

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

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

COLORADO CROSS-DISABILITY COALITION, a Colorado non-profit Corporation,  
HEATHER REBEKAH RENEE LUCAS, by and through her parent and next friend, CARRIE  
ANN LUCAS  
ADRIANNE EMILY MONIQUE LUCAS, by and through her parent and next friend, CARRIE  
ANN LUCAS, and  
ASIZA CAROLYN KOLENE LUCAS, by and through her parent and next friend, CARRIE  
ANN LUCAS,

Plaintiffs, and

LAURA HERSHEY,  
CARRIE ANN LUCAS, and  
DANIEL WILSON,

Plaintiffs, on behalf of themselves and a class of similarly situation persons,

v.

THE CITY AND COUNTY OF DENVER, COLORADO,

Defendant and Third Party Plaintiff,

v.

SEMPLE BROWN DESIGN, P.C.,

Third Party Defendant.

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**PLAINTIFFS' FOURTH AMENDED AND SUPPLEMENTAL  
CLASS ACTION COMPLAINT**

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Plaintiffs, Colorado Cross-Disability Coalition, Laura Hershey, Carrie Ann Lucas,  
Heather Rebekah Renee Lucas, Adrienne Emily Monique Lucas, Asiza Carolyn Kolene Lucas  
and Daniel Wilson, by and through their attorneys, Kevin W. Williams, Legal Program Director

of the Colorado Cross-Disability Coalition, and Fox & Robertson, P.C., hereby submit their Fourth Amended and Supplemental Complaint for violations of Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131 *et seq.* (the “ADA”), and section 504 of the Rehabilitation Act, 29 U.S.C. § 794 (the “Rehabilitation Act”), and the Colorado Anti-Discrimination Act, Colo. Rev. Stat. § 24-34-601 *et seq.* (“CADA”).

### **JURISDICTION**

1. 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.

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

### **PARTIES**

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

4. Plaintiff Laura Hershey is and was at all times material hereto a resident of Colorado residing in this district. Ms. Hershey is substantially limited in several major life activities, including walking and breathing, and requires the use of a motorized wheelchair for mobility. Laura Hershey is a CCDC member.

5. Plaintiff Carrie Ann Lucas is and was at all times material hereto a resident of Colorado residing in this district. Ms. Lucas is substantially limited in several major life activities, including walking, hearing, breathing and seeing. She requires the use of a motorized

wheelchair for mobility, sign language interpreters for effective communication and screen enhancement software for reading. Carrie Lucas is a CCDC member.

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

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

8. Plaintiff Asiza Carolyn Kolene Lucas is substantially impaired in several major life activities because she has a developmental disability, anxiety disorder and Tourette's Syndrome. At all times material hereto, Miss Lucas was a resident of Colorado. She is twelve years old and participates in this lawsuit by and through her parent and next friend, her mother Carrie Ann Lucas. Plaintiff Asiza Carolyn Kolene Lucas is a CCDC member.

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

10. Defendant City and County of Denver (“City”) owns, operates and leases to others the Ellie Caulkins Opera House (the “Opera House”).

**CLASS ACTION ALLEGATIONS**

11. Plaintiffs Carrie Ann Lucas, Laura Hershey, and Daniel Wilson seek to maintain this action as a class action under Rule 23(b)(2) of the Federal Rules of Civil Procedure. The class consists of all persons with disabilities who are currently or have been in the past four years residents of the State of Colorado who use wheelchairs or scooters for mobility who, within four years prior to the filing of the complaint in this Lawsuit, were denied or are being denied, full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of the Ellie Caulkins Opera House.

12. The class identified in Paragraph 11 is so numerous, and the class members are difficult or impossible to identify, making joinder of all members impracticable.

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

- a. Whether the City in its operation of the Opera House excludes individuals with disabilities from participation in or denies those individuals the benefits of the services, programs, or activities of the Opera House or subjects such individuals to discrimination in violation of the ADA and Rehabilitation Act.
- b. Whether the Opera House complies with the Americans with Disabilities Act Accessibility Guidelines (“ADAAG”), 28 C.F.R. pt. 36, app. A.

- c. What measures are legally required to bring the Opera House into compliance with the ADAAG.
- d. Whether the Opera House is a “place of public accommodation” as that term is used in Colo. Rev. Stat. § 24-34-601(1).
- e. Whether the City refuses, withholds from or denies individuals with disabilities the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of the Opera House in violation of Colo. Rev. Stat. § 24-34-601(2).

14. The claims of Carrie Ann Lucas, Laura Hershey, and Daniel Wilson are typical of the claims of the members of the class. They – like all other members of the class – use wheelchairs or scooters for mobility and claim the City has violated the ADA, the Rehabilitation Act and the CADA by failing to make the Opera House accessible to people who use wheelchairs.

15. Plaintiffs Carrie Ann Lucas, Laura Hershey, and Daniel Wilson 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 Kevin Williams is thoroughly familiar with issues concerning people who use wheelchairs because he is a tetraplegic, and has used a wheelchair for over 20 years. Finally, Plaintiffs Carrie Ann Lucas, Laura Hershey, and Daniel Wilson have no interests that conflict in any way with those of the class.

16. This action may be maintained as a class action pursuant to Federal Rule of Civil Procedure 23(b)(2) because the City's violations of the ADA, the Rehabilitation Act and the CADA are applicable to all members of the class. Therefore, an injunction requiring compliance with the ADA, the Rehabilitation Act and the CADA is appropriate, and this injunctive relief is the only relief sought on behalf of the class.

### **GENERAL ALLEGATIONS**

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

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

19. The Opera House was built with and continues to have a number of discriminatory design defects, including but not limited to those described below.

20. Accessible seats in the orchestra section are below the level of the main lobby. To access these seats, the Opera House requires patrons who use wheelchairs to use tiny residential elevators – not lifts; not commercial elevators – that carry only one passenger at a time, malfunction often, and move slowly. These factors, especially in combination, often make it impossible for patrons who use wheelchairs to get to their seats before the beginning of a show or to use the restroom or have a snack at intermission.

21. The residential elevators do not comply with the provisions of the Department of Justice Standards for Accessible Design, 28 C.F.R. pt 36, app. A ("Standards") governing

elevators, as -- among other things -- their internal dimensions are far less than the required 54 inches by 68 inches. *See id.* § 4.10.9 & Fig. 22; *see also generally id.* § 4.10.

22. Because the residential elevators are elevators, not lifts, the fact that they fail to comply with § 4.10 of the Standards is sufficient to demonstrate that they are in violation of the Standards and thus Title II of the ADA. Assuming, *arguendo*, that the residential elevators could be analyzed as lifts, they also fail to comply with the provisions of the Standards governing lifts.

23. Under the Standards, lifts are required to comply with the American Society of Mechanical Engineers A17.1 Safety Code for Elevators and Escalators, Section XX, 1990 (“ASME A17.1-1990”) as well as state and local codes. *See* Standards §§ 4.1.6(g), 4.11.2.

24. The residential elevator used by patrons who use wheelchairs to get to the Orchestra level does not comply with Section XX of the ASME A17.1-1990. That section applies to “Inclined Stairway Chairlifts and Inclined and Vertical Wheelchair Lifts;” it does not cover residential elevators.

25. In addition, Rule 2000.7a of ASME A17.1-1990 states that a lift may not “penetrate a floor.” The House Left residential elevator currently penetrates multiple floors to get from the Orchestra level at the bottom to the Mezzanine level at the top. In addition, both residential elevators penetrate the Main level floor to get from that level to the Orchestra level.

26. Rule 2000.10a of ASME A17.1-1990 requires that operation of the lift car be controlled by a key, and that “up” and “down” control switches at all stations shall be by means

of a continuous pressure device. Neither is the case with the residential elevators used in the Opera House.

27. The fact that the residential elevators violate Section XX of ASME A17.1-1990 means that they violate Standards §§ 4.1.6(g) and 4.11.2, which incorporate that section by reference.

28. The residential elevators also fail to comply with the Denver Building Code. The applicable city building codes are the 1997 Uniform Building Code, Vol. 1, 2 and 3 (“UBC-1997”), as amended and supplemented by the Amendments to the Building Code for the City and Count of Denver, 1999 edition (“DBC-1999”). *See* Ord. No. 263, §§ 2, 3 (1999).

29. In buildings such as the Opera House, the DBC requires at least one elevator serving each level, DBC-1999 § 1105.3.1.1, and requires that “[a]ll elevators shall be accessible,” *id.* § 1105.3.1.2.

30. The residential elevators do not comply with the applicable provisions governing elevators. *See, e.g.*, UBC-1997 § 3003.4.7 (requiring car size that “shall allow for the turning of a wheelchair” and a minimum size of 68 inches by 54 inches).

31. Although the DBC permits “platform lifts” in lieu of elevators, *see* DBC-1999 § 1105.3.2, the residential elevators in the Opera House are not platform lifts.

32. The fact that the residential elevators violate the DBC-1999 means that they violate Standards § 4.1.6(g) which requires compliance with “state and local codes.”

33. At 33½ inches wide, the residential elevators are too narrow. As part of an accessible route, see Standards § 4.1.6(g), they are required to be at least 36 inches wide, *id.*

§ 4.3.3. However, the 33½ inch width can only be remedied by removing the handrail in each residential elevator, which would render it noncompliant with Rule 2000.1a(7) of ASME 17.1-1990.

34. The residential elevators have accordion doors at either end that tend to trap a user's feet in front, and parts of their wheelchairs, backpacks or other medical devices in the back. When this happens, the device grinds to halt, further delaying the patron in getting to his or her seat or, for example, to the restroom at intermission.

35. The residential elevators can be controlled only from the inside, but the size of the residential elevator makes it very difficult for a nondisabled person to accompany a patron in a power wheelchair. Individuals who do not have the ability to push buttons on their own – precisely those individuals most likely to use power chairs – cannot easily use the devices at all.

36. The use of a residential elevator in a commercial facility, in and of itself, is a design defect that, among other things, leads to repeated and predictable malfunctions, in violation of 28 C.F.R. § 35.133. This, in turn, leads to significant discrimination because, as described in greater detail herein, it prevents patrons with disabilities from enjoying benefits of the services, programs, or activities of the Opera House, in violation of 42 U.S.C. § 12132.

37. The lobbies of the residential elevators do not have sufficient maneuvering clearances, in violation of Standards § 4.13.6 and Fig. 25.

38. When it first opened, the Opera House had a number of designated accessible seats in the Orchestra section that were on a slope and were not level, in violation of Standards § 4.33.4.

39. The Opera House provides some wheelchair seating locations that are segregated from their respective companion seats, in violation of Standards § 4.33.3.

40. Wheelchair seating is not sufficiently dispersed in the Opera House in violation of Standards § 4.33.3. For example, there are over 600 seats in the Orchestra level, but only four wheelchair accessible seats, below the one percent required by Standards § 4.1.6(19)(g).

41. Several of the restrooms in the Ellie were designed without adequate turning or maneuvering clearances. For example, several of the family restrooms are too narrow, in violation of section 4.22.3 of the Standards or have inadequate clearance at the main door or the door to the accessible stall, in violation of section 4.13.6 and Figure 25.

42. In the Kevin Taylor restaurant, several raised areas were designed and built into the (on information and belief) originally empty, level space, in violation of section 5.4 of the Standards. The bar has no lowered area, in violation of section 5.2. There are no accessible tables, in violation of sections 4.1.3(18), 4.32 and 5.1.

43. The areas adjacent to certain staircases lack detectible warnings.

44. A few of the examples of the discrimination that the Plaintiffs have suffered because of these discriminatory design defects and violations of the ADA are set forth below.

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

46. In or about October of 2005, Plaintiff Carrie Ann Lucas and two of her daughters, Heather and Adrienne, attended a performance of the ballet, "Sleeping Beauty" at the Opera House. It took at least twenty minutes for all three of them to use the residential elevator to

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

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

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

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

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

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

52. Ms. Lucas and her daughters did not attend performances of any other ballets during the 2005-2006 season because of the problems with the residential elevators.

53. In or about November of 2006, Ms. Lucas and her daughters attended a performance of the "Nutcracker" at the Opera House. Ms. Lucas, Heather and Adrienne were initially unable to access their seats because the vestibule between the residential elevator and their seats was filled with chairs. Ms. Lucas had to find an usher and convince the usher to remove the chairs so they could use the residential elevator.

54. In or about March of 2007, Ms. Lucas and two of her daughters attended a performance of "Where the Wild Things Are". Ms. Lucas, Heather, and Adrienne were again unable to access their seats because the vestibule between the residential elevator and their seats

was filled with chairs. Again, they had to get someone to move the chairs. When Ms. Lucas used the residential elevator to exit after the performance, the accordion doors caught and disconnected a piece of Ms. Lucas' ventilator tubing.

55. Ms. Lucas and her daughters did not attend any other ballet performances during the 2006-2007 season because of the problems with the residential elevators.

56. In or about September of 2007, Ms. Lucas and two of her daughters, Adrienne and Asiza, attended a performance of "The Little Mermaid" at the Opera House. They purchased tickets in the Orchestra section, and thus were required to use the residential elevator to get to their seats. At intermission, Ms. Lucas started to take her daughter Asiza -- who does not use a wheelchair -- to the restroom. Ms. Lucas was forced to leave her other daughter, Adrienne, alone at her seat because there would not have been time during intermission for both Ms. Lucas and Adrienne to use the residential elevator. Ms. Lucas and Asiza attempted to use the residential elevator together, which required Asiza to stand on the footrest of Ms. Lucas's wheelchair. Although the usher instructed Ms. Lucas not to push any buttons until the door closed, Ms. Lucas is unable to reach the buttons when she is all the way inside the residential elevator. As a result, the usher also boarded the elevator in order to push the buttons once Ms. Lucas was in place. The usher managed to squeeze into the available space by hanging over the side of Ms. Lucas' wheelchair. When the usher leaned over Ms. Lucas's wheelchair, to push the buttons, she leaned on Ms. Lucas's ventilator tubing, breaking the support arm. However, after the door closed and the usher hit the button, the residential elevator went nowhere. The usher

then hit the alarm button and Ms. Lucas tried the emergency phone. While they were stuck, the phone never gave any indication that it had made a connection of any sort.

57. Eventually, all of the lights started flashing and the door opened, still on the Orchestra level where Ms. Lucas had boarded it. Asiza was scared and crying, but still needed to use the restroom. Because Ms. Lucas could not use the residential elevator, an usher agreed to accompany Asiza to the restroom. She was upset and crying when she returned.

58. When Ms. Lucas began using her Blackberry to take notes on what had happened, an usher approached her and told her that she could not have her Blackberry on. This was despite the fact that it was still intermission. Although Ms. Lucas could not get her name, another usher, Giselle, told Ms. Lucas that this was the assistant house manager. Giselle also told Ms. Lucas to turn off her Blackberry.

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

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

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

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

63. When she finally got to the residential elevator, Ms. Hershey could not access it because of the flow of patrons moving down the stairs.

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

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

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

67. Discriminatory design defects at the Opera House have included and/or continue to include, without limitation, the following:

- a. seats in the Orchestra level are not on level ground;

- b. some wheelchair seating locations are separated from companion seats by pillars;
- c. the orchestra level is not accessible to individuals who use wheelchairs via an elevator; instead, the only access to the orchestra level for individuals who use wheelchairs is via two residential elevators on either side of the orchestra level, which malfunction often and take too long to operate;
- d. there is no accessible route connecting wheelchair seating locations to the residential elevators in the orchestra level;
- e. the residential elevators will not accommodate some individuals who use wheelchairs and mobility devices, rendering the orchestra level inaccessible to them;
- f. the residential elevators are difficult to operate and provide no instruction;
- g. the controls on the residential elevators are not operable by some individuals who use wheelchairs or mobility devices;
- h. the residential elevators are difficult to find; on information and belief, there is not appropriate signage to indicate to individuals who use wheelchairs or mobility devices where they are located;
- i. depending on the size of the wheelchair or mobility device, there is insufficient room in the residential elevator for any other passengers;
- j. the new residential elevators have malfunctioned repeatedly when CCDC members who use wheelchairs have attempted to use them;

- k. the residential elevators are difficult to enter for individuals who use wheelchairs, because one must turn around an obstruction to enter them and because of the pedestrian traffic flow on the stairs adjacent to the residential elevators;
- l. the residential elevators are so slow that individuals who use wheelchairs cannot leave the orchestra level and return during intermissions before the performance begins;
- m. wheelchair seats have been sold to individuals who use wheelchairs that have no captioning screens, known as “Figaros;”
- n. individuals who use wheelchairs have had to change seating locations because they were sold “Accessible” seats that were not actually accessible;
- o. companion seating in some wheelchair seating sections does not offer an equivalent view of the “Figaro” captioning screens;
- p. the aisle leading to the front row of the orchestra level where wheelchair seating locations is designated is narrow, and there is no turn around space for an individual who uses a wheelchair;
- q. people who use wheelchairs are unable to sit in the seats they have chosen and purchased;
- r. the areas adjacent to staircases lack appropriate detectible warnings;
- s. restrooms were designed in violation of the Standards; and

t. the Kevin Taylor restaurant was designed in violation of the Standards.

68. Laura Hershey has attended performances at the Opera House and would like to attend future performances there if the ADA violations and design defects described herein are remedied. Ms. Hershey has experienced discrimination including but not limited to that described herein. Defendant's conduct has deterred Ms. Hershey from attending future performances until the ADA violations and design defects described herein are remedied.

69. Laura Hershey suffered damages as a result of Defendant's conduct.

70. Carrie Ann Lucas and her daughters have attended performances at the Opera House and would like to attend future performances there if the ADA violations and design defects described herein are remedied. The Lucases have experienced discrimination including but not limited to that described herein. Defendant's conduct has deterred the Lucases from attending future performances until the ADA violations and design defects described herein are remedied.

71. The Lucases suffered damages as a result of Defendant's conduct.

72. Daniel Wilson has attended performances at the Opera House and would like to attend future performances there if the ADA violations and design defects described herein are remedied. Mr. Wilson has experienced discrimination including but not limited to that described herein. Defendant's conduct has deterred Mr. Wilson from attending future performances until the ADA violations and design defects described herein are remedied.

73. Mr. Wilson suffered damages as a result of Defendant's conduct.

74. On information and belief, other CCDC members have attended performances at the Opera House and would like to attend future performances there if the ADA violations and design defects described herein are remedied. On information and belief, these other CCDC members have experienced discrimination similar to that described herein. On information and belief, Defendant's conduct has deterred other CCDC members from attending future performances until the ADA violations and design defects described herein are resolved.

75. On information and belief, other CCDC members have suffered damages as a result of Defendant's conduct.

76. Plaintiff CCDC has members who attend performances at the Opera House and who would like to attend performances at the Opera House.

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

78. 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 laws cited herein.

79. Defendant's actions have caused and continue to cause distinct, palpable, and perceptible injury to CCDC.

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

81. Defendant's discrimination has been and continues to be a barrier to the full participation of persons with disabilities and, therefore, frustrates CCDC's ability to achieve full inclusion for persons with disabilities.

82. Defendant's discrimination described herein deter some persons with disabilities from attending events at the Opera House.

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

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

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

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

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

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

89. Defendant acted intentionally or with reckless or callous indifference to the federally protected rights of others and/or with deliberate indifference to the strong likelihood that its acts would likely result in a violation of federally protected rights

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

90. Plaintiffs reallege and incorporate by reference the allegations in the remainder of this Fourth Amended Complaint as if fully set forth herein.

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

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

93. Defendant has violated the ADA by denying Plaintiffs and members of the class the benefits of the services, programs, or activities of the Opera House through actions that include but are not limited to the discriminatory design defects alleged herein.

94. Defendant's violations of the ADA have harmed Plaintiffs and members of the class.

**SECOND CLAIM FOR RELIEF**  
(Violation of Rehabilitation Act)

95. Plaintiffs reallege and incorporate by reference the allegations in the remainder of this Fourth Amended Complaint as if fully set forth herein.

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

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

98. Defendant has violated the Rehabilitation Act by excluding Plaintiffs members of the class from the participation in, denying them the benefits of, and/or subjecting them to discrimination under the programs and/or activities of the Opera House through actions that include but are not limited to the discriminatory design defects alleged herein.

99. Defendant's violations of the Rehabilitation Act have harmed Plaintiffs and members of the class.

**THIRD CLAIM FOR RELIEF**  
(Colorado Anti-Discrimination Act)

100. Plaintiffs reallege and incorporate by reference the allegations in the remainder of this Fourth Amended Complaint as if fully set forth herein.

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

102. Defendant -- in its ownership and/or operation of the Opera House -- is a place of public accommodation as that term is defined in Colo. Rev. Stat. § 24-34-601(1).

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

104. Defendant has violated the Colorado Anti-Discrimination Act by denying Plaintiffs and members of the class the full enjoyment of any of the accommodations, advantages, facilities, and/or privileges of the Opera House through actions that include but are not limited to the discriminatory design defects alleged herein.

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

106. Defendant's violations of the Colorado Anti-Discrimination Act have harmed Plaintiffs and members of the class.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully pray:

1. That this Court assume jurisdiction;
2. That this Court certify the following class:

all persons with disabilities who are currently or have been in the past four years residents of the State of Colorado who use wheelchairs or scooters for mobility who, within four years prior to the filing of the complaint in this Lawsuit, were denied or are being denied, full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of the Ellie Caulkins Opera House;

3. That this Court appoint Plaintiffs Carrie Ann Lucas, Laura Hershey, and Daniel Wilson as class representatives;

4. That this Court appoint Amy F Robertson and Kevin W. Williams as class counsel;

5. That this Court issue an injunction ordering Defendant bring the Opera House into compliance with the ADA, the Rehabilitation Act, and the Colorado Anti-Discrimination Act;

6. That this Court award compensatory damages to Named Plaintiffs;

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

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

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

Dated: October 3, 2008

Respectfully submitted,

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