

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

3. The Congressional findings include:

- a. "some 43,000,000 Americans have one or more physical or mental disabilities . . . ;"
- b. "historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;"
- c. "discrimination against individuals with disabilities persists in such critical areas as . . . public accommodations;"
- d. "individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory

effects of architectural . . . barriers, . . . segregation, and relegation to lesser services, programs, activities, benefits, . . . or other opportunities;”

- e. “the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity . . . to pursue those opportunities for which our free society is justifiably famous . . .”

42 U.S.C. § 12101(a).

2. Congress explicitly stated that among the purposes of the Americans with Disabilities Act 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).

2. Congress gave commercial businesses and owners, operators, lessors and lessees of places of public accommodation one and a half years to implement the Act. The effective date was January 26, 1992.

3. In spite of this abundant lead time and the extensive publicity the ADA has received since 1990, Defendants continue to discriminate against persons who use wheelchairs or other assistive devices and their companions by relegating them to inferior seating that is wholly in violation of applicable nondiscrimination laws. Further, Defendants advertise and sell tickets for “wheelchair seating” knowing that such seating frequently does not exist, often as a result of

Defendants' actions. Persons with disabilities are forced to either leave the event or sit in uncomfortable, dangerous locations where they often cannot see the performers and cannot sit with their companions.

JURISDICTION

2. 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.

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

4.

5.

PARTIES

2. Plaintiff Colorado Cross-Disability Coalition ("CCDC") is a Colorado nonprofit corporation whose members are persons with disabilities -- including those who have permanent impairments that require them to use wheelchairs or other assistive devices for mobility -- and their nondisabled allies. CCDC's purpose is to ensure full participation of all people with all types of 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 -- places of public accommodation. CCDC engages in extensive outreach as well as advocacy, educational, and training 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 ADA and Colorado law. CCDC's members have been discriminated against and continue to be discriminated against by Defendants' conduct.

3. Plaintiffs Sharon Brown-Jodoin and Leo D. Jodoin are a married couple who are and were at all times material hereto residents of Colorado residing at 1515 11th Street, Greeley, Colorado, 80631-3745. Mrs. Brown-Jodoin has multiple sclerosis and uses an electric three-

wheel cart known as a “Mobie” for mobility. Mrs. Brown-Jodoin is substantially limited in the major life activity of walking. Mrs. Brown-Jodoin and Mr. Jodoin attended the Tina Turner concert on May 30, 1997, the John Denver concert on July 17, 1995, and the Melissa Etheridge concert on May 21, 1995, all of which took place at Fiddler’s Green.

4. Plaintiff Carolyn Inagaki is and was at all times material hereto a resident of Colorado residing at 6597 South Yukon Way, Littleton, Colorado, 80123. Plaintiffs Colleen Galloway and Charles Galloway are Carolyn Inagaki’s sister and brother-in-law respectively and were at all times material hereto residents of Colorado residing at 1600 Lee Street, Lakewood, Colorado, 80215. Ms. Inagaki has post-polio syndrome and uses an electric three-wheel cart for mobility and is substantially limited in the major life activity of walking. Plaintiff Charles Galloway wears a prostheses as a result of a lower leg amputation in 1984. Mr. Galloway uses a cane or crutches for mobility and is substantially limited in the major life activity of walking. Ms. Inagaki attended the Yanni concert on June 9, 1995, with Plaintiff Colleen Galloway and Plaintiff Charles Galloway, and the Tina Turner concert on May 30, 1997, with Plaintiff Colleen Galloway. All of these concerts took place at Fiddler’s Green.

5. Plaintiff Steve Mertz is a Colorado resident who is and was at all times material hereto a resident of Colorado residing at 5072 Cottonwood, Boulder, Colorado, 80301. Mr. Mertz has post-measles myelitis which has caused damage to his spinal cord. As a result, Mr. Mertz uses two canes for mobility and is substantially limited in the major life activity of walking. Mr. Mertz attended the Tina Turner concert on May 30, 1997, the Jimmy Buffet concert in September of 1996, and the Eagles concert on June 14, 1994, at Fiddler’s Green.

6. Plaintiff Ian Watlington and his mother Susan Watlington are and were at all times material hereto Colorado residents residing at 10251 West 44th Avenue, # 6-105, Wheat Ridge, Colorado, 80033. Mr. Watlington has cerebral palsy and uses a manual wheelchair for mobility. Mr. Watlington is substantially limited in the major life activity of walking. Mr. Watlington and

Ms. Watlington attended the WOMAD Festival, headlining Peter Gabriel on September 16, 1993, the H.O.R.D.E. Festival, headlining the Blues Traveler and Big Head Todd and the Monsters, on August 7, 1994, the Tom Petty concert on August 12, 1995, the Sting concert on August 11, 1996, and the Tina Turner concert on May 30, 1997, at Fiddler's Green. Mr. Watlington also attended the Lollapalooza Festival, headlining Smashing Pumpkins on July 9, 1994, which was held at Fiddler's Green.

7. Plaintiff Adam Dennis is and was at all times material hereto a Colorado resident residing at 3425 South Sherman Street, # 410, Englewood, Colorado, 80110. Mr. Dennis has spinal muscular atrophy, a form of muscular dystrophy, and uses a motorized wheelchair for mobility. Mr. Dennis is substantially limited in the major life activity of walking. Mr. Dennis attended the Tina Turner concert on May 30, 1997, at Fiddler's Green.

8. Plaintiff Teri Christopher is and was at all times material hereto a resident of Colorado, residing at 700 Monaco Parkway, Denver, Colorado 80220. Due to a stroke, Ms. Christopher is paralyzed on her left side. Ms. Christopher uses a wheelchair for mobility and she is substantially limited in several major life activities. Ms. Christopher attended the Tina Turner concert on May 30, 1997, at Fiddler's Green with her sister, Regina Friend, and two friends.

9. Plaintiff Kevin Smith is and was at all times material hereto a Colorado resident residing at 3230 Oak Street, Wheat Ridge, CO 80033. Mr. Smith is a tetraplegic and uses an electric wheelchair for mobility. Mr. Smith is substantially limited in several major life activities. Mr. Smith attended the Neil Young concert on July 20, 1997, at Fiddler's Green with his brother and several friends.

10. Plaintiff Lauren Winter and Plaintiff Kim Keller are and were at all times material hereto Colorado residents residing at 2676 S. Green Ct., Denver, CO 80219. Ms. Winter has multiple sclerosis and uses a wheelchair for mobility. Ms. Winter is substantially limited in the major life

activity of walking. Ms. Winter and Ms. Keller attended the Santana concert on August 30, 1995, and the Tina Turner concert on May 30, 1997, both of which were held at Fiddler's Green.

11. Defendant Fey Concert Company ("Fey Concerts") is a Colorado general partnership which on information and belief promotes and operates concerts held at Fiddler's Green. Fey Concerts handles nearly all promotion and bookings for Fiddler's Green and other Colorado concert venues, including Red Rocks, the Paramount Theater, McNichols Arena, Mile High Stadium, and the Denver Coliseum. Fey Concerts promotes 350 shows annually throughout the Western United States and is one of the largest regional concert promotion and production companies in the United States.

12. Defendant Universal Concerts, Inc. ("Universal"), formerly known as MCA Concerts, Inc., is a California corporation and is a general partner in the partnership of Fey Concerts. Universal leases Fiddler's Green from Defendant Museum of Outdoor Arts and, on information and belief, operates Fiddler's Green in conjunction with Fey Concerts. Universal is a subsidiary of Seagram Co., Ltd., a Canadian corporation. Seagram, Co., Ltd. operates world wide and in 1996 had total assets of over \$21 billion and net sales of over \$5 billion.

13. Defendant Every Dog Has Its Day, Inc. is a Colorado corporation and is a general partner in the partnership of Fey Concerts.

14. Defendant Museum of Outdoor Arts ("MOA") is the owner of Fiddler's Green. The eight-acre site was donated to the MOA in 1986. MOA is a Colorado nonprofit corporation, incorporated in 1982 via a private foundation by John W. Madden, Jr., which owns and/or displays a collection of statues, sculptures and other art forms which are located in a 400 acre outdoor setting in Englewood and Greenwood Village, Colorado. On information and belief, MOA has assets totaling in the millions of dollars. During times material hereto, MOA has had an annual operating budget in excess of \$750,000. MOA has received public funds from sources such as the State Art Council and the Scientific and Cultural Facilities District -- metropolitan

Denver's one-tenth of one percent sales tax collected for the arts. MOA leases Fiddler's Green to Defendant Universal. MOA receives a percentage of the net income from Fiddler's Green.

CLASS ACTION ALLEGATIONS

2. Plaintiffs Sharon Brown-Jodoin, Leo D. Jodoin, Carolyn Inagaki, Colleen Galloway, Charles Galloway, Ian Watlington, Susan Watlington, Adam Dennis, Teri Christopher, Kevin Smith, Lauren Winter and Kim Keller, (together the "Representative Plaintiffs") seek to maintain this action as a class action with two subclasses under Rule 23(b)(2) and/or Rule 23(b)(3) of the Federal Rules of Civil Procedure. The first subclass consists of all persons with permanent disabilities who use wheelchairs or electric carts for mobility who have been denied full and equal enjoyment of the services, facilities, privileges, advantages, and accommodations at Fiddler's Green on the basis of disability. The second subclass consists of all persons with a relationship or association with members of the first subclass who, as a result of the relationship or association, have been denied full and equal enjoyment of the services, facilities, privileges, advantages, and accommodations of Fiddler's Green.

3. The Representative Plaintiffs seek certification of the class only with respect to claims brought under the ADA and C.R.S. § 24-34-601 et seq.

4. The class identified in paragraph 22 is believed to consist of well over 1,000 members and joinder of all of such class members in this lawsuit is impracticable.

5. There are numerous questions of law and fact common to the class, including without limitation, the following:

- a. whether Defendants own, lease, lease to, or operate a "public accommodation" as defined under the ADA and C.R.S. § 24-34-601;
- b. whether the failure to remove the architectural barriers at issue constitutes discrimination under the ADA and C.R.S. § 24-34-601;

- c. whether failure to provide ADA compliant integrated seating that is dispersed throughout the seating area constitutes discrimination under the ADA and C.R.S. § 24-34-601;
- d. whether providing more ADA compliant wheelchair and companion seating is readily achievable for Defendants;
- e. whether providing ADA compliant wheelchair and companion seating which is on an accessible route with appropriate egress routes and appropriate slopes for a person who uses a wheelchair is readily achievable for Defendants;
- f. whether providing ADA compliant integrated seating is readily achievable for Defendants;
- g. whether providing ADA compliant integrated seating that is dispersed throughout the seating area is readily achievable for Defendants;
- h. whether failing to provide a reasonable number of aisle seats with removable arm rests and signage indicating they are reserved for persons with disabilities constitutes discrimination under the ADA and C.R.S. § 24-34-601;
- i. whether advertising and selling seating in a wheelchair seating section to class members who are prohibited from sitting in such a section upon arriving at the concert constitutes discrimination under the ADA and C.R.S. § 24-34-601;
- j. whether requiring persons who use wheelchairs or other mobility aids to sit on steep slopes and/or in areas having impaired lines of sight constitutes discrimination under the ADA and C.R.S. § 24-34-601;

- k. whether requiring the companions of persons who use wheelchairs or other mobility aids to sit on steep slopes and/or in areas having impaired lines of sight constitutes discrimination under the ADA and C.R.S. § 24-34-601;
- l. whether requiring class members who have purchased reserved seating tickets to find alternative seating during a concert constitutes discrimination under the ADA and C.R.S. § 24-34-601.

2. The claims of the Representative Plaintiffs are typical of the claims of the members of the class because (1) their claim under the ADA, like the ADA claims of all members of the class, concerns the questions whether providing a reasonable number of appropriately-sized, integrated, dispersed, level wheelchair and companion seating which adjoins an accessible route and provides lines of sight and choice of admission prices comparable to the general public is required of Defendants under the ADA, and whether doing so would be readily achievable for Defendants; and (2) the Representative Plaintiffs' claim under C.R.S. § 24-34-601, like all class claims under that section, concerns whether Defendants' failure to provide a sufficient number of integrated, dispersed, level wheelchair and companion seating, which adjoins an accessible route and provides lines of sight and choice of admission prices comparable to the general public "directly or indirectly . . . den[ies] to an individual or a group . . . because of disability . . . the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations" of Fiddler's Green.

3. The Representative Plaintiffs will fairly and adequately protect the interests of the class because their counsel, Fox & Robertson, P.C., have extensive experience in litigation, including class action litigation. In addition, one of the Representative Plaintiffs' counsel, Mr. Fox, and counsel for Plaintiff CCDC, Mr. Williams, are intimately familiar with issues concerning persons with disabilities because they are both quadriplegics who have each used electric wheelchairs for

over ten years. Finally, the Representative Plaintiffs have no interests which conflict in any way with those of the class.

4. This action may be maintained as a class action pursuant to Rule 23(b)(2) because the discriminatory conduct at issue -- failure to provide appropriate wheelchair and companion seating at Fiddler's Green -- is applicable to all members of the class and therefore an injunction requiring such seating is appropriate. In addition, the injunctive relief is the predominant relief sought by the class.

5. This action may be maintained as a class action pursuant to Rule 23(b)(3) because the many questions of law and fact which are common to class members clearly predominate over individual questions affecting members of the class. The common issues of law and fact relate to issues central to the case, such as whether Fiddler's Green is a place of public accommodation and whether Defendants own, operate, lease (or lease to) a place of public accommodation under the ADA and C.R.S. § 24-34-601, and whether the failure to remove the architectural barriers at issue constitutes discrimination under these statutes. In addition, because Plaintiffs seek only \$50 in damages for each instance of discrimination under the Colorado Anti-Discrimination Act, the minimum amount of damages required by C.R.S. § 24-34-602, there are no individual issues concerning each member's damages.

6. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because the amount of damages recoverable by individual class members under C.R.S. § 24-34-602 are small, and because the burden upon such individual litigants may make it difficult and impractical for them to pursue their claims against Defendants.

7. Judicial economy will be served by maintenance of this lawsuit as a class action because it is likely to avoid the burden which would otherwise be placed upon the judicial system by the filing of numerous similar suits by disabled persons in the region. There are no obstacles to effective and efficient management of this lawsuit as a class action by this Court.

GENERAL ALLEGATIONS

2. Fiddler's Green is an amphitheater located at 6350 Greenwood Plaza Boulevard, Englewood, CO 80111. Defendants' advertising proclaims "Fiddler's Green Amphitheatre has welcomed some of the hottest entertainers in the world including Elton John, Jimmy Buffett, Bette Midler, the Eagles, Lollapalooza and Jose Carreras (to name only a few) since its debut in 1988. This world class, multi-million dollar performing arts theatre provides an outstanding variety of unforgettable summer entertainment - from the successful 'Pops Series' to country, blues, rock, classical and jazz. With Fiddler's Green state-of-the-art production capabilities, these shows literally come to life! Fiddler's Green has something for everyone from May through September. Fiddler's Green comfortably accommodates 18,000 people in an intimate setting with 7,500 fixed seats and hillside lawn seating for another 10,500." (Emphasis added.)

3. According to advertising, promotional and sales materials including, but not limited to, the Internet website for Fiddler's Green, brochures dispensed by Fiddler's Green employees at Fiddler's Green and its box office, and seating charts found at Ticketmaster ticket centers that sell tickets for concerts at Fiddler's Green, Fiddler's Green has one designated "wheelchair seating" area located in the reserved seating section of the amphitheater. The wheelchair seating area is divided into a front section and a rear section which are separated by a railing and have two slightly graded ramps at either end. The front section of the wheelchair seating area is approximately 28 feet wide by 10 feet 2 inches deep and the rear section is approximately 31 feet wide by 9 feet 3 inches deep. Under applicable Department of Justice regulations set forth below which specify the dimensions of wheelchair spaces and wheelchair seating areas, the wheelchair seating area at Fiddler's Green provides at most approximately 20 wheelchair spaces, and this number does not take into account space needed for companion seats which are required by the ADA.

4. On May 21, 1995, Sharon Brown-Jodoin and her husband Leo D. Jodoin attended the Melissa Etheridge concert at Fiddler's Green.

5. At the Melissa Etheridge concert, a temporary stage was placed within the rear section of the wheelchair seating section and the front section of the wheelchair seating section was extremely crowded. Because the stage blocked most of the rear seating section and because of the overcrowding of the wheelchair seating section as a whole, Sharon Brown-Jodoin was virtually unable to move within the wheelchair seating area. She could not leave the seating section to get food and drink or use the restroom without requiring several other persons who use wheelchairs and other mobility aids and their companions to move first. She was unable to turn her "Mobie" around so that she could see Melissa Etheridge performing on the stage behind her. Sharon Brown-Jodoin felt trapped. Although she can stand for brief periods (minutes at a time) and did so in order to turn around and see Melissa Etheridge on the stage behind her, Ms. Brown-Jodoin had to rely upon her husband Leo and strangers sitting near them to hold her up. Many nondisabled concert-goers pushed and crowded their way into the wheelchair seating section, making it more difficult for Ms. Brown-Jodoin to stand and to see and made her fear for her safety.

6. Sharon Brown-Jodoin and Leo Jodoin complained to the Fiddler's Green staff about the seating situation. Fiddler's Green staff said they could do nothing to address the problem.

7. On July 17, 1995, Sharon Brown-Jodoin and her husband Leo Jodoin attended the John Denver concert at Fiddler's Green.

8. When Sharon Brown-Jodoin and Leo Jodoin arrived at the John Denver concert, the front section of the wheelchair seating area was completely blocked with equipment such that Sharon Brown-Jodoin, her husband, and other persons with disabilities and their companions around the wheelchair section could not sit in that area. Instead, Sharon Brown-Jodoin and her husband (along with others who used wheelchairs or mobility aids and their companions) were all

crowded into the rear seating section, such that Sharon Brown-Jodoin and her husband were seated partially in the pedestrian walkway behind the wheelchair seating section. Many of the persons who use wheelchairs who were seated there could not leave the section without requiring others who use wheelchairs or other mobility aids and their companions to move first; people were effectively trapped in the wheelchair seating section as a result of the overcrowding. During the entire concert, pedestrians walking down the pedestrian walkway in the dark repeatedly bumped into and tripped over Sharon Brown-Jodoin's Mobie and Leo Jodoin's adjacent folding chair.

9. Sharon Brown-Jodoin and Leo Jodoin complained to Fiddler's Green staff about the seating arrangement, but the Fiddler's Green staff responded that they could do nothing to solve the problem.

10. On May 30, 1997, Sharon Brown-Jodoin and her husband attended the Tina Turner concert at Fiddler's Green as a celebration of their wedding anniversary.

11. Upon arriving at the wheelchair seating section at the Tina Turner concert, Sharon Brown-Jodoin and Leo Jodoin discovered that the front section of wheelchair seating was occupied by machinery and persons operating the machinery and, thus, there was no available seating for them in that section. Equipment was also positioned in the rear section of the wheelchair seating section. The equipment in the front section was stacked so high it prohibited any person seated in the rear section from seeing the stage. There were far more persons who use wheelchairs and other mobility aids looking for seating than there were available wheelchair seating spaces.

12. When Sharon Brown-Jodoin and Leo Jodoin complained that they could not sit in the section for which they purchased tickets and that they could not see the concert from behind that section, Fiddler's Green staff informed them that nothing could be done. Ms. Brown-Jodoin and her husband sat in the pedestrian walkway behind the V.I.P. seating area adjacent to the

wheelchair seating section because it was the only place from which they could see. However, Fiddler's Green staff told them they were not permitted to sit there because they constituted a "fire hazard." Ms. Brown-Jodoin and her husband refused to move and requested to speak with a manager, but no manager ever spoke with them. They demanded that they be permitted to see the concert like everybody else.

13. While sitting behind the V.I.P. seats, Sharon Brown-Jodoin and Leo Jodoin were disturbed by concert-goers who, while walking by on the pedestrian walkway, stopped to watch the concert by standing behind their seats. In addition, persons sitting in the V.I.P. section complained about them sitting there and the noise emanating from the nondisabled concert-goers who continued to stop. This was humiliating and embarrassing for Sharon Brown-Jodoin and Leo Jodoin.

14. Once the Tina Turner concert started, the entire audience stood up, completely blocking the view of Sharon Brown-Jodoin. Sharon Brown-Jodoin stood occasionally for short periods with the assistance of her husband, but because her disability prevents her from standing for more than a short time, she missed much of the concert.

15. Throughout the Tina Turner concert, Sharon Brown-Jodoin and her husband complained repeatedly to the Fiddler's Green staff about the seating arrangement. They were told by the staff that nothing would be done to remedy the problem.

16. Sharon Brown-Jodoin and Leo Jodoin complained to staff about their seating arrangements at each of these three concerts; Sharon Brown-Jodoin called and complained to the Fiddler's Green administrative office after the concerts. Because she registered her complaints to Fiddler's Green employees (and because she had sat in an unobstructed wheelchair seating section at Fiddler's Green concerts previously), Sharon Brown-Jodoin and Leo Jodoin believed that appropriate wheelchair seating would be provided at Fiddler's Green concerts.

17. Sharon Brown-Jodoin purchased Melissa Etheridge, John Denver, and Tina Turner concert tickets for herself and her husband from Ticketmaster ticket centers. Sharon Brown-Jodoin and her husband always asked for wheelchair seating and were told by Defendants and/or their agents that the tickets they purchased were for the wheelchair seating area described above in paragraph 33. For each concert, they were sold two tickets for wheelchair seating at the “reserved seating” price. At no time prior to their arrival at these concerts did anyone provide Sharon Brown-Jodoin or Leo Jodoin with information that wheelchair seating would not be available, that wheelchair seating would be obstructed, that they would not be able to see the stage, or that they would be required to sit on a steep slope. At no time did any person inform Sharon Brown-Jodoin or Leo Jodoin that there existed any wheelchair seating in any other location at Fiddler’s Green or at any price than the “reserved seating” price.

18. Sharon Brown-Jodoin and Leo Jodoin desire and are ready, able and willing to attend concerts at Fiddler’s Green in the future.

19. On June 9, 1995, Carolyn Inagaki, her sister, Colleen Galloway, and her brother-in-law, Charles Galloway, attended the Yanni concert at Fiddler’s Green. All three of them are big fans of Yanni.

20. When Carolyn Inagaki, Colleen Galloway and Charles Galloway arrived at the Yanni concert, the wheelchair seating section was blocked with equipment which appeared to include spotlights and projectors and persons operating that equipment. The front section of the wheelchair seating section was completely covered with equipment such that no seating was available to them. The equipment in the front section was stacked so high that it completely blocked the view from the rear seating section.

21. Because they could not sit in or see from the wheelchair seating section, Carolyn Inagaki, Colleen Galloway, and Charles Galloway complained to Fiddler’s Green staff members working in the wheelchair seating area. A Fiddler’s Green staff person told them that the persons

standing in the wheelchair seating section operating the equipment were members of Yanni's concert crew, and that there was no other place to put the equipment. Fiddler's Green staff said they could do nothing to alleviate the wheelchair seating problem. Other persons with mobility impairments who could not sit in the wheelchair seating section at the Yanni concert also complained to staff.

22. Colleen Galloway and others requested to speak to a supervisor. A supervisor arrived and informed them that the only seating option would be for all of them to sit along the pedestrian walkways at the extreme left and right of the amphitheater. Each of these pedestrian walkways has a very steep grade and is used by nondisabled concert-goers to come and go from the fixed seating in the reserved seating area at Fiddler's Green. Because of the angle between the walkways and the stage, and because concert-goers use the walkway to come and go from their seats throughout the concert, it is impossible to see the entire stage from these walkways. In addition, it would be impossible for them to sit next to each other on the walkways.

23. Carolyn Inagaki, Colleen Galloway and Charles Galloway did not want to sit on a steep slope with an impaired line of sight and they made this known to the Fiddler's Green staff. They attempted to find seating elsewhere and moved behind the V.I.P. seating directly adjacent to the wheelchair seating section.

24. Fiddler's Green staff told them they could not sit behind the V.I.P. seats immediately adjacent to the wheelchair seating area because they would be blocking the pedestrian walkway there, although there also was pedestrian traffic on the walkway where the Fiddler's Green wanted them to sit.

25. Fiddler's Green staff escorted Carolyn Inagaki, Colleen Galloway and Charles Galloway to the sloped pedestrian walkway on the extreme left side of the amphitheater and told them to sit there. Fiddler's Green staff required them to sit close to the railing on the outer edge of the walkway next to the plants and flowers. In order to prevent her scooter from rolling down the

hill, Carolyn Inagaki turned the power off and removed the key. Colleen Galloway sat in a metal folding chair behind Carolyn Inagaki and Charles Galloway sat in a folding chair to the side of and slightly behind Colleen Galloway. They were not permitted to sit directly next to each other.

26. Because Carolyn Inagaki, Colleen Galloway, and Charles Galloway were seated in a walkway at the extreme left side of the amphitheater, much of the stage and the performers were blocked from view. Also, other concert-goers who were using the pedestrian walkway to get to and from their seats continually walked in front of them, further blocking their view. They could not see Yanni when he was seated at the piano. Also, they could not see members of the orchestra, including the violinist, who is one of Carolyn Inagaki's favorite musicians.

27. Carolyn Inagaki wrote a letter to Fiddler's Green on or about June 15, 1995, describing her experience at the Yanni concert. In the letter, she expressed the disappointment and unhappiness she felt as a result of not being able to see part of the stage, for being treated differently from nondisabled concert-goers, and for not being able to sit in the seating area for which she purchased tickets. Carolyn believed that by informing Fiddler's Green staff about her experience, she and other persons who require wheelchair and companion seating would never again be subjected to such discriminatory treatment.

28. On May 30, 1997, Carolyn Inagaki and Colleen Galloway attended the Tina Turner concert at Fiddler's Green in celebration of Carolyn Inagaki's birthday.

29. Upon arriving at the wheelchair seating section, Carolyn Inagaki and Colleen Galloway again found the wheelchair seating section was nearly completely blocked with equipment which appeared to include spotlights and projectors and persons operating that equipment. The front section of the wheelchair seating section was completely covered with equipment such that no seating was available to them. The equipment in the front section was stacked so high that it completely blocked the view from the rear wheelchair seating section. Equipment blocked both

sections of the wheelchair seating area and was stacked as high as three feet above the railing which separates the front and back wheelchair seating section.

30. Because Carolyn Inagaki could not sit in or see from the wheelchair seating section, she and Colleen Galloway complained to Fiddler's Green staff members working in the area. Ms. Inagaki and Ms. Galloway explained that they had been subjected to this during the Yanni concert, that they bought tickets for the wheelchair section, and that they refused to sit in a location which was on a steep slope or where they could not see. They again asked to speak to a supervisor.

31. The same supervisor who spoke to Carolyn Inagaki and Colleen Galloway at the Yanni concert arrived. A Fiddler's Green staff person said that she knew this was going to happen, that she knew people would be upset when they put the equipment there, and that this happens frequently, or words to that effect. The supervisor instructed Carolyn Inagaki and Colleen Galloway that they could sit where they did at the Yanni concert (on the steeply sloped pedestrian walkway at the remotest edge of the amphitheater where they could not see a large part of the stage) and that they could get their money back. At no time did the supervisor or any other staff member suggest any other options for seating.

32. Colleen Galloway and other aggrieved persons who held tickets for the wheelchair seating section went, as instructed, with a staff member to the box office. Carolyn Inagaki waited for her sister behind the wheelchair seating section. Because of the equipment blocking her view, Ms. Inagaki could not see the opening act of Cyndi Lauper.

33. Colleen Galloway was gone approximately forty-five minutes, during which time Carolyn Inagaki moved from behind the wheelchair seating section to behind the adjacent V.I.P. seating section from which she could see the stage.

34. Colleen Galloway rejoined her sister at the area near the wheelchair seating section behind the V.I.P. seating. When she retrieved a metal folding chair to sit next to her sister,

Fiddler's Green staff told her that she was not permitted to sit there, but that she and Carolyn Inagaki could sit together on one of the sloped pedestrian walkways at the remotest ends of the amphitheater. Instead, Colleen Galloway stood behind the equipment in the wheelchair seating section, barely able to see. Carolyn remained seated behind the V.I.P. section. One and a half hours passed before Fiddler's Green staff permitted Colleen Galloway to sit with her sister Carolyn.

35. At some point during the concert, a Fiddler's Green staff person told Carolyn Inagaki she could not remain stationary behind the V.I.P. section because it was a fire lane. Left with no viable seating options, Carolyn Inagaki remained behind the V.I.P. area but constantly drove her scooter back and forth so that she was not "stationary."

36. Carolyn Inagaki was afraid to move from her place to go get a drink or use the restroom for fear she would not be permitted to return. She attempted to order a drink from a server who waited on persons in the V.I.P. section, but the server refused.

37. Persons seated in the V.I.P. section turned around several times during the concert and stared at Carolyn Inagaki.

38. During the concert, people in the V.I.P. section stood up, blocking Ms. Inagaki's view.

39. Carolyn Inagaki, who can transfer from her scooter into a regular seat, and Charles Galloway would have benefitted greatly if Fiddler's Green provided aisle seating with removable armrests reserved for persons with disabilities. Because of Carolyn Inagaki's disability, it is difficult to transfer from the scooter to any fixed seating other than an aisle seat. Seats with removable armrests make this easier. Because of Charles Galloway's disability, it is difficult for him to navigate down the fixed seating aisles to get to seats located on the interior of the row. If Fiddler's Green provided some fixed seats on the end of the row next to the aisle, both Carolyn Inagaki and Charles Galloway could use those seats. On information and belief, Fiddler's Green

provides no reserved aisle seating with removable arm rests and signage indicating they are reserved for persons with disabilities.

40. Carolyn Inagaki, Colleen Galloway, and Charles Galloway purchased concert tickets for the Yanni and Tina Turner concerts at Ticketmaster ticket centers. They always asked for wheelchair seating and were told by Defendants and/or their agents that the tickets they purchased were for the wheelchair seating area described above in paragraph 33. They were sold tickets for wheelchair seating at the “reserved seating” price. At no time prior to their arrival at the concert did anyone provide them with information that wheelchair seating would be unavailable or obstructed, or that they would not be permitted to sit together, or that they would be required to sit on a steep slope, or that their line of sight to the stage would be impaired. At no time did any person inform them that there existed any wheelchair seating in any other location at Fiddler’s Green or at any price other than the “reserved seating” price.

41. Carolyn Inagaki, Colleen Galloway, and Charles Galloway desire and are ready, able and willing to attend concerts at Fiddler’s Green in the future.

42. Steve Mertz and his wife Beverly Morgan-Mertz attended the Tina Turner concert at Fiddler’s Green on May 30, 1997.

43. Steve Mertz and Beverly-Morgan Mertz decided to go to the Tina Turner concert at the last minute. They believed that Fiddler’s Green provided accessible or wheelchair and companion seating based on past trips to concerts there, and they intended to purchase tickets for those seats. They drove to Fiddler’s Green and purchased tickets at the Fiddler’s Green box office. They were sold general admission tickets, which they were told were the only seats available. When Steve Mertz and Beverly Morgan-Mertz entered the amphitheater, the staff person taking tickets told Steve Mertz that they could sit in the wheelchair seating section. A Fiddler’s Green staff person informed Steve Mertz that the wheelchair seating section was crowded, but that they could “squeeze in” Mr. Mertz and his wife. Steve Mertz and Beverly

Morgan-Mertz were directed by Fiddler's Green staff to sit in the wheelchair seating section described above in paragraph 33. General admission seating is on the lawn at the back of the amphitheater. This lawn seating is on a steeply sloped grassy hill which would have been difficult for Mr. Mertz to navigate, and Mr. Mertz's disability makes sitting without back support very uncomfortable.

44. When Steve Mertz and Beverly Morgan-Mertz approached the wheelchair seating section, they observed a pile of equipment stacked in the front section, making it impossible to take a seat there. Also, there was equipment in the rear section. The equipment in the front section coupled with the operators of that equipment who were standing behind it made it impossible to see the stage from a seated position in the rear section. Although Steve Mertz can stand and walk, his disability makes standing for an extended period of time painful and uncomfortable.

45. Steve Mertz observed several persons with mobility impairments complaining to Fiddler's Green staff about the unavailability of wheelchair seating. Steve Mertz observed that many nondisabled concert-goers were staring at the aggrieved persons around the wheelchair seating area. Steve Mertz, Beverly Morgan-Mertz, and other persons who use wheelchairs and other mobility aids were directed by Fiddler's Green staff to sit on the steeply sloped pedestrian walkways at the extreme left or right sides of the amphitheater. Steve Mertz decided he did not want to sit on a steep slope. Steve Mertz and Beverly Morgan-Mertz used folding chairs to sit in the rear of the wheelchair seating section. Neither of them could see the concert from a seated position. Both of them had to stand in order to see. Steve Mertz stood as long as he could tolerate, and then he was forced to sit and thus could not see.

46. So that he might be able to see the concert better, Steve Mertz stood up several times. Standing for any length of time causes Steve Mertz pain and discomfort. When Mr. Mertz complained about the limited line of sight, a Fiddler's Green staff person told him that he could

look at the projection screens above the stage. Had Mr. Mertz been able to sit in an appropriate unobstructed wheelchair seating space with a companion seat for his wife or a reserved aisle seat next to his wife, they would have been able to see the stage like all other nondisabled concert-goers.

47. Steve Mertz and his wife Beverly Morgan-Mertz would have benefitted greatly if Fiddler's Green provided reserved aisle seating with removable armrests. Because of Mr. Mertz's disability, it is difficult for him to navigate down the fixed seating aisles to get to seats located on the interior of the row; if Fiddler's Green provided some fixed seats on the end of the row next to the aisle, Mr. Mertz could use that seat. On information and belief, Fiddler's Green provides no reserved aisle seating with removable arm rests and signage indicating they are reserved for persons with disabilities.

48. Steve Mertz and Beverly Morgan-Mertz desire and are ready, able and willing to attend concerts at Fiddler's Green in the future.

49. Ian Watlington and his mother Susan Watlington have been attending concerts at Fiddler's Green since it opened in 1988. Mr. Watlington and Ms. Watlington attended the WOMAD Festival, headlining Peter Gabriel on September 16, 1993, the H.O.R.D.E. Festival, headlining the Blues Traveler and Big Head Todd and the Monsters, on August 7, 1994, the Tom Petty concert on August 12, 1995, the Sting concert on August 11, 1996, the Tina Turner concert on May 30, 1997, at Fiddler's Green. Mr. Watlington also attended the Lollapalooza Festival, headlining Smashing Pumpkins, on July 9, 1994, at Fiddler's Green.

50. Ian Watlington and Susan Watlington obtained their tickets for all of the Fiddler's Green concerts they attended from a Ticketmaster ticket center. They specifically requested wheelchair seating and were told by Defendants and/or their agents that the tickets they purchased were for the wheelchair seating area described above in paragraph 33. They were sold two tickets for wheelchair seating at the "reserved seating" price. At no time did any person inform the

Watlingtons that there was wheelchair seating available at any price other than the “reserved seating” price or that they had a choice of places to sit. At no time prior to their arrival at each of these concerts did any person inform the Watlingtons that there would be no wheelchair seating available, that the wheelchair seating would be obstructed, that they would be required to sit on a steep slope, or that their line of sight to the stage would be impaired.

51. With the exception of the Tina Turner concert, Ian Watlington sat in the wheelchair seating section at all of the concerts he attended at Fiddler’s Green. At each of these concerts, there were so many persons crowded into the wheelchair seating section that Ian Watlington could not independently enter or exit the section. Although he wanted to, Ian Watlington was unable to get out to look at the merchandise on sale, to obtain food or drink, or get to the restroom, without asking several people (including other persons who use wheelchairs) to move from their seating locations. Due to the loudness of the concerts, it was nearly impossible for Ian Watlington to get the attention of others when he did want to get in or out of the wheelchair seating section. Ian Watlington was effectively trapped within the wheelchair seating section. No accessible route as defined under the ADA was provided to and from the wheelchair seating spaces at any of these concerts.

52. After arriving at the Tina Turner concert on May 30, 1997, Ian Watlington approached the wheelchair seating section where he had sat at previous concerts. Before reaching that seating area, Fiddler’s Green staff intercepted him and told them him the wheelchair seating section was full and to sit on the steeply sloped pedestrian walkway at the extreme right side of the amphitheater.

53. Ian Watlington observed that there was equipment completely obstructing access to the front section of the wheelchair seating area and that the equipment was piled so high that no seated person sitting behind it could see the stage.

54. A Fiddler's Green staff person escorted Ian Watlington to the sloped pedestrian walkway at the far right side of the amphitheater and pointed out where to sit. The staff person told Mr. Watlington to sit against the railing on the outside of the walkway adjacent to a flower bed. Ian Watlington's companion held tightly on to the push handles of his manual wheelchair to prevent him from rolling unexpectedly down the steep slope. Mr. Watlington had to lock the brakes on his wheelchair to prevent it from rolling down the steep slope. He also turned his chair into the folding chair next to him to prevent accidentally rolling down the hill. Ian Watlington feared for his own safety while moving and sitting on that steep slope. Because Mr. Watlington, his mother and their companions were seated in a pedestrian walkway, Ian Watlington feared that he may be bumped by persons walking up and down or standing and dancing in the aisles. Mr. Watlington feared that if this happened, his brake could dislodge. Ian Watlington had experienced brakes not working in the past; he knew that if his brakes slipped on this steep slope, he and perhaps other people could be severely injured. Because of the steep slope, Ian Watlington was apprehensive during the entire concert and did not dance and move about as he usually does at concerts.

55. Ian Watlington complained and expressed his safety concerns to Fiddler's Green staff. A Fiddler's Green staff person responded by telling him what the last two songs were going to be. The staff person explained that because the crowd rushes up the walkway to get out at the end of the concert, this would give Ian Watlington, Susan Watlington, and their companions additional time to exit the amphitheater without having to contend with the crowd. This placed Ian Watlington in greater fear for his safety.

56. Because of the viewing angle from where they were sitting, Ian Watlington and Susan Watlington could not see much of the stage or the performers. Tina Turner was visible only when she was at the front of the stage, and frequently Ian Watlington and Susan Watlington

could not see her at all. Their view of the stage was also obstructed by persons walking up and down the pedestrian walkway in front of them.

57. Ian Watlington and Susan Watlington stayed seated on the pedestrian walkway during the entire concert. When the concert was over, they were surrounded by the leaving crowd. They had to wait approximately ten minutes after the encore to be able to leave.

58. Ian Watlington and Susan Watlington desire and are ready, able and willing to attend concerts at Fiddler's Green in the future.

59. On May 30, 1997, Adam Dennis attended the Tina Turner concert at Fiddler's Green.

60. Adam Dennis purchased his ticket for the Tina Turner concert from a Ticketmaster ticket center and he was told by Defendants and/or their agents that the tickets he purchased were for the wheelchair seating area described above in paragraph 33. The sales agent sold Mr. Dennis a ticket for wheelchair seating at the "reserved seating" price. At no time did the sales agent inform Mr. Dennis that there would not be wheelchair seating available, that the wheelchair seating would be obstructed, that Mr. Dennis would not be able to see the stage, or that Mr. Dennis would be required to sit on a steep slope.

61. Adam Dennis arrived at the Tina Turner concert early. When he approached the wheelchair seating section, he saw equipment and persons standing in both the front and rear sections. The equipment nearly completely covered the floor space in the wheelchair seating section. Mr. Dennis was able to get his wheelchair through the rear seating section and to wedge his wheelchair in between the equipment in the front section. Mr. Dennis could not see the stage because the equipment blocked his view. He was able to catch glimpses of the stage by looking between the equipment in front of him.

62. After Adam Dennis took his place in the front section, other persons who use canes and their companions sat just behind him. They complained that they could not see either. They took seats at the top of the ramp because it was the only place where they could catch glimpses

of the stage. Because there was so much equipment crowded into the wheelchair seating section and because persons were seated behind him on the ramp, Mr. Dennis was unable to turn his wheelchair around or to get out of the wheelchair seating section. Unless others moved, Mr. Dennis was confined to his space. Mr. Dennis spent the entire concert confined to that space.

63. At some time early into the concert, Mr. Dennis became aware that many of the aggrieved persons who purchased tickets for the wheelchair seating section were told by Fiddler's Green staff to go to the box office and get refunds. Mr. Dennis considered doing so, but he could not get out of the wheelchair seating without making other people moving.

64. Adam Dennis desires and is ready, able and willing to attend concerts at Fiddler's Green in the future.

65. Teri Christopher attended the Tina Turner concert on May 30, 1997, with her sister Regina Friend and two friends. The Tina Turner concert was only the second large-scale social outing involving a crowd Ms. Christopher had attempted since she had a stroke causing her to use a wheelchair.

66. Although Teri Christopher can walk with a cane, she is limited in her ability to stand, and she becomes exhausted easily. Therefore, Ms. Christopher took her wheelchair to the Tina Turner concert. Because of perception impairments resulting from the stroke, Ms. Christopher is easily upset, frightened and confused by height or uneven surfaces.

67. Regina Friend obtained the tickets for the Tina Turner concert through a Ticketmaster ticket center. She specifically requested wheelchair seating. She asked whether all four of them could sit together in the wheelchair seating section; she also asked where the wheelchair seating was located. The sales agent showed Ms. Friend a ring binder which contained a chart showing wheelchair seating area at Fiddler's Green. The chart depicted the wheelchair seating section as described in paragraph 33. The sales agent made a telephone call and told Ms. Friend that they could all sit together in the wheelchair seating section. The agent sold Ms. Friend four tickets for

the wheelchair seating section for the Tina Turner concert at Fiddler's Green. At no time prior to the Tina Turner concert did any person inform Regina Friend or Teri Christopher or their friends that there existed any other wheelchair seating area at Fiddler's Green other than the area described in paragraph 33 or that there existed wheelchair seating at different prices. At no time prior to the Tina Turner concert did any person inform Regina Friend or Teri Christopher or their friends that wheelchair seating would be unavailable or obstructed, that they would be required to sit on a steep slope, that they would not all be able to sit together, or that their line of sight would be impaired.

68. Upon arriving at the wheelchair seating section on the night of the Tina Turner concert, Teri Christopher, her sister and their friends discovered that there was a large amount of equipment and persons standing in the front section of the wheelchair seating section. There was one person in a wheelchair seated in that section. There was also equipment in the rear seating section and two people in folding chairs were seated there. There was no room in the front section for Teri Christopher or her companions to sit. The equipment in the front of the wheelchair seating section was piled so high that Teri Christopher could not see over it from her wheelchair in the rear seating section.

69. When Teri Christopher, Regina Friend, and their friends complained to the Fiddler's Green staff, the staff said that there was nothing they could do about the seating problem. Fiddler's Green staff directed Teri Christopher, Regina Friend, their friends and other aggrieved persons who use mobility aids and their companions to sit on the steeply sloped pedestrian walkways at the extreme ends of the amphitheater. Regina Friend pushed Teri Christopher's wheelchair to the pedestrian walkway located at the extreme left of the amphitheater. Several persons who use wheelchairs and other mobility aids and their companions were seated along the railing on the outside edge of the sloped pedestrian walkway. Persons were walking up and down the pedestrian walkway which blocked the view of those seated along the railing.

70. Teri Christopher was frightened by the degree of the slope and feared for her safety. She had one of her friends pull her wheelchair down the slope slowly backwards so that she could avoid looking down at the slope. Her friend pulled Teri Christopher's wheelchair all the way down to the bottom of the pedestrian walkway to an area which was level. This area was located near the corner of the stage, and there were chairs available for her friends to sit in. Concert staff prohibited them from sitting there, however. Her friend pushed Terri Christopher in her wheelchair all the way back up the pedestrian walkway and back toward the wheelchair seating area.

71. The concert was going on while Teri Christopher and Regina Friend were attempting to find a place to sit. Neither of them could enjoy the concert because they were trying to find a place to sit. Because of her distress at the seating situation, Ms. Christopher decided to leave the concert.

72. Teri Christopher went home with her mother and missed the entire concert; Regina Friend saw only the first half hour of the concert (during which she was distracted due to searching for seats) and the last half hour after Teri Christopher left with her mother.

73. Teri Christopher desires and is ready, able and willing to attend concerts at Fiddler's Green in the future.

74. Kevin Smith attended the Neil Young concert on July 20, 1997, with his brother and several friends.

75. Mr. Smith purchased the tickets for the Neil Young concert. Prior to the concert, Mr. Smith telephoned Ticketmaster and specifically asked about the spaces he and his friends would be sitting in. He was assured that there was plenty of seating and that it was reserved for persons who use wheelchairs and their companions.

76. Upon arriving at the concert, Mr. Smith and his companions were directed to the area described in paragraph 33. This area was filled with light, sound and other equipment as well as

equipment operators. The equipment and the operators blocked their view of the concert, made it nearly impossible for persons in wheelchairs to enter and exit the wheelchair seating area, and prevented Mr. Smith and his friends from sitting together.

77. Kevin Smith desires and is ready, able and willing to attend concerts at Fiddler's Green in the future.

78. Plaintiffs Lauren Winter and Kim Keller attended the Santana concert on August 30, 1995, and the Tina Turner concert on May 30, 1997, both of which were held at Fiddler's Green.

79. Ms. Keller purchased the tickets for the Santana concert. She requested tickets for a wheelchair accessible space and an adjacent companion seat, and the tickets that she received said "Wheelchair."

80. When they arrived at the Santana concert, Ms. Keller and Ms. Winter found video and other equipment in the front section of the area described in paragraph 33. Ms. Keller and Ms. Winter sat in the rear section of the area and the equipment blocked their view. In addition, the rear section was so crowded that no one could leave without requiring other people in that section to move.

81. Prior to the Tina Turner concert, Ms. Keller purchased tickets for the concert at a Blockbusters store. Ms. Keller expressly asked for a wheelchair accessible space and an adjacent companion seat. The ticket agent made a telephone call. After the telephone call, the agent assured Ms. Keller that the reserved tickets she purchased were for a wheelchair and companion seat.

82. Ms. Winter and Ms. Keller arrived early for the Tina Turner concert. When they got to the area described in paragraph 33, they saw equipment and equipment operators in that area which made it impossible to see the stage. When they complained to Fiddler's Green staff, they were told that they could either sit behind the equipment (where they couldn't see the stage) or they could sit on the steep pedestrian walkways at the extreme left and right of the amphitheater.

83. Ms. Keller talked to an equipment operator to see if the equipment could be moved so that they could see the stage. The equipment operator responded that Ms. Keller should not tell him how to do his job.

84. Left with no alternative, Ms. Keller and Ms. Winter sat on one of the steep pedestrian walkways. To avoid rolling down the walkway, Ms. Winter had to turn her chair sideways towards the crowd. Neither Ms. Winter nor Ms. Keller could see the video portion of the concert. In addition, because of the steepness of the walkway, Ms. Keller had to push Ms. Winter's wheelchair when Ms. Winter had to use the restroom.

85. During the concert, a woman in front of Ms. Keller and Ms. Winter stood up and started dancing, thereby blocking their view of the stage. When Ms. Keller asked her to sit down because she was blocking their view, the dancing woman replied: "Fuck the wheelchair. I lost my seating because of a fucking wheelchair." Ms. Keller asked for assistance from a security guard, but he said that there was nothing he could do.

86. Ms. Keller and Ms. Winter desire and are ready, able and willing to attend concerts at Fiddler's Green in the future.

87. All of the Representative Plaintiffs purchased tickets for and/or went to Fiddler's Green concerts believing the representations made by Defendants and their agents that they would be sitting in the wheelchair seating section described in paragraph 33 and that they would be sitting in appropriate, level wheelchair and companion spaces.

88. Defendants' actions have caused and continue to cause distinct and palpable injury to Plaintiff Colorado Cross-Disability Coalition.

89. Defendants' discrimination has been and continues to be a barrier to the full participation of persons with disabilities and therefore frustrates CCDC's purpose.

90. Defendants' discriminatory practices have interfered with and continues to interfere with CCDC's efforts to make the community accessible to persons with disabilities and thus makes CCDC's task more difficult for several reasons:

- a. Defendants' discrimination, in and of itself, makes enjoying concerts in Colorado less accessible to persons with mobility impairments who use wheelchairs and other mobility aids;
- b. Defendants' discrimination segregates persons with disabilities thereby perpetuating discriminatory attitudes in the public at large. Defendants' conduct sends a clear message to the general public that it is permissible to discriminate against persons with disabilities in places of public accommodation; this frustrates CCDC's educational and advocacy mission which is designed to show that discrimination such as that perpetrated by Defendants is both illegal and improper;
- c. Defendants' discrimination sends a clear message to persons with disabilities and their companions that they are unwanted at Fiddler's Green, discouraging persons with disabilities and their companions from attending summer concerts or going to places of public accommodation; this clearly frustrates CCDC's mission of full participation of all persons with disabilities in all areas of the community; and
- d. because CCDC strives to, and expends resources on, achieving full participation and inclusion of persons with disabilities -- which includes participation of and with their nondisabled companions, CCDC suffers palpable injury as a result of Defendants' discriminatory treatment against nondisabled companions on the basis of their relationship to or association with persons with disabilities.

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

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

4. CCDC's injuries are traceable to Defendants' discriminatory conduct alleged herein and will be redressed by the relief requested.

5. CCDC's members who use wheelchairs and those who use other aids for mobility, and their spouses, friends, relatives and associates who go with them to places of public accommodation, have been injured and will continue to be injured by Defendants' refusal to comply with the ADA and the Colorado Antidiscrimination Act and continued acts of discrimination.

6. The elimination of discrimination such as that of Defendants is at the core of CCDC's organizational purpose.

7. The individual participation of each injured CCDC member is not indispensable to the proper resolution of this case.

FIRST CLAIM FOR RELIEF
(Violations of the Americans with Disabilities Act Against
All Defendants on Behalf of the Class and CCDC)

2. Plaintiff CCDC and Representative Plaintiffs Sharon Brown-Jodoin, Leo Jodoin, Carolyn Inagaki, Colleen Galloway, Charles Galloway, Ian Watlington, Susan Watlington, Adam Dennis, Teri Christopher, Kevin Smith, Lauren Winter and Kim Keller, reallege and incorporate by reference the allegations set forth in paragraphs 1 - 126 above as if fully set forth herein.

3. One of the most important parts of the ADA is Title III, which provides that “[n]o individual shall be discriminated against 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.”

4. The ADA also prohibits public accommodations from discriminating against persons with disabilities “through contractual, licensing, or other arrangements.” Id. at § 12182(b)(1)(A).

5. “[A] concert hall . . . or other place of exhibition or entertainment” is a public accommodation covered by the ADA. Id. at § 12181(7)(C).

6. Fiddler’s Green is a concert hall or other place of entertainment and is thus a “public accommodation” under the ADA.

7. Title III applies to “any person who owns, leases (or leases to), or operates a place of public accommodation.”

- a. Defendant MOA owns Fiddler’s Green, a place of public accommodation, and leases it to Defendant Universal.
- b. On information and belief, Defendant Fey Concerts operates Fiddler’s Green in conjunction with Defendant Universal.
- c. Defendant Universal leases Fiddler’s Green from Defendant MOA and operates Fiddler’s Green. Defendant Universal is also a general partner in Fey Concert Company.
- d. Defendant Every Dog Has Its Day is a general partner in Fey Concert Company.

2. The ADA defines illegal discrimination to include, in pertinent part, a “failure to remove architectural barriers. . . that are structural in nature, in existing facilities. . . where such removal is readily achievable.” 42 U.S.C. §§ 12182(b)(2)(A)(iv).

3. The ADA defines "readily achievable" to mean "easily accomplishable and able to be carried out without much difficulty or expense" and requires examination of, among other things, "the nature and cost of the action needed," "the overall financial resources of the facility or facilities involved in the action," "the overall size of the business of a covered entity with respect to the number of employees; the number, type and location of its facilities," "the overall financial resources of any parent corporation or entity; the overall size of the parent corporation or entity with respect to the number of its employees; the number, type, and location of its facilities," and "the type of operation or operations of any parent corporation or entity, including the composition, structure, and functions of the workforce of the parent corporation or entity." 42 U.S.C. § 12181(9); 28 C.F.R. § 36.104.

4. Under its statutory authority, the U.S. Department of Justice has promulgated federal regulations to implement the ADA, including provisions contained in the ADA Accessibility Guidelines for Buildings and Facilities ("ADAAG"), 28 C.F.R. Part 36, App. A at § 4.33.

5. The appropriate size, number, structure, and location of "wheelchair seating locations" are described in the ADAAG, which provides, in pertinent part, that "[i]n places of assembly with fixed seating accessible wheelchair locations shall comply with" the following:

- a. The minimum clear ground and floor space appropriate for wheelchair seating locations is 48 inches deep and 66 inches wide for two wheelchair locations or 33 inches wide for one wheelchair location. ADAAG § 4.33.2 and Figure 46.
- b. All wheelchair seating locations "shall adjoin an accessible route that also serves as a means of egress in case of emergency." ADAAG 4.33.3.
- c. An accessible route is "[a] continuous unobstructed path connecting all accessible elements and spaces of a building or facility." ADAAG 3.5 (emphasis added).

- d. The minimum clear width of an accessible route shall be 36 inches. ADAAG 4.3.3.
- e. The ground or floor at wheelchair locations shall be level. ADAAG 4.33.4.
- f. For assembly areas having over 500 seats, the number of required wheelchair locations is 6, plus 1 additional space for each total seating capacity increase of 100. ADAAG § 4.1.3(19)(a).

2. Fiddler's Green has seating capacity of 18,000 and thus should provide 181 wheelchair spaces. Given the specifications set forth above for wheelchair spaces, the wheelchair seating area at Fiddler's Green provides at most approximately 21 wheelchair spaces, and this number does not take into account space needed for companion seats which are required by the ADA. In addition, the few wheelchair spaces at Fiddler's Green are often occupied by equipment and personnel. Defendants discriminate against persons with disabilities in violation of the ADA because they provide an insufficient number of wheelchair seating spaces.

3. In addition, the ADAAG requires (i) wheelchair seating spaces be located so that they provide lines of sight and choice of admission prices comparable to those for members of the general public, and (ii) in assembly areas with seating capacity of over 300, the wheelchair seating spaces be located so that they are dispersed throughout the seating area. ADAAG § 4.33.3.

4. When purchasing tickets for concerts at Fiddler's Green, persons with mobility limitations who use wheelchairs or other mobility aids have only one choice of wheelchair seating at a single specified price. This violates the ADA.

5. Defendants provide a range of seating possibilities to non-disabled concert-goers which are unavailable to persons who use wheelchairs or other mobility aids and their companions in violation of the ADA.

- a. Defendants offer a “V.I.P. Box Suite Program” which Defendants promote as “[t]he ideal vehicle for entertaining business clients, company executives, and other VIPs. Stimulate sales promotion programs with one of our VIP box suites, complete with VIP reserved parking and executive wait staff service.” On information and belief, none of these boxes is accessible to persons who use wheelchairs in accordance with ADAAG standards.
- b. Defendants also offer general admission seats to nondisabled customers, which is less expensive than the reserved seats. Persons who use wheelchairs and other mobility aids are not offered seats in this area. On information and belief, no ADA compliant wheelchair seating currently exists in the general admission area.
- c. Defendants also offer a “Premier Ticket Program” for nondisabled concert-goers. According to Defendants’ promotional materials, “[t]he same outstanding seats can be yours all season long! Premier seating is available to every event held at Fiddler's Green Amphitheatre.” Because Defendants continuously permit the only available wheelchair seating to be blocked at Fiddler’s Green, this ticket program is also unavailable to persons who use wheelchairs or other mobility aids and their companions.
- d. Defendants offer a “Group Sales Program” for nondisabled concert-goers. According to Defendants’ promotional materials, “[t]hrough Fiddler's special group savings package, your firm or organization can save on regular admission prices! Perfect for ‘company days’ or a special summer outing! Groups of 20 or more can get blocks of tickets in reserved sections, or on the lawn (general admission).” Because the only

designated seating available for persons who use wheelchairs or mobility aids and their companions is in the often unusable wheelchair seating section which will not seat more than approximately 21 persons, and because there exists no appropriate wheelchair seating in the general admission seating area at Fiddler's Green, persons who use wheelchairs or other mobility aids are denied this ticket option as well.

2. Because there is only one wheelchair seating area at Fiddler's Green at one price whereas the general public has a wide variety of seating locations and prices to choose from, Defendants are in violation of the dispersed seating and line of sight/choice of prices provisions of the ADA.

3. Furthermore, the ADAAG requires "one percent, but not less than one, of all fixed seats shall be aisle seats with no arm rests on the aisle side. Each such seat shall be identified by a sign or marker. Signage notifying patrons of the availability of such seats shall be posted at the ticket office." ADAAG § 4.1.3(19)(a).

4. On information and belief, Defendants have failed to make at least one percent of the fixed seats at Fiddler's Green aisle seats with removable arm rests on the aisle side in violation of the ADA.

5. Finally, it is discrimination under the ADA to "fail[] to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities" 42 U.S.C. § 12182(b)(2)(A)(ii).

6. Defendants have a policy which allows, and/or Defendants make a practice of allowing concert equipment and operators to block the already limited number of wheelchair seating locations at Fiddler's Green. Defendants are required by the ADA to modify this policy or practice so that persons who use wheelchairs or other mobility aids and their companions may sit comfortably and see the concert. Defendants have not done so, even though permitting the

wheelchair seating section to be used for wheelchair seating is an imminently reasonable modification necessary to allow persons with disabilities to enjoy Fiddler's Green concerts.

7. Providing reasonable numbers of appropriately sized, level, integrated, dispersed wheelchair and companion seating spaces that adjoin an accessible route and provide lines of sight and choices of admission prices comparable to those provided to the general public, and providing a sufficient number of seats with removable aisle-side arm rests is readily achievable for Defendants. By failing to take these measures and others to comply with relevant statutes, Defendants have discriminated against CCDC, the Representative Plaintiffs and those they seek to represent in violation of the ADA.

SECOND CLAIM FOR RELIEF

(Violation of Colorado Revised Statute § 24-34-601 Against
All Defendants on Behalf of the Class and CCDC)

2. Plaintiff CCDC and Representative Plaintiffs Sharon Brown-Jodoin, Leo Jodoin, Carolyn Inagaki, Colleen Galloway, Charles Galloway, Ian Watlington, Susan Watlington, Adam Dennis, Teri Christopher, Kevin Smith, Lauren Winter and Kim Keller, reallege and incorporate by reference the allegations set forth in paragraphs 1 - 146 above as if fully set forth herein.

3. C.R.S. § 24-34-601(1) defines a "place of public accommodation" as "any place of business engaged in any sales to the public and any place offering services, facilities, privileges, advantages, or accommodations to the public, including but not limited to" "any recreational area and facility; . . . or any public building, . . . arena, theater, hall, [or] auditorium, . . . whether indoor or outdoor."

4. Fiddler's Green is a place of public accommodation for purposes of § 24-34-601.

5. C.R.S. § 24-34-601(2) provides in relevant part that "[i]t is a discriminatory practice and unlawful for a person, directly or indirectly, to refuse, withhold from, or deny to an individual or a group, because of disability . . . the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation . . ."

6. The Colorado Civil Rights Commission (“CCRC”), which is charged by statute to adopt rules and regulations for the implementation of § 601, has interpreted § 601 to incorporate the requirements of the ADA. Rule 60.1(C) of the CCRC’s “Rules Prohibiting Discrimination on Account of Mental and Physical Disability” provides that:

Whenever possible, the interpretation of state law [the provisions of Parts 3 through 7 of Article 34 of Title 24, C.R.S. (1988), as amended] concerning disability shall follow the interpretations established in Federal regulations adopted to implement the Americans with Disabilities Act and the Fair Housing Act and in the Federal case law interpreting the Americans with Disabilities Act and the Fair Housing Act, and such interpretations shall be given weight and found to be persuasive in any administrative proceedings.

3 Code Colo. Reg. 708-1 (square brackets in original).

2. By failing to provide integrated, level, appropriately-sized wheelchair and companion seating spaces which are dispersed throughout the seating area and which adjoin an accessible route which provide lines of sight and choice of admission prices comparable to the general public at Fiddler’s Green, and by failing to provide appropriate reserved aisle seating with removable armrest, Defendants have discriminated against CCDC, the Representative Plaintiffs and those they represent by denying “an individual or a group, because of disability” the full and equal enjoyment of the services and accommodations of the amphitheater in violation of § 24-34-601.

THIRD CLAIM FOR RELIEF

(Violation of the Americans with Disabilities Act On Behalf of Steve Mertz)

2. Plaintiff Steve Mertz realleges and incorporates by reference the allegations set forth in paragraphs 1 - 152 above as if fully set forth herein.

3. As set forth above in paragraphs 127 - 146, Defendants have discriminated against Mr. Mertz in violation of the ADA by failing to provide integrated, level, appropriately-sized

wheelchair and companion seating spaces which are dispersed throughout the seating area and which adjoin an accessible route and which provide lines of sight and choice of admission prices comparable to the general public at Fiddler’s Green, and by failing to provide appropriate reserved aisle seating with removable armrest.

FOURTH CLAIM FOR RELIEF

(Violation of Colorado Revised Statute § 24-34-601
Against All Defendants On Behalf of Steve Mertz)

2. Plaintiff Steve Mertz realleges and incorporates by reference the allegations set forth in paragraphs 1 - 154 above as if fully set forth herein.

3. As set forth above in paragraphs 147 - 152, Defendants have discriminated against Mr. Mertz in violation of C.R.S. § 24-34-601 by failing to provide integrated, level, appropriately-sized wheelchair and companion seating spaces which are dispersed throughout the seating area and which adjoin an accessible route and which provide lines of sight and choice of admission prices comparable to the general public, and by failing to provide appropriate reserved aisle seating with removable armrest.

FIFTH CLAIM FOR RELIEF

(Violation of Colorado Consumer Protection Act Against Defendants Fey
Concert Company, Universal Concerts, Inc. and Every Dog Has Its Day, Inc.)

2. Plaintiffs CCDC, Sharon Brown-Jodoin, Leo Jodoin, Carolyn Inagaki, Colleen Galloway, Charles Galloway, Ian Watlington, Susan Watlington, Adam Dennis, Teri Christopher, Kevin Smith, Lauren Winter and Kim Keller, reallege and incorporate by reference the allegations set forth in paragraphs 1 - 156 above as if fully set forth herein.

3. 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.”

4. 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.” C.R.S. § 6-1-112(1).

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

6. 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.

C.R.S. § 6-1-105(1).

2. Defendants Fey Concert Company, Universal Concerts, Inc. and Every Dog Has Its Day, Inc., through promotional brochures, Internet websites, the Ticketmaster seating manuals, and the representations of Ticketmaster ticket agents all advertise and/or claim that Fiddler’s Green provides “wheelchair seating,” and depict the wheelchair seating area as being that area described above in paragraph 33.

3. Ticketmaster, Inc. and the Fiddler’s Green box office are Defendants’ agents with regard to the sales of tickets for concerts at Fiddler’s Green.

4. Defendants Fey Concert Company, Universal Concerts, Inc. and Every Dog Has Its Day, Inc. continue to advertise that they sell tickets for “wheelchair seating” in the reserved seating section. Defendants have repeatedly been placed on notice that they have been falsely advertising that wheelchair seating is available at Fiddler’s Green concerts; nevertheless, Defendants continue to falsely 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. Defendants’ misrepresentations are in violation of the CCPA.

5. Defendants misrepresentations have damaged CCDC, its members, and Plaintiffs Sharon Brown-Jodoin, Leo Jodoin, Carolyn Inagaki, Colleen Galloway, Charles Galloway, Ian Watlington, Susan Watlington, Adam Dennis, Teri Christopher, Kevin Smith, Lauren Winter and Kim Keller,.

SIXTH CLAIM FOR RELIEF

(Negligent Misrepresentation Against Defendants Fey Concert Company, Universal Concerts, Inc. and Every Dog Has Its Day, Inc.)

2. Plaintiffs Sharon Brown-Jodoin, Leo Jodoin, Carolyn Inagaki, Colleen Galloway, Charles Galloway, Ian Watlington, Susan Watlington, Adam Dennis, Teri Christopher, Kevin Smith, Lauren Winter and Kim Keller, reallege and incorporate by reference the allegations set forth in paragraphs 1 - 165 above as if fully set forth herein.

3. Plaintiffs Sharon Brown-Jodoin, Leo Jodoin, Carolyn Inagaki, Colleen Galloway, Charles Galloway, Ian Watlington, Susan Watlington, Adam Dennis, Teri Christopher, Kevin Smith, Lauren Winter and Kim Keller, seek recovery under the theory of “Negligent Misrepresentation” on behalf of themselves only, and not as a representative of a class.

4. From the repeated complaints of the Plaintiffs and others, Defendants Fey Concert Company, Universal Concerts, Inc. and Every Dog Has Its Day, Inc. knew that the only appropriate available reserved wheelchair seating was or would be either too crowded an area in which to sit or that the wheelchair seating area would be totally or partially obstructed by concert equipment.

5. Despite this knowledge, Defendants Fey Concert Company, Universal Concerts, Inc. and Every Dog Has Its Day, Inc. and/or their agents negligently and falsely represented to the Plaintiffs that reserved wheelchair seating was available at Fiddler’s Green concerts with the intent that the Plaintiffs would purchase tickets for wheelchair seating.

6. Plaintiffs justifiably relied on Defendants’ misrepresentations in buying wheelchair seating tickets for concerts at Fiddler’s Green and in attending those concerts.

7. Plaintiffs suffered pecuniary losses and physical and mental distress as a result of Defendants’ misrepresentations.

SEVENTH CLAIM FOR RELIEF

(Individual Claims: Fraud and Fraudulent Concealment Against Defendants Fey Concert Company, Universal Concerts, Inc. and Every Dog Has Its Day, Inc.)

2. Plaintiffs Sharon Brown-Jodoin, Leo Jodoin, Carolyn Inagaki, Colleen Galloway, Charles Galloway, Ian Watlington, Susan Watlington, Adam Dennis, Teri Christopher, Kevin Smith, Lauren Winter and Kim Keller, reallege and incorporate by reference the allegations set forth in paragraphs 1 - 171 above as if fully set forth herein.
3. Plaintiffs Sharon Brown-Jodoin, Leo Jodoin, Carolyn Inagaki, Colleen Galloway, Charles Galloway, Ian Watlington, Susan Watlington, Adam Dennis, Teri Christopher, Kevin Smith, Lauren Winter and Kim Keller, seek recovery under the theories of “Fraud” and “Fraudulent Concealment” on behalf of themselves only, and not as a representative of a class.
4. From the repeated complaints of the Plaintiffs and others, Defendants Fey Concert Company, Universal Concerts, Inc. and Every Dog Has Its Day, Inc. knew that the only available appropriate reserved wheelchair seating was or would be either too crowded an area in which to sit or that the wheelchair seating area would be totally or partially obstructed by concert equipment.
5. Despite this knowledge, Defendants Fey Concert Company, Universal Concerts, Inc. and Every Dog Has Its Day, Inc. and/or their agents intentionally and falsely represented to the Plaintiffs that reserved wheelchair seating was available -- or failed to disclose that appropriate wheelchair seating was unavailable -- at Fiddler’s Green concerts with the intent that the Plaintiffs would purchase tickets for wheelchair seating.
6. Plaintiffs justifiably relied on Defendants’ misrepresentations and omissions in buying wheelchair seating tickets for concerts at Fiddler’s Green and in attending those concerts.
7. Plaintiffs suffered pecuniary losses and physical and mental distress as a result of Defendants’ misrepresentations and omissions.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray:

1. That this Court assume jurisdiction;
2. That this Court certify the class of plaintiffs identified in paragraph 20 pursuant to Rule 23 of the Federal Rules of Civil Procedure for purposes of the ADA and C.R.S. § 24-34-601 claims;
3. That this Court issue an injunction on behalf of the class and CCDC ordering Defendants to provide a reasonable number of integrated, level, and appropriately sized wheelchair seating and seats with removable aisle-side arm rests and provide wheelchair seating locations that: (i) provide lines of sight and choice of admission prices comparable to those for members of the general public; (ii) are dispersed throughout the seating area; (iii) adjoin an accessible route that also serves as a means of egress in case of emergency; and (iv) permit individuals who use wheelchairs to sit with family members or other companions at Fiddlers Green;
4. That this Court award \$50 for each instance of discrimination faced by each member of the class identified in paragraph 20, the minimum amount required by C.R.S. § 24-34-602 for violations of C.R.S. § 24-34-601;
5. That this Court award to CCDC \$50 per instance of discrimination faced by its members pursuant to C.R.S. § 24-34-602;
6. That on behalf of Plaintiff Steve Mertz, this Court issue an injunction ordering Defendants to provide a reasonable number of integrated, level, and appropriately sized wheelchair seating and seats with removable aisle-side arm rests and provide wheelchair seating locations that: (i) provide lines of sight and choice of admission prices comparable to those for members of the general public; (ii) are dispersed throughout the seating area; (iii) adjoin an accessible route that also serves as a means of egress in case of emergency; and (iv) permit

individuals who use wheelchairs to sit with family members or other companions at Fiddlers Green;

7. That this Court award \$500 to Plaintiff Steve Mertz for Defendants' violations of C.R.S. § 24-34-601;

8. That this Court award three times the amount of actual damages to each Plaintiff who was damaged by Defendants' deceptive trade practices, as is permitted under C.R.S. § 6-1-113(2)(a);

9. That this Court award to CCDC three times the amount of actual damages suffered by CCDC and its members as a result of Defendants' deceptive trade practices pursuant to C.R.S. § 6-1-113(2)(a);

10. That this Court order Defendants to pay \$2,000 to the general fund of the State of Colorado for each separate violation of the CCPA, or \$100,000, whichever is greater, as is permitted under C.R.S. § 6-1-112(1);

11. That this Court award compensatory and punitive damages to each Plaintiff who relied on and was damaged by Defendants' negligent misrepresentations and/or fraudulent conduct;

12. That this Court award reasonable attorneys' fees and costs; and

13. That this Court award such additional or alternative relief as may be just, proper and equitable.

JURY DEMAND: Plaintiffs demand a jury on all issues which can be heard by a jury.

Respectfully submitted,

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