

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

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

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

Plaintiffs,

v.

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

Defendants.

**DEFENDANT DENVER CENTER FOR THE PERFORMING ARTS
ANSWER TO SECOND AMENDED COMPLAINT**

Defendant, Denver Center for the Performing Arts (“DCPA”), through its attorneys,
Semple, Miller, Mooney & Farrington, P.C., by Martin Semple, Patrick B. Mooney and M. Brent
Case, answer Plaintiffs’ Second Amended Complaint (“complaint”) as follows:

INTRODUCTION

1. DCPA denies the allegations of paragraph 1 of the complaint.

2. DCPA admits that the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12101, *et seq.*, is a civil rights law enacted in July 1990 and denies all remaining allegations of paragraph 2 of the complaint.

3. DCPA admits that 42 U.S.C. § 12101(b) sets forth certain purposes of the ADA and that paragraph 3 of the complaint sets forth portions of 42 U.S.C. § 12101(b).

4. With regard to the allegations of paragraph 4 of the complaint, these allegations relate to a defendant other than DCPA and do not require an answer from DCPA. To the extent that an answer is required the allegations are denied.

5. DCPA denies the allegations of paragraph 5 of the complaint insofar as such allegations are against DCPA.

6. DCPA denies the allegations of paragraph 6 of the complaint insofar as such allegations are against DCPA.

7. DCPA denies the allegations of paragraph 7 of the complaint insofar as such allegations are against DCPA.

JURISDICTION

8. With regard to the allegations contained in paragraph 8 DCPA admits that the court has jurisdiction over this action pursuant to U.S.C. §§ 1331 and 1343 and otherwise denies the allegations contained in paragraph 8.

9. DCPA admits the allegations in paragraph 9 of the complaint.

PARTIES

10. DCPA is without information as to the truth of the allegations of paragraph 10 of the complaint and therefore denies the allegations.

11. DCPA is without information as to the truth of the allegations of paragraph 11 of the complaint and therefore denies the allegations.

12. DCPA is without information as to the truth of the allegations of paragraph 12 of the complaint and therefore denies the allegations.

13. DCPA is without information as to the truth of the allegations of paragraph 13 of the complaint and therefore denies the allegations.

14. DCPA is without information as to the truth of the allegations of paragraph 14 of the complaint and therefore denies the allegations.

15. DCPA is without information as to the truth of the allegations of paragraph 15 of the complaint and therefore denies the allegations.

16. DCPA is without information as to the truth of the allegations of paragraph 16 of the complaint and therefore denies the allegations.

17. With regard to the allegations of paragraph 17 of the complaint, these allegations relate to a defendant other than DCPA and do not require an answer from DCPA.

18. DCPA admits that it is a Colorado nonprofit corporation which through contractual and leasing arrangements provides theatrical, musical, and other artistic performances to the public at some of the facilities in the Performing Arts Complex. DCPA admits that Denver Center Attractions and Denver Center Theater Company are divisions of the DCPA. DCPA admits that it operates its own ticketing service for the productions it presents at venues in the Performing Arts Complex. DCPA admits that it operates a website with the URL address of www.denvercenter.org. DCPA denies all remaining allegations of paragraph 18 of the complaint.

19. With regard to the allegations of paragraphs 19, 20 and 21 of the complaint, these allegations relate to a defendant other than DCPA and do not require an answer from DCPA. To the extent that an answer is required the allegations are denied.

GENERAL ALLEGATIONS

20. To the extent that the allegations in paragraph 22 relate to the DCPA, DCPA admits the allegations except that the Tramway Theater is not part of the Performing Arts Complex.

21. DCPA admits the allegations in paragraph 23 of the complaint.

22. With regard to the allegations contained in paragraph 24, DCPA admits the allegations in the first sentence, with regard to the remaining allegations insofar as they relate to DCPA, DCPA admits that it is a user of theaters in the Performing Arts Complex, and is without information with regard to the remainder of the allegations and accordingly deny same.

23. With regard to the allegations of paragraphs 25 through 56 of the complaint, these allegations relate to defendants other than DCPA and do not require an answer from DCPA. To the extent that an answer is required the allegations are denied.

24. The allegations contained in paragraph 57 relate to a defendant other than DCPA and does not require an answer from DCPA. To the extent an answer is required the allegations are denied.

25. DCPA denies the allegations of paragraph 58 of the complaint insofar as such allegations are against DCPA.

26. DCPA denies the allegations of paragraph 59 of the complaint insofar as such allegations are against DCPA. DCPA is without information as to the truth of the allegations

against other defendants in this matter; therefore DCPA denies any such allegations and any remaining allegations of paragraph 59.

27. DCPA denies the allegations contained in paragraph 60 of the complaint.

28. With regard to the allegations contained in paragraphs 61 through 65 of the complaint, the allegations relate to defendants other than other than DCPA and do not require an answer from DCPA. To the extent that an answer is required the allegations are denied.

29. To the extent the allegations in paragraph 66 of the complaint relate to the DCPA, DCPA denies such allegations.

30. DCPA denies the allegations of paragraph 67 of the complaint insofar as such allegations are against DCPA. DCPA is without information as to the truth of the allegations against other defendants in this matter; therefore DCPA denies any such allegations and any remaining allegations of paragraph 67.

31. DCPA denies the allegations of paragraph 68 of the complaint insofar as such allegations are against DCPA. DCPA is without information as to the truth of the allegations against other defendants in this matter; therefore DCPA denies any such allegations and any remaining allegations of paragraph 68.

32. DCPA denies the allegations contained in paragraph 69 of the complaint.

33. With regard to the allegations contained in paragraph 70 of the complaint, DCPA admits that on June 17, 2006, plaintiff Carrie A. Lucas purchased tickets for the November 11, 2006 performance of *The Lion King*. DCPA admits that three of the tickets Ms. Lucas purchased are for seats in Row S, Section E of The Buell Theater (two wheelchair accessible seats and one companion seat). DCPA admits that on June 29, 2006, plaintiff Carrie A. Lucas spoke to a DCPA employee named Shana Lawson about the provision of a sign language interpreter for the

November 11, 2006 performance of *The Lion King*. DCPA admits that it has scheduled a sign language interpreted performance of *The Lion King* on October 22, 2006. DCPA denies the remaining allegations of paragraph 70 of the complaint.

34. DCPA denies the allegations in paragraph 71 of the complaint.

35. With regard to the allegations contained in paragraph 72 of the complaint, DCPA admits that on June 29, 2004, DCPA employee Don Burge spoke with Ms. Lucas concerning her request that DCPA provide a sign language interpreter four to six feet in front of her Row S, Section E seat during the November 11, 2006 performance of *The Lion King*. DCPA admits that Mr. Burge agreed to call Ms. Lucas back concerning her request. DCPA denies the remaining allegations of paragraph 72 of the complaint.

36. With regard to the allegations contained in paragraph 73 of the complaint, DCPA admits that later on June 29, 2006, Don Burge left plaintiff Lucas a voice message at the telephone number that she had provided to him, and that such message speaks for itself, but otherwise denies the allegations contained in paragraph 73 of the complaint.

37. With regard to the allegations contained in paragraphs 74 through 87 of the complaint, the allegations relate to defendants other than DCPA and do not require an answer from DCPA. To the extent that an answer is required the allegations are denied.

38. DCPA admits that there are more than fifty seats in the Stage Theater but denies the remaining allegations of paragraph 88 of the complaint.

39. DCPA denies the allegations in paragraph 89 of the complaint insofar as such allegations relate to DCPA.

40. With regard to the allegations contained in paragraph 90 of the complaint, DCPA admits that in 2005, DCPA closed its 14th Street box office and moved it to a location inside the

Helen Bonfils Theater Complex, but otherwise denies the allegations contained in paragraph 90 of the complaint.

41. With regard to the allegations contained in paragraph 91 of the complaint, the allegations relate to a defendant other than other than DCPA and do not require an answer from DCPA. To the extent that an answer is required the allegations are denied.

42. With regard to the allegations contained in paragraph 92 of the complaint DCPA admits that patrons may purchase tickets for performances sponsored by the DCPA through its ticketing service which operates through, among others, a website, phone, box office, and further admits that wheelchair seating purchases were available on its website for the “PHAMALy Presents the Wiz” but otherwise denies the allegations contained in paragraph 92.

43. DCPA is without information as to the truth of the allegations in paragraph 93 of the complaint and therefore denies the allegations.

44. With regard to the allegations contained in paragraphs 94 through 98 of the complaint, the allegations relate to defendants other than other than DCPA and do not require an answer from DCPA. To the extent that an answer is required the allegations are denied.

45. With regard to the allegations contained in paragraph 99 of the complaint DCPA admits that it operates a website, that the statements on the website speak for themselves and otherwise denies the allegations contained in paragraph 99 of the complaint.

46. DCPA denies the allegations contained in paragraph 100 of the complaint insofar as such allegations relate to DCPA.

47. With regard to the allegations contained in paragraph 101 of the complaint, DCPA states that the statements in the website speak for themselves and otherwise denies the allegations contained in paragraph 101 of the complaint.

48. With regard to the allegations contained in paragraphs 102 through 107 of the complaint, the allegations relate to defendants other than other than DCPA and do not require an answer from DCPA. To the extent that an answer is required the allegations are denied.

49. DCPA is without information as to the truth of the allegations contained in paragraph 108 of the complaint and therefore denies the allegations.

50. DCPA denies the allegations contained in paragraph 109 of the complaint insofar as such allegations relate to DCPA.

51. DCPA is without information as to the truth of the allegations contained in paragraph 110 of the complaint and therefore denies the allegations.

52. DCPA denies the allegations contained in paragraph 111 of the complaint insofar as such allegations relate to DCPA.

53. DCPA is without information as to the truth of the allegations contained in paragraph 112 of the complaint and therefore denies the allegations.

54. DCPA denies the allegations contained in paragraph 113 of the complaint insofar as such allegations relate to DCPA.

55. DCPA is without information as to the truth of the allegations contained in paragraph 114 of the complaint and therefore denies the allegations.

56. DCPA denies the allegations contained in paragraph 115 of the complaint insofar as such allegations relate to DCPA.

57. DCPA is without information as to the truth of the allegations contained in paragraph 116 of the complaint and therefore denies the allegations.

58. DCPA denies the allegations contained in paragraph 117 of the complaint insofar as such allegations relate to DCPA.

59. DCPA is without information as to the truth of the allegations contained in paragraph 118 of the complaint and therefore denies the allegations.

60. DCPA denies the allegations contained in paragraph 119 of the complaint insofar as such allegations relate to DCPA.

61. DCPA is without information as to the truth of the allegations contained in paragraph 120 of the complaint and therefore denies the allegations.

62. DCPA denies the allegations contained in paragraph 121 of the complaint insofar as such allegations relate to DCPA.

63. DCPA is without information as to the truth of the allegations contained in paragraph 122 of the complaint and therefore denies the allegations.

64. DCPA is without information as to the truth of the allegations contained in paragraph 123 of the complaint and therefore denies the allegations.

65. DCPA is without information as to the truth of the allegations contained in paragraph 124 of the complaint and therefore denies the allegations.

66. DCPA denies the allegations of paragraph 125 of the complaint insofar as such allegations relate to DCPA.

67. With regard to the allegations contained in paragraph 126 the complaint, the allegations relate to a defendant other than other than DCPA and do not require an answer from DCPA. To the extent that an answer is required the allegations are denied.

68. DCPA denies the allegations of paragraph 127 of the complaint insofar as such allegations and any remaining are against DCPA.

69. DCPA denies the allegations of paragraph 128 of the complaint insofar as such allegations are against DCPA.

70. DCPA denies the allegations of paragraph 129 of the complaint insofar as such allegations are against DCPA.

71. DCPA denies the allegations of paragraph 130 of the complaint insofar as such allegations are against DCPA.

72. DCPA denies the allegations of paragraph 131 of the complaint insofar as such allegations are against DCPA.

73. DCPA denies the allegations of paragraph 132 of the complaint insofar as such allegations relate to DCPA.

74. DCPA denies the allegations of paragraph 133 of the complaint insofar as such allegations relate to DCPA.

75. DCPA denies the allegations of paragraph 134 of the complaint insofar as such allegations relate to DCPA.

76. The allegations contained in paragraph 135 are legal conclusions which do not require an answer.

77. DCPA denies the allegations of paragraph 136 of the complaint insofar as such allegations are against DCPA. DCPA is without information as to the truth of the allegations against other defendants in this matter; therefore DCPA denies any such allegations and any remaining allegations contained in paragraph 136.

FIRST and SECOND CLAIMS FOR RELIEF

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

THIRD CLAIM FOR RELIEF

79. DCPA incorporates by reference its responses to paragraph 1-146 as though fully set forth herein.

80. Paragraph 148 of the complaint sets forth a statement of law to which no response from DCPA is required; and otherwise DCPA denies any allegations contained in paragraph 148.

81. The allegations contained in paragraph 149 state a legal conclusion that do not require an answer but otherwise denies the allegations contained in paragraph 149 of the complaint.

82. DCPA denies the allegations contained in paragraph 150 of the complaint insofar as such allegations are against DCPA..

83. DCPA denies the allegations of paragraph 151 of the complaint insofar as such allegations are against DCPA.

FOURTH CLAIM FOR RELIEF

84. DCPA incorporates by reference its responses to paragraphs 1-151 of the complaint as though fully set forth herein.

85. Paragraph 153 of the complaint sets forth a statement of law to which no response from DCPA is required.

86. The allegations contained in paragraph 154 are legal conclusions that do not require an answer by DCPA but otherwise denies the allegations of paragraph of 154 of the complaint.

87. Paragraph 155 of the complaint sets forth a statement of law to which no response from DCPA is required.

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

89. Paragraph 157 of the complaint sets forth a statement of law to which no response from DCPA is required.

90. DCPA denies the allegations of paragraph 158 of the complaint insofar as such allegations are against DCPA. DCPA is without information as to the truth of the allegations against other defendants in this matter; therefore DCPA denies any such allegations and any remaining allegations of paragraph 158.

FIFTH CLAIM FOR RELIEF

91. DCPA incorporates by reference its responses to paragraphs 1-158 of the complaint as though fully set forth herein.

92. Paragraph 160 of the complaint sets forth a statement of law to which no response from DCPA is required.

93. DCPA is without information as to the truth of the allegations in paragraph 161 of the complaint and therefore denies the allegations.

94. Paragraph 162 of the complaint sets forth a statement of law to which no response from DCPA is required.

95. Paragraph 163 of the complaint sets forth a statement of law to which no response from DCPA is required.

96. Paragraph 164 of the complaint sets forth a statement of law to which no response from DCPA is required.

97. To the extent that the allegations in paragraph 165 of the complaint relate to DCPA, DCPA denies such allegations.

98. To the extent that the allegations in paragraphs 166 of the complaint relate to DCPA, DCPA states that the information and statements on its website and publications speak for themselves and otherwise denies the allegations of paragraph 166.

99. With regard to the allegations contained in paragraph 167 of the complaint DCPA admits that the DCPA box office sells tickets for DCPA sponsored events, but otherwise denies the allegations contained in paragraph 167.

100. DCPA admits that it provides information to the public concerning availability of wheelchair accessible seats at performances which it presents but otherwise denies the remaining allegations of paragraph 168 of the complaint.

AFFIRMATIVE DEFENSES

1. DCPA states that the allegations of the complaint fails to state a claim upon which relief can be granted.

2. DCPA asserts that the plaintiffs failed to exhaust administrative remedies.

3. Plaintiffs have failed to minimize or mitigate their damages, if any.

4. To the extent plaintiffs are making any claims against DCPA with regard to the theaters in the Helen Bonfils Theater Complex, these theaters constitute existing facilities under Title II of the ADA which does not require that the existing facilities be accessible to and usable by people with disabilities.

5. Plaintiffs have not alleged or demonstrated intentional discrimination or deliberate indifference against them by DCPA and are, therefore, not entitled to compensatory damages from DCPA under Title II of the ADA.

6. Plaintiffs' damages, to the extent there are any such damages, were caused by their own acts or omissions or were caused by the acts or omissions of third parties over which DCPA has no control or right of control.

7. Plaintiffs' claims are not ripe.

8. One or more of the plaintiffs are not proper parties or real parties in interest as to all claims for relief asserted by plaintiffs' complaint.

9. One or more of the plaintiffs lacks standing.

10. Plaintiffs' claims for injunctive relief are moot.

11. Plaintiffs' claims are barred by the doctrines of undue burden, necessity and fundamental alteration.

12. Plaintiffs' claims are barred by the doctrines of waiver, estoppel, ratification and laches.

13. DCPA has complied with all applicable laws, statutes and regulations.

14. Plaintiffs' claims are barred by applicable statutory limitations, exceptions and exemptions.

WHEREFORE, DCPA, having fully answered plaintiffs' complaint, moves this honorable Court to dismiss plaintiffs' complaint against DCPA with prejudice, and DCPA be granted its costs and attorneys' fees in this matter.

RESPECTFULLY SUBMITTED this 8th day of September, 2006.

SEMPLE, MILLER, MOONEY
& FARRINGTON, P.C.

s/Martin Semple

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ATTORNEYS FOR DEFENDANT
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PERFORMING ARTS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **DEFENDANT DENVER CENTER FOR THE PERFORMING ARTS ANSWER TO SECOND AMENDED COMPLAINT** was filed and served this 8th day of September, 2006 via CM/ECF to the following:

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