

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 97-B-2135

COLORADO CROSS-DISABILITY COALITION

and

JULIE REISKIN and DEBBIE LANE, for themselves and all others similarly situated,

Plaintiffs,

v.

TACO BELL CORPORATION,

Defendant.

THIRD AMENDED CLASS ACTION COMPLAINT

Plaintiffs Colorado Cross-Disability Coalition, Julie Reiskin and Debbie Lane, by and through their attorneys Kevin W. Williams and Fox & Robertson, P.C., hereby submit their Third Amended Class Action Complaint for violation of the Americans with Disabilities Act and the Colorado Anti-Discrimination Act.

INTRODUCTION

1. Over seven years after Congress passed our nation's landmark civil rights law for people with disabilities, Defendant -- which owns, operates, leases and leases to Taco Bell restaurants in Colorado -- has yet to make its restaurants accessible to wheelchairs.

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 people with disabilities in our country's history.

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

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

42 U.S.C. § 12101(b).

4. Congress gave commercial businesses one and a half years to implement the Act. The effective date was January 26, 1992.

5. In spite of this abundant lead time and the extensive publicity the ADA has received since 1990, Defendant continues to discriminate against people who use wheelchairs in ways that include but are not limited to maintaining fixed barriers designed to cause patrons to form a single line (“queue lines”) that are too narrow to permit passage of people who use wheelchairs, blocking queue lines and maintaining counters too high for people who use wheelchairs.

JURISDICTION

6. 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.

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

PARTIES

8. Plaintiff Julie Reiskin is and was at all times material hereto a resident of Colorado residing at 3645 Milwaukee St., Denver, Colorado, 80205. Ms. Reiskin has multiple sclerosis and is, as a result, substantially impaired in several major life activities. Among other things, Ms. Reiskin requires an electric wheelchair for mobility.

9. Plaintiff Debbie Lane is and was at all times material hereto a resident of Colorado residing at 1421 Pearl Street, No. 1, Denver, Colorado, 80203. Ms. Lane has epilepsy and spastic paraparesis and is, as a result, substantially impaired in several major life activities. Among other things, Ms. Lane requires an electric, three-wheel scooter for mobility.

10. Plaintiff Colorado Cross-Disability Coalition (“CCDC”) is a non-profit corporation incorporated in the State of Colorado. It is a state-wide organization of people with disabilities -- including those who use wheelchairs and electric scooters due to mobility impairments -- and their non-disabled 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 people with disabilities have access to -- and do not encounter discrimination in -- places of public accommodation. CCDC

engages in extensive outreach as well as advocacy and educational efforts to promote access for and combat discrimination against people with disabilities. This effort and this purpose have been and continue to be adversely affected by Defendant's violations of the ADA and the Colorado Anti-Discrimination Act ("CADA"), C.R.S. § 24-34-601 et seq.

11. Defendant Taco Bell Corporation is a corporation incorporated under the laws of California. Its principal place of business is 17901 Von Karmen Avenue, Irvine, CA 92614. Taco Bell Corporation owns, operates, leases and/or leases to Taco Bell restaurants in Colorado.

CLASS ACTION ALLEGATIONS

12. Plaintiffs Julie Reiskin and Debbie Lane seek to maintain this action as a class action under Rule 23(b)(2) and/or Rule 23(b)(3) of the Federal Rules of Civil Procedure. The class consists of all people with disabilities who use wheelchairs or electric scooters for mobility who, during the two years prior to the filing of the Class Action Complaint, were denied the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any Taco Bell restaurant in Colorado on the basis of disability.

13. The class identified in paragraph 12 is believed to consist of well over 1,000 members and joinder of all of such class members in this lawsuit is impracticable.

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

1. Whether Taco Bell restaurants in Colorado are “public accommodations” under the ADA;
2. Whether Taco Bell restaurants in Colorado are “public accommodations” under C.R.S. § 24-34-601;
3. Whether Taco Bell restaurants in Colorado deny the full and equal enjoyment of their goods, services, facilities, privileges, advantages, or accommodations to people in wheelchairs in violation of the ADA and C.R.S. § 24-34-601; and
4. What measures are legally required to bring Taco Bell restaurants in Colorado into compliance with the ADA and C.R.S. § 24-34-601.

15. The claims of Ms. Reiskin and Ms. Lane are typical of the claims of the members of the class. They -- like all other members of the class -- use a wheelchair or electric scooter for mobility and claim Defendant has violated the ADA and C.R.S. § 24-34-601 by failing to make its Taco Bell restaurants accessible to people in wheelchairs.

16. Ms. Reiskin and Ms. Lane will fairly and adequately protect the interests of the class because they have retained counsel with extensive experience in litigation, including class action litigation. In addition, Plaintiffs’ counsel, Timothy Fox, and counsel for CCDC, Kevin Williams, are thoroughly familiar with issues concerning people with disabilities because both are tetraplegics and both have used an electric wheelchair for over 10 years. Finally, Ms. Reiskin and Ms. Lane have no interests that conflict in any way with those of the class.

17. This action may be maintained as a class action pursuant to Rule 23(b)(2) because the Defendant's violations of the ADA and CADA, including but not limited to the maintenance of narrow queue lines and high counters, are applicable to all members of the class. Therefore, an injunction requiring compliance with the ADA and CADA is appropriate and the primary relief sought is injunctive relief.

18. 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 Taco Bell restaurants in Colorado are public accommodations, whether removing or widening the narrow queue lines, lowering counters and otherwise complying with the ADA in stores built prior to the effective date of the ADA is readily achievable for the Defendant and whether Defendant has violated C.R.S. § 24-34-601. In addition, because Plaintiffs seek only \$50 in damages for each instance of discrimination, the minimum amount of damages required by C.R.S. § 24-34-602, there are no individual issues concerning each member's damages.

19. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because the damages suffered by individual class members are small and because the burden upon such individual litigants may make it difficult and impractical for them to pursue their claims against Defendant.

20. Judicial economy will be served by maintenance of this lawsuit as a class action in that it is likely to avoid the burden which would be otherwise placed upon the judicial system by the filing of

numerous similar suits by disabled people in the region. There are no obstacles to effective and efficient management of this lawsuit as a class action by this Court.

GENERAL ALLEGATIONS

21. CCDC's members include many people who use wheelchairs. Many of these people are regular patrons of "fast food" restaurants, including Taco Bell restaurants.

22. On or about July 27, 1997, Plaintiff Julie Reiskin, her stepson, and two of his friends attempted to patronize the Taco Bell at 1265 S. Colorado Boulevard. When Ms. Reiskin approached the counter to place her order, she encountered a series of fixed barriers designed to cause patrons to form a single line, or "queue line." The width of the lane between the barriers was too narrow for her to traverse in her wheelchair, and Ms. Reiskin's wheelchair became stuck in the line.

23. Ms. Reiskin told the restaurant employees that she could not get through. The employees said that Ms. Reiskin should go around the line through a section that was cordoned off with a chain. Because the employees did not offer assistance, Ms. Reiskin's stepson had to unhook the chain. Ms. Reiskin then proceeded down a narrow aisle to the area where customers order food.

24. Ms. Reiskin, her stepson and his friends ordered their dinner. While they waited, another customer ordered, and his food was ready before Ms. Reiskin's. The aisle, however, was so narrow that the other customer could not get by Ms. Reiskin to pick up his food. In addition, the counter was so high that it was very difficult for Ms. Reiskin to pay the cashier or pick up her food.

25. In the Taco Bell at 1265 S. Colorado Boulevard, the width of the queue lines is approximately 25 inches. At the point where a 180 degree turn is required, the width is approximately 24 inches.

26. The counter at the Taco Bell at 1265 S. Colorado Boulevard is approximately 41 inches high for its entire length.

27. On May 28, 1998, Plaintiff Debbie Lane attempted to patronize Taco Bell restaurants located at 12480 W. 64th Avenue, Arvada, Colorado and 7221 Pecos, Denver, Colorado. On information and belief, these restaurants were designed and constructed for first occupancy after January 26, 1993.

28. The queue line at the Taco Bell restaurant on W. 64th Avenue was so narrow that it was almost impossible for Ms. Lane to traverse in her scooter. She was forced repeatedly to drive back and forth to try to make the tight turns, causing her to ram the scooter into the condiment stand (which was a boundary for a portion of the queue line) in the process. This caused customers on the other side of the condiment stand to jump with surprise. Other customers began to stare at Ms. Lane as she struggled to make her way through the queue line. This embarrassed Ms. Lane. One customer, seeing the difficulties Ms. Lane was having, commented sarcastically “Wow, this place is really accessible.”

29. In the Taco Bell restaurant on W. 64th Avenue, the width of the queue line is approximately 34 inches. At the point where a 180 degree turn is required, the width is approximately 32 inches.

30. At the Pecos Street Taco Bell restaurant, Ms. Lane was unable even to try to enter the queue line because it was blocked by a “Godzilla” advertising placard. Thus even though other patrons who did not use wheelchairs were able to traverse the queue line, Ms. Lane was forced to use a segregated path to get to the counter.

31. In the Taco Bell restaurant on Pecos Street, the width of the queue line is approximately 34 inches. At the point where a 180 degree turn is required, the width is approximately 38 inches.

32. The Americans with Disabilities Act Accessibility Guidelines (“ADAAG”), 28 C.F.R. Part 36, Appendix A, specify that the width of an accessible route requiring a turn around an obstruction must be a minimum of 42 inches and that the width at the point of the 180 degree turn must be a minimum of 48 inches. Id. § 4.3.3 and figure 7(b). This standard applies to the queue lines at Taco Bell restaurants in Colorado.

33. The queue lines in the Taco Bell restaurants identified above are narrower than the specifications in the ADAAG, and other Taco Bell restaurants in Colorado have queue lines in which the width is below that required by the ADAAG.

34. ADAAG § 7.2 requires that an area of the counter at least a 36 inches in width be at most 36 inches in height. This standard applies to the counters at Taco Bell restaurants in Colorado.

35. The counter at the Colorado Boulevard Taco Bell restaurant does not meet ADAAG specifications, and other Taco Bell restaurants in Colorado have counters which do not comply with the ADAAG.

36. The queue lines, counter heights and other features of the Taco Bell restaurants in Colorado discriminate against people in wheelchairs by denying them the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of these Taco Bell restaurants.

37. Ms. Reiskin and Ms. Lane regularly patronize “fast food” restaurants. They plan to patronize such restaurants at least once a week in the future. They would like to -- and are ready, willing and able to -- patronize Taco Bell restaurants when their discriminatory barriers are removed or cured.

38. Many of CCDC’s members patronize “fast food” restaurants, plan to continue to do so in the future and would like to -- and are ready, willing and able to -- patronize Taco Bell restaurants when the discriminatory barriers are removed or cured.

39. In addition, the discriminatory features of Taco Bell restaurants in Colorado, including but not limited to those described above, are generally known to CCDC’s members who are discouraged from patronizing these restaurants. Ms. Reiskin and Ms. Lane now generally avoid patronizing Taco Bell restaurants because they are aware of the discriminatory barriers they will encounter there.

40. Ms. Reiskin and Ms. Lane were injured by the discrimination they encountered at the Taco Bell restaurants identified above and continue to be injured by their inability to patronize this and other Taco Bell restaurants in Colorado. They have also been injured by the stigma of Defendant’s discrimination.

41. CCDC's members are injured by their inability to patronize Taco Bell restaurants in Colorado and by the stigma of the discrimination they encounter when they attempt to patronize these restaurants.

42. In addition, Defendant's actions have caused and continue to cause distinct and palpable injury to CCDC itself.

43. Defendant's discrimination has been and continues to be a barrier to the full participation of people with disabilities in the state of Colorado and therefore frustrates CCDC's purpose.

44. Defendant's discriminatory practice has interfered with and continues to interfere with CCDC's efforts to make Colorado accessible to people with disabilities and thus makes CCDC's task more difficult for several reasons:

1. Defendant's discrimination, in and of itself, makes Colorado less accessible to people who use wheelchairs.
2. In addition, Defendant's discrimination segregates people with disabilities thereby perpetuating discriminatory attitudes in the public at large.

45. Defendant's 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 and educational missions.

46. 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 Colorado, including that of Defendant.

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

48. CCDC's members who use wheelchairs have been injured and will continue to be injured by Defendant's refusal to comply with the ADA and the CADA and its continued acts of discrimination.

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

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

FIRST CLAIM FOR RELIEF
(Violation of the Americans with Disabilities Act)

51. Plaintiffs reallege and incorporate by reference the allegations set forth in paragraphs 1 - 50 above as if fully set forth herein.

52. Title III of the ADA prohibits discrimination by public accommodations on the basis of disability. 42 U.S.C. § 12181 et seq.

53. Restaurants are public accommodations covered by the ADA. 42 U.S.C. § 12181(7)(B).
54. The Taco Bell restaurants in Colorado are all “public accommodations” under the ADA.
55. Title III applies to “any person who owns, leases (or leases to), or operates a place of public accommodation.” 42 U.S.C. § 12182(a). Defendant owns, leases (or leases to) and/or operates places of public accommodation.
56. The ADA defines illegal discrimination to include, in pertinent part:
1. a “failure to remove architectural barriers. . . that are structural in nature, in existing facilities. . . where such removal is readily achievable;”
 2. “with respect to a facility or part thereof that is altered . . . in a manner that affects or could affect the usability of the facility or part thereof, a failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Where the entity is undertaking an alteration that affects or could affect usability of or access to an area of the facility containing a primary function, the entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area . . . [is] readily accessible to and usable by individuals with disabilities where such alterations to the path of travel . . . are not

disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).” and

3. “a failure to design and construct facilities for first occupancy later than 30 months after July 26, 1990 that are readily accessible to and usable by individuals with disabilities . . .”

42 U.S.C. §§ 12182(b)(2)(A)(iv) & 12183(a).

57. On information and belief, removing or widening the narrow queue lines, lowering the counters and otherwise bringing Taco Bell restaurants in Colorado that were designed and constructed for first occupancy before January 26, 1993, into compliance with the ADA is readily achievable.

58. By failing to remove or widen queue lines and lower counter heights and otherwise denying to persons who use wheelchairs the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of the Taco Bell restaurants in Colorado, Defendant has violated the ADA and has injured the Plaintiffs.

59. On information and belief, Defendant has designed and constructed Taco Bell restaurants in Colorado for first occupancy after January 26, 1993, with queue lines and counters that do not comply with the ADAAG and thus Defendant has violated the ADA and has injured the Plaintiffs.

60. Defendant has obstructed its queue lines by placing objects such as advertising placards in the lines, thereby preventing persons who use wheelchairs and scooters from accessing the lines in violation of the ADA and injuring Plaintiffs.

SECOND CLAIM FOR RELIEF
(Violation of C.R.S. § 24-34-601)

61. Plaintiffs reallege and incorporate by reference the allegations set forth in paragraphs 1 - 60 above as if fully set forth herein.

62. C.R.S. § 24-34-601(1) defines a “place of public accommodation” to include “any place of business engaged in any sales to the public,” including “any place to eat.”

63. The Taco Bell restaurants in Colorado are places of business engaged in sales to the public and places to eat and therefore are places of public accommodation for purposes of § 24-34-601.

64. 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 . . .”

65. By, among other things, designing and constructing, and/or failing to cure, queue lines or counters that do not comply with the ADAAG, and by obstructing queue lines with placards and the like, the Defendant has discriminated against the Plaintiffs by denying them the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of the Taco Bell restaurants in Colorado in violation of § 24-34-601.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray:

66. That this Court assume jurisdiction.
67. That this Court certify the class of Plaintiffs identified in paragraph 12 pursuant to Rule 23 of the Federal Rules of Civil Procedure.
68. That this Court issue an injunction ordering Defendant to comply with the ADA by removing or widening narrow queue lines, keeping queue lines unobstructed by placards or other objects, lowering counter heights, and otherwise bringing its restaurants into compliance with the ADAAG.
69. That this Court award \$50 for each instance of discrimination against each member of the class identified in paragraph 12, the minimum amount required by C.R.S. § 24-34-602 for violations of C.R.S. § 24-34-601.
70. That this Court award reasonable attorneys' fees and costs.
71. 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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