

**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 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

**ANSWER OF DEFENDANT CITY AND COUNTY OF DENVER TO PLAINTIFFS’
SECOND AMENDED COMPLAINT**

The Defendant City and County of Denver (“City”), by and through its undersigned attorneys, hereby answers Plaintiffs’ Second Amended Complaint (referred to herein as “Complaint”) as follows:

INTRODUCTION

1. Insofar as Paragraph 1 of Plaintiffs’ Complaint is directed at the City, the City denies the allegations of said Paragraph.

2. The City admits the allegations of Paragraph 2 of Plaintiffs' Complaint.

3. With respect to Paragraph 3 of Plaintiffs' Complaint, the City states that the Americans with Disabilities Act ("ADA") speaks for itself and that no response by the City is required. To the extent a response is required, the allegations of Paragraph 3 are denied.

4. With respect to Paragraph 4 of Plaintiffs' Complaint, the City states that the ADA speaks for itself and that no response by the City is required to the allegation that the ADA "further clarified the Rehabilitation Act of 1973." The City admits that it received federal financial assistance.

5. Insofar as Paragraph 5 of Plaintiffs' Complaint is directed at the City, the City denies the allegations of said Paragraph.

6. With respect to Paragraph 6 of Plaintiffs' Complaint, the City denies that individuals who use wheelchairs currently are subjected to problems, including the alleged problems listed in subparagraphs (a) through (d) of paragraph 6 of Plaintiffs' Complaint. The City admits that there have been occasional delays due to a malfunction in a wheelchair lift at the Ellie Caulkins Opera House ("Opera House").

7. Insofar as Paragraph 7 of Plaintiffs' Complaint is directed against the City, the City denies the allegations of said Paragraph.

JURISDICTION

8. With respect to Paragraph 8 of the Complaint, the City admits that this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 1343, and the City denies the allegation that this Court has pendent jurisdiction over claims brought under the laws of the State of Colorado.

9. The City admits the allegations of Paragraph 9 of Plaintiffs' Complaint.

PARTIES

10. The City admits that CCDC is a Colorado non-profit corporation, but is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of Paragraph 10 of Plaintiffs' Complaint and therefore denies the same.

11. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 11 of Plaintiffs' Complaint and therefore denies the same.

12. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 12 of Plaintiffs' Complaint and therefore denies the same.

13. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 13 of Plaintiffs' Complaint and therefore denies the same.

14. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 14 of Plaintiffs' Complaint and therefore denies the same.

15. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 15 of Plaintiffs' Complaint and therefore denies the same.

16. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 16 of Plaintiffs' Complaint and therefore denies the same.

17. With respect to Paragraph 17, the City affirmatively states as follows: (1) It owns and/or operates facilities in the Performing Arts Complex (DPAC), containing the Quigg Newton Denver Municipal Auditorium, housing the Ellie Caulkins Opera House, the Temple Hoyne Buell Theatre, Boettcher Concert Hall, and the Bonfils Theatre Complex, which in turn houses (a) the Stage Theatre, (b) the Space Theatre, (c) the Jones Theatre, (d) the Ricketson Theatre, and

e) the Seawell Ballroom; (2) The City owns the Boettcher Concert Hall, the Quigg Newton Denver Municipal Auditorium, the Bonfils Theatre Complex and the Garner Galleria Theatre; (3) The City leases to the Denver Center for the Performing Arts (DCPA) the Bonfils Theatre Complex and leases the Garner Galleria Theatre to GPAC, Inc. Upon information and belief, Denver Center Attractions, a division of DCPA, leases the Garner Galleria Theatre from GPAC, Inc.; (4) The Buell Theatre is currently owned by Denver Public Facilities Leasing Trust 2003B and is leased to the City. With respect to the Ellie Caulkins Opera House, the Temple Hoyne Buell Theatre and the Boettcher Concert Hall, the City has entered into numerous user agreements with different tenants, including several of the Defendants, to use these theatres for specific periods of time for the presentation of various types of theatrical, musical and other events. The City does not provide or sell tickets for events. Upon information and belief, the individual users of the facilities either sell tickets to their events or contract with a ticketing agency to sell tickets to their events. The City admits that it operates several web sites, one of which has the URL address, www.artscomplex.com. The City denies all remaining allegations of Paragraph 17.

18. The allegations of Paragraph 18 of Plaintiffs' Complaint are not directed at the City, and therefore no response is required or given by the City. To the extent a response is required, the allegations of Paragraph 18 are denied.

19. The allegations of Paragraph 19 of Plaintiffs' Complaint are not directed at the City, and therefore no response is required or given by the City. To the extent a response is required, the allegations of Paragraph 19 are denied.

20. The allegations of Paragraph 20 of Plaintiffs' Complaint are not directed at the City, and therefore no response is required or given by the City. To the extent a response is required, the allegations of Paragraph 20 are denied.

21. The allegations of Paragraph 21 of Plaintiffs' Complaint are not directed at the City, and therefore no response is required or given by the City. To the extent a response is required, the allegations of Paragraph 21 are denied.

GENERAL ALLEGATIONS

22. With respect to Paragraph 22, the City affirmatively states as follows: (1) It owns and/or operates facilities in the Performing Arts Complex (DPAC), containing the Quigg Newton Denver Municipal Auditorium housing the Ellie Caulkins Opera House, the Temple Hoyne Buell Theatre, Boettcher Concert Hall, and the Bonfils Theatre Complex, which in turn houses (a) the Stage Theatre, (b) the Space Theatre, (c) the Jones Theatre, (d) the Ricketson Theatre, and e) the Seawell Ballroom; (2) The City owns the Boettcher Concert Hall, the Quigg Newton Denver Municipal Auditorium, the Bonfils Theatre Complex and the Garner Galleria Theatre; (3) The City leases to the Denver Center for the Performing Arts (DCPA) the Bonfils Theatre Complex and leases the Garner Galleria Theatre to GPAC, Inc. Upon information and belief, Denver Center Attractions, a division of DCPA, leases the Garner Galleria Theatre from GPAC. Inc.; (4) The Buell Theatre is currently owned by Denver Public Facilities Leasing Trust 2003B and is leased to the City. With respect to the Ellie Caulkins Opera House, the Temple Hoyne Buell Theatre and the Boettcher Concert Hall, the City enters into user agreements with different tenants to use these theatres for specific periods of time for the presentation of various types of theatrical, musical and other events. The City denies all remaining allegations of Paragraph 22.

23. The allegations of Paragraph 23 of Plaintiffs' Complaint are not directed at the City, and therefore no response is required or given by the City. To the extent a response is required, the allegations of Paragraph 23 are denied.

24. With respect to Paragraph 24 of Plaintiffs' Complaint, the City admits that the Performing Arts Complex is located at 14th and Curtis Streets, and affirmatively states that the Performing Arts Complex includes, among other theatres and auditoria, the Opera House, the Buell Theatre, the Boettcher Concert Hall, the Space Theatre, the Jones Theatre, the Stage Theatre, the Ricketson Theatre, and the Garner Galleria Theatre. The City further admits that the City's Department of Public Works provides a public parking garage adjacent to the Performing Arts Complex. The City further admits that the Performing Arts Complex is located on a four block site. The City affirmatively states that DCPA, the Colorado Symphony, Opera Colorado and the Colorado Ballet all use or have used the Performing Arts Complex. The City denies all remaining allegations of Paragraph 24.

25. With respect to Paragraph 25, the City affirmatively states that over the years the City has engaged in design and construction activities relating to various aspects of the Performing Arts Complex. The City denies all remaining allegations of Paragraph 25.

26. With respect to Paragraph 26, the City affirmatively states that over the years the City has engaged in design and construction activities relating to certain aspects of the Performing Arts Complex, including certain facilities adjacent to the Boettcher Concert Hall, the Auditorium Theatre in 2004-2005, the Buell Theatre in 1990. The City denies all remaining allegations of Paragraph 26.

27. The City admits the allegations of Paragraph 27 of Plaintiffs' Complaint.

28. With respect to Paragraph 28 of Plaintiffs' Complaint, the City admits that the Opera House was constructed in 2004-2005 and opened its doors to the public in the fall of 2005. The City denies all remaining allegations of Paragraph 28.

29. With respect to Paragraph 29, the City affirmatively states that the Opera House is housed within the existing footprint of the Auditorium Theatre and that certain aspects of the Auditorium Theatre are incorporated into the Opera House during construction. The City denies all remaining allegations of Paragraph 29.

30. With respect to Paragraph 30 of Plaintiffs' Complaint, the City admits that the Opera House provides seats on five (5) levels for viewing of performances and that these levels are the Orchestra level, the Parterre level, the Mezzanine level, the Loge level and the Balcony level. The City denies all remaining allegations of Paragraph 30.

31. The City denies the allegations of Paragraph 31 of Plaintiffs' Complaint.

32. The City denies the allegations of Paragraph 32 of Plaintiffs' Complaint.

33. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 33 of Plaintiffs' Complaint and therefore denies the same.

34. With respect to Paragraph 34 of Plaintiffs' Complaint, the City admits that the only access to the Orchestra level of the Opera House for people who use wheelchairs or mobility devices is via wheelchair lifts. The City denies all remaining allegations of Paragraph 34.

35. The City denies the allegations of Paragraph 35 of Plaintiffs' Complaint.

36. The City admits that there was one incident in the fall of 2005 in which a lift malfunctioned at the Opera House, but is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 36 of Plaintiffs' Complaint and therefore denies the same.

37. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 37 of Plaintiffs' Complaint and therefore denies the same.

38. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 38 of Plaintiffs' Complaint and therefore denies the same.

39. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 39 of Plaintiffs' Complaint and therefore denies the same.

40. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 40 of Plaintiffs' Complaint and therefore denies the same.

41. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 41 of Plaintiffs' Complaint and therefore denies the same.

42. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 42 of Plaintiffs' Complaint and therefore denies the same.

43. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 43 of Plaintiffs' Complaint and therefore denies the same.

44. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 44 of Plaintiffs' Complaint and therefore denies the same.

45. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 45 of Plaintiffs' Complaint and therefore denies the same.

46. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 46 of Plaintiffs' Complaint and therefore denies the same.

47. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 47 of Plaintiffs' Complaint and therefore denies the same.

48. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 48 of Plaintiffs' Complaint and therefore denies the same.

49. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 49 of Plaintiffs' Complaint and therefore denies the same.

50. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 50 of Plaintiffs' Complaint and therefore denies the same.

51. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 51 of Plaintiffs' Complaint and therefore denies the same.

52. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 52 of Plaintiffs' Complaint and therefore denies the same.

53. Paragraph 53 of Plaintiffs' Complaint states legal conclusions to which no response is required. To the extent a response is required, the City denies each allegation of Paragraph 53.

54. With respect to Paragraph 54 of Plaintiffs' Complaint the City admits that it has made certain modifications to wheelchair seating in the Orchestra level of the Opera House, but denies the remaining allegations contained in Paragraph 54 of Plaintiffs' Complaint.

55. The allegations of Paragraph 55 of Plaintiffs' Complaint are not directed at the City, and therefore no response is required or given by the City. To the extent a response is required, the allegations of Paragraph 55 are denied.

56. With respect to Paragraph 56 of Plaintiffs' Complaint, the City affirmatively states that CCDC and the City discussed several issues regarding accessibility issues at the Opera House and the City affirmatively states that during the course of a dialogue regarding the issues,

Plaintiffs filed this lawsuit. The City denies the remainder of the allegations of Paragraph 56 of Plaintiffs' Complaint not expressly admitted herein.

57. With respect to Paragraph 57 of Plaintiffs' Complaint, the City affirmatively states that the Buell Theatre was constructed in 1991 and that it has approximately 2,884 seats. The City denies all remaining allegations of Paragraph 57.

58. The City denies the allegations of Paragraph 58 of Plaintiffs' Complaint.

59. The City denies the allegations of Paragraph 59 of Plaintiffs' Complaint.

60. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 60 of Plaintiffs' Complaint and therefore denies the same.

61. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 61 of Plaintiffs' Complaint and therefore denies the same.

62. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 62 of Plaintiffs' Complaint and therefore denies the same.

63. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 63 of Plaintiffs' Complaint and therefore denies the same.

64. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 64 of Plaintiffs' Complaint and therefore denies the same.

65. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 65 of Plaintiffs' Complaint and therefore denies the same.

66. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 66 of Plaintiffs' Complaint and therefore denies the same.

67. The City denies the allegations of Paragraph 67 of Plaintiffs' Complaint.

68. With respect to Paragraph 68 of Plaintiffs' Complaint, insofar as the allegations are directed at the City, the City denies that it is responsible for providing tickets for wheelchair accessible seating at the Buell Theatre or that it has discriminated in its ticketing policies. The City is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 68 and therefore denies the same.

69. Insofar as Paragraph 69 of Plaintiffs' Complaint is directed at the City, the City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 69 of Plaintiffs' Complaint and therefore denies the same.

70. Insofar as Paragraph 70 of Plaintiffs' Complaint is directed at the City, the City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 70 of Plaintiffs' Complaint and therefore denies the same.

71. Insofar as Paragraph 71 of Plaintiffs' Complaint is directed at the City, the City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 71 of Plaintiffs' Complaint and therefore denies the same.

72. Insofar as Paragraph 72 of Plaintiffs' Complaint is directed at the City, the City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 72 of Plaintiffs' Complaint and therefore denies the same.

73. Insofar as Paragraph 73 of Plaintiffs' Complaint is directed at the City, the City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 73 of Plaintiffs' Complaint and therefore denies the same.

74. With respect to Paragraph 74 of Plaintiffs' Complaint, the City affirmatively states that CCDC and the City discussed several issues regarding accessibility issues at the Opera House and the City affirmatively states that during the course of a dialogue regarding the issues, Plaintiffs filed this lawsuit. The City denies the remainder of the allegations of Paragraph 74 of Plaintiffs' Complaint not expressly admitted herein.

75. With respect to Paragraph 75 of Plaintiffs' Complaint, the City affirmatively states that the Boettcher Concert Hall was constructed in 1978, that it has approximately 2,634 seats, and that the Colorado Symphony performs at the Boettcher Concert Hall. The City denies all remaining allegations of Paragraph 75.

76. Insofar as Paragraph 76 of Plaintiffs' Complaint is directed at the City, the City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 76 of Plaintiffs' Complaint and therefore denies the same.

77. Insofar as Paragraph 77 of Plaintiffs' Complaint is directed at the City, the City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 77 of Plaintiffs' Complaint and therefore denies the same.

78. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 78 of Plaintiffs' Complaint and therefore denies the same.

79. The City admits the allegations contained in Paragraph 79 of Plaintiffs' Complaint.

80. With respect to Paragraph 80 of Plaintiffs' Complaint, the City affirmatively states that it exchanged letters with CCDC and that Ms. Hershey and Ms. Stephens were accommodated. The City denies all remaining allegations of Paragraph 80.

81. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 81 of Plaintiffs' Complaint and therefore denies the same.

82. Insofar as Paragraph 82 of Plaintiffs' Complaint is directed at the City, the City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 82 of Plaintiffs' Complaint and therefore denies the same.

83. Insofar as Paragraph 83 of Plaintiffs' Complaint is directed at the City, the City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 83 of Plaintiffs' Complaint and therefore denies the same.

84. Insofar as Paragraph 84 of Plaintiffs' Complaint is directed at the City, the City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 84 of Plaintiffs' Complaint and therefore denies the same.

85. Insofar as Paragraph 85 of Plaintiffs' Complaint is directed at the City, the City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 85 of Plaintiffs' Complaint and therefore denies the same.

86. Insofar as Paragraph 86 of Plaintiffs' Complaint is directed at the City, the City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 86 of Plaintiffs' Complaint and therefore denies the same.

87. With respect to Paragraph 87 of Plaintiffs' Complaint, the City affirmatively states that CCDC and the City discussed several issues regarding accessibility issues at the Opera House and the City affirmatively states that during the course of a dialogue regarding the issues, Plaintiffs filed this lawsuit. The City further affirmatively states that it informed CCDC of the City's communications with the fire department, and the fire department's directions to the City. The City admits that it sent CCDC a letter informing of an intent to add additional wheelchair seating at the Boettcher Concert Hall in crossover aisles, as directed by the fire department and in the interest of life safety issues. The City admits that CCDC made a request for installation of wheelchair and companion seating on the crossover aisle between orchestra 1 and orchestra 2, and the City denies the remainder of the allegations of Paragraph 87 of Plaintiffs' Complaint.

88. With respect to Paragraph 88 of Plaintiffs' Complaint, the City admits that the Stage Theatre provides more than fifty seats and denies the remainder of the allegations of Paragraph 88 of Plaintiffs' Complaint.

89. The City denies the allegations contained in Paragraph 89 of Plaintiffs' Complaint.