

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.

CARRIE ANN LUCAS,
KIRK WILLIAMS,
MATTHEW FEENEY,
KALYN HEFFERNAN,
FRANK MANGO, and
JAMES VACIK, on behalf of themselves and a class of similarly-situated individuals,

Plaintiffs,

v.

CITY AND COUNTY OF DENVER, COLORADO,

Defendant.

CLASS ACTION COMPLAINT

Plaintiffs, Carrie Ann Lucas, Kirk Williams, Matthew Feeney, Kalyn Heffernan, Frank Mango, and James Vacik, by and through their attorneys Amy F. Robertson, Kevin W. Williams, and Alison Daniels, hereby bring this Class Action Complaint against the City and County of Denver.

INTRODUCTION

1. Red Rocks Amphitheater is a beautiful natural venue in the Colorado foothills that is owned and operated by the Defendant City & County of Denver. Unfortunately, the City and its contractors have implemented policies that have the effect of excluding patrons who use wheelchairs from all but the most distant seats. These discriminatory policies and practices

violate Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973.

2. Section 504 of the Rehabilitation Act requires that people with disabilities “be provided with meaningful access to the benefit[s]” that the City offers. *Alexander v. Choate*, 469 U.S. 287, 301 (1985). In 2003, the Tenth Circuit addressed the question whether it was sufficient for the public entity to simply ensure “access” to its facilities. That court “reject[ed] the argument that the ADA requires no more than mere physical access. Instead, . . . the ADA requires public entities to provide disabled individuals with ‘*meaningful access*’ to their programs and services.” *Chaffin v. Kansas State Fair Bd.*, 348 F.3d 850, 857 (10th Cir. 2003) (emphasis in original).

3. The City’s policies and those of its contractors -- for whose acts the City is responsible -- deny meaningful access to Red Rocks to patrons who use wheelchairs or other mobility devices.

4. Plaintiffs bring this lawsuit to ensure that they and others who use wheelchairs or other mobility devices have equal and meaningful access to this remarkable Colorado treasure.

JURISDICTION AND VENUE

5. This action arises under the laws of the United States. Jurisdiction is conferred upon this court pursuant to 28 U.S.C. §§ 1331 and 1343.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2), as all of the events giving rise to the claims occurred in Colorado.

PARTIES

7. Plaintiff Carrie Ann Lucas is currently and at all times relevant to this suit has been a resident of the State of Colorado. Ms. Lucas is an individual with a disability as she is substantially limited in major life activities, including but not limited to walking. Plaintiff Lucas relies on a wheelchair for mobility.

8. Plaintiff Kirk Williams is currently and at all times relevant to this suit has been a resident of the State of Colorado. Mr. Williams is an individual with a disability as he is substantially limited in major life activities, including but not limited to walking. Plaintiff Williams relies on a wheelchair for mobility.

9. Plaintiff Matthew Feeney is currently and at all times relevant to this suit has been a resident of the State of Colorado. Mr. Feeney is an individual with a disability as he is substantially limited in major life activities, including but not limited to walking. Plaintiff Feeney relies on a wheelchair for mobility.

10. Plaintiff Kalyn Heffernan is currently and at all times relevant to this suit has been a resident of the State of Colorado. Ms. Heffernan is an individual with a disability as she is substantially limited in major life activities, including but not limited to walking. Plaintiff Heffernan relies on a wheelchair for mobility.

11. Plaintiff Frank Mango is currently and at all times relevant to this suit has been a resident of the State of Colorado. Mr. Mango is an individual with a disability as he is substantially limited in major life activities, including but not limited to walking. Plaintiff Mango relies on a wheelchair for mobility.

12. Plaintiff James Vacik is currently and at all times relevant to this suit has been a resident of the State of Colorado. Mr. Vacik is an individual with a disability as he is substantially limited in major life activities, including but not limited to walking. Plaintiff Vacik relies on a wheelchair for mobility.

13. Defendant City & County of Denver (the “City”) is a home rule municipality under Article XX, § 6 of the Colorado Constitution. As such, it is a public entity as that term is used in Title II of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12131 *et seq.* Additionally, the City is a recipient of federal financial assistance as that term is used in section 504 of the Rehabilitation Act (“Section 504”), 29 U.S.C. § 794.

FACTUAL ALLEGATIONS

Red Rocks Amphitheater

14. Red Rocks Amphitheatre (“Red Rocks”) is an outdoor amphitheater with 70 rows of seating carved into a mountain.

15. Red Rocks is owned and operated by Defendant City.

16. Red Rocks was built in the 1940s but has gone through a number of alterations and improvements since that time.

17. Some of these improvements have occurred since June 3, 1977, the effective date of the implementing regulations Section 504, and others since January 26, 1992, the effective date of Title II of the ADA.

18. Red Rocks only provides wheelchair accessible seating in the first and last rows of the venue, Row 1 and Row 70.

19. For some events, front row accessible tickets are classified as reserved, rather than general admission.

20. Reserved seating is more expensive than general admission seating.

21. Accessible seating in the front row at Red Rocks is routinely unavailable for many shows, leaving those using wheelchairs or other mobility devices only one option, Row 70, the back row of the amphitheater farthest from the stage. (Wheelchairs and other mobility devices will be referred to collectively in this Complaint as “wheelchairs.”)

The City and its Contractors

22. Defendant City contracts with promoters AEG Live - Rocky Mountains, LLC (“AEG Live”) and Live Nation Worldwide, Inc., pursuant to which contracts these entities lease and operate Red Rocks for individual concerts.

23. Defendant City contracts with Argus Event Staffing, LLC to provide on-site event staffing services.

24. Defendant City contracts with AXS Digital, LLC (“AXS”), to sell tickets to Red Rocks. Customers attempting to purchase tickets online at the www.redrocksonline.com website are directed to the website www.axs.com.

25. AXS is owned by AEG Live.

26. Defendant City is a “partner” with StubHub, Inc. (“StubHub”), a ticket reselling website.

27. StubHub is also the “Official Ticket Resale Marketplace of AXS.”

28. Because the City is responsible for the conduct of both its own staff and its contractors’ staff, and because it is often difficult for a Red Rocks patron to know whether on-

site staff work for the City or for a contractor, such staff will be referred to herein as “Red Rocks Staff.”

29. For the purposes of the claims asserted herein, the conduct of all contractors’ staff is the responsibility of and attributable to Defendant City.

Number and Location of Accessible Seats

30. The 2010 Department of Justice Standards for Accessible Design (“2010 Standards”) set forth minimum numbers and dimensions of wheelchair seating and companion spaces required in assembly areas. §§ 221, 802.

31. Red Rocks does not have a sufficient number of accessible and companion seats to satisfy the 2010 Standards.¹

32. Red Rocks has 9,525 seats.

33. Because Red Rocks has 9,525 seats, it is required to have 59 wheelchair seating spaces, each one adjacent to a companion seat, for a total of 118 spaces. *See* 2010 Standards, table 221.2.1.1; section 221.3.

34. Defendant City claims that Red Rocks has 36 accessible/companion spaces in Row 1 (between seats 33 and 76) and 42 such seats in Row 70, for a total of 78 spaces.

35. That is, the number of accessible seats the City claims Red Rocks has is 40 spaces short of what is required by the 2010 Standards for a venue with 9,525 seats.

¹ Both the 2010 Standards and the 1991 DOJ Standards for Accessible Design (“1991 Standards”) set forth minimum numbers and dimensions of wheelchair seating spaces required in assembly areas. 1991 Standards §§ 4.1.3(19); 4.33.3; 2010 Standards §§ 221, 802. Because the number of required wheelchair spaces is lower in the 2010 Standards, *compare* 2010 Standards Table 221.2.1.1 *with* 1991 Standards § 4.1.3(19)(a), that newer, lower standard applies, 28 C.F.R. § 35.133(c).

36. The 2010 Standards require that wheelchair-accessible seating positions be at least 33 inches wide. § 802.1.2; *see also* 1991 Standards 4.33.2, Fig. 46.

37. Based on the required width of accessible seating positions, and allocating 18 inches to each companion seat, the figure of 36 accessible/companion spaces in Row 1 -- as claimed by the City -- is improperly inflated.

38. Properly measured, at most 15 pairs or a total of 30 accessible and companion seats would fit in the space available in Row 1.

39. Thus in total, Red Rocks is 46 accessible/companion seat pairs short of what is required by the 2010 Standards.

Accessible Ticketing and Seating at Red Rocks

40. Plaintiffs have repeatedly found that it is impossible for them to purchase front row accessible tickets at face value through the AXS website.

41. Plaintiffs have repeatedly had the experience of going online to the AXS website the instant ticket sales open for a Red Rocks concert or very soon thereafter, and finding that there are no front row accessible tickets available.

42. After learning from the AXS ticketing website that front row accessible seats are sold out, Plaintiffs have repeatedly found these same seats on secondary seller websites like StubHub, generally at much higher prices than face value and often only shortly after tickets went on sale.

43. These experiences have made the concert-going experience for patrons who use wheelchairs more expensive, arduous, and time consuming -- and often just unsuccessful -- than that of patrons who do not use such devices.

44. For example, Plaintiff Lucas attempted to buy front row accessible tickets to the Bare Naked Ladies concerts in both 2015 and 2016, but was unsuccessful. Both on the day they went on sale and three days before the June 5, 2016 concert, Plaintiff Lucas noticed that StubHub had front row accessible seats available, but for approximately double their face value.

45. Plaintiff Williams attempted to buy front row accessible tickets to the June 13, 2015 Tedeschi Trucks Band concert as soon as they went on sale, but was unable to do so because the AXS website stated that the front row accessible tickets were sold out. He found them soon after on StubHub for a much higher price.

46. Plaintiff Feeney attempted to buy front row accessible tickets to the July 24-26, 2015 String Cheese Incident concerts but was unable to do so because the AXS website stated that the front row accessible tickets were sold out. Instead, he was forced to purchase front row accessible tickets on the secondary market for \$400, far higher than their face value.

47. Plaintiff Heffernan attempted to buy front row accessible tickets to the 2016 LCD Soundsystem show as soon as they went on sale, but was unable to do so because the AXS website stated that the front row accessible tickets were sold out. She instead purchased tickets in row 70.

48. Plaintiff Mango attempted to buy front row accessible tickets the moment they went on sale to several 2016 shows: Heart on August 30, 2016; Sammy Hagar on September 5, 2016; Get the Led Out on September 30, 2016; and Jimmy Buffet on October 13, 2016. He was unable to get front row accessible tickets to any of these shows on the AXS website, but later saw that front row accessible seats were available on secondary ticketing websites for each of those shows for far more than the face value. For example, 20 front row accessible tickets to the

Jimmy Buffet concert were available on StubHub about one hour after they came on sale and sold out for prices ranging from \$555 to \$1431 per ticket.

49. Plaintiff Vacik attempted to buy front row accessible tickets to two concerts, Twenty One Pilots on July 12, 2016 (through AXS.com) and Cage the Elephant on June 1, 2015 (through a presale), but was unable to get them. He later saw front row accessible tickets to both concerts on StubHub for far more than their face value.

50. Other putative class members have had similar experiences. They have attempted to purchase Row 1 accessible tickets immediately or soon after they go on sale, learn (from the AXS website) that those tickets are sold out, and later find them on sale for higher prices on the secondary market.

51. On information and belief, the tickets that are being made available on the secondary market at much higher prices are being purchased by people who do not use wheelchairs and are then being resold on the secondary market.

52. Patrons who use wheelchairs who need to buy accessible seats but do not want to sit in the very back of the venue have only one option: front row accessible seats. Because of the practices described above, in many cases such patrons are forced to pay more than double the face value on secondary ticketing sites.

53. Row 70 seating at Red Rocks does not provide an equivalent concert experience to rows lower in the venue due to differences in acoustics, reduced ability to see the performers, and overexposure to the elements.

54. The disparity in seating particularly affects people who use wheelchairs and also have hearing or vision disabilities.

55. For example, due to vision problems, Plaintiff Lucas is not able to sit in Row 70 and actually see the concert.

56. Sitting in Row 70 can also result in greater exposure to the elements, such as the wind, rain, and cold, in contrast to the more protected seats lower in the venue.

57. For example, Plaintiff Mango attended the Van Halen concert on July 20, 2015 and was only able to purchase tickets for the 70th row. It was very windy on the night of the concert and the acoustics in the back row were significantly worse than it was for those able to sit closer to the stage in the non-accessible seats.

58. For the reasons described above, many Plaintiffs and putative class members have been deterred from attending concerts when the only available seating was in Row 70, because the concert experience is not equivalent to the concert experience in lower rows of the venue.

Many First Row Seats Are Empty or Are Occupied by People Who Do Not Need Them

59. Many Plaintiffs have observed that people occupying the front row accessible seats do not use wheelchairs, nor do they appear to be accompanying someone who does, nor do they appear to otherwise require the accessible features of these seats.

60. Plaintiffs have also attended concerts at Red Rocks and have observed (by photo or video) or had reported to them by friends that a number of the seats in the front row were empty or that they contained very few patrons who use wheelchairs. Some of these concerts were ones to which the Plaintiffs in question were unable to purchase front row accessible tickets.

61. For example, on June 19, 2016, Plaintiff Lucas attended the Bob Dylan concert. She and two family members started trying to purchase tickets to this concert the moment they

went on sale. They were able to purchase three tickets at the far end of the first row. During the concert, however, she noticed that the majority of individuals in the front row accessible seating were not people using wheelchairs.

62. Both Plaintiffs Mango and Vacik attended the August 30, 2016, Heart concert. Both observed that, although the front row was full, there were only a handful of people in wheelchairs in that row.

63. Other putative class members report similar experiences: being unable to purchase Row 1 accessible tickets or purchasing them at higher cost, but later observing that many patrons in the front row do not appear to require accessible seating or that many of the seats in Row 1 are empty.

Reseating Policies

64. On information and belief, prior to the past few years, Red Rocks Staff have been willing to reseat to Row 1 patrons who use wheelchairs holding tickets to inaccessible seats. More recently, this has not been permitted. Unless the patron who uses a wheelchair holds a ticket for Row 1, Red Rocks Staff will not allow them to sit in Row 1 even if an accessible seat is available.

65. On June 19, 2014, Plaintiff Heffernan attended a Flying Lotus concert where she had purchased general admission tickets because Row 1 accessible seats were sold out. She asked to be resealed in Row 1 as it was nearly empty, but Red Rocks Staff told her that she could only sit in Row 70. After speaking with a number of Red Rocks Staff, each demanding to see her Row 1 ticket, a supervisor returned and told her she could sit in Row 1 this one time, but never again unless she had a Row 1 ticket.

66. As the above makes clear, many Row 1 accessible seats are being purchased by patrons who do not need accessible seating, leaving people who use wheelchairs and actually need these seats without access to the Row 1 accessible seats.

67. Defendant City has refused to make reasonable accommodations or modifications in its policies to prevent and/or remedy fraud in the purchase and use of accessible seats, and this lack of enforcement has the effect of excluding people who use wheelchairs or other mobility devices from Row 1 accessible seating and denying them meaningful access to Red Rocks.

68. Defendant's discriminatory ticketing practices leave patrons who use wheelchairs scrambling to find a way to attend Red Rocks events in the Row 1 accessible wheelchair seating area by purchasing expensive secondary market tickets, by buying general admission tickets and asking to be reseated, or by joining pre-sales and fan clubs at additional cost -- and often still coming up empty handed.

Parking and the Parking Shuttle

69. The only accessible parking at the lower end of the amphitheater is located in the "Upper South Lot."

70. Patrons with disabilities who need accessible parking and who want to sit in Row 1 accessible seats must park in the Upper South Lot.

71. The route from the Upper South Lot to the lower entrance to the amphitheater is a long, steep walkway.

72. The slope of this walkway exceeds the allowable slope for accessible routes.

73. It is thus difficult if not impossible for patrons using wheelchairs or other mobility devices to traverse the walkway from the Upper South Lot to the amphitheater.

74. Defendant City provides shuttle services to transport guests with disabilities from the Upper South Lot to the entrance closest to Row 1 accessible seating.

75. Patrons who use wheelchairs are required to present a Row 1 ticket to gain access to the shuttle.

76. Patrons who do not use wheelchairs are not required to present a ticket to use the shuttle.

77. This policy makes it almost impossible for Defendant to reseat patrons who use wheelchairs who have purchased tickets to inaccessible seats in the lower part of the amphitheater, because such patrons are not able to get to the first row area to request to be resealed.

78. On October 13, 2016, for the Jimmy Buffet concert, Plaintiff Lucas was required to show her Row 1 ticket to use the shuttle.

79. At the Bob Dylan concert on June 19, 2016, Plaintiff Lucas was required to show her Row 1 ticket to use the shuttle. She asked the shuttle driver what would have happened if she did not have a Row 1 ticket. He stated that she would not have been permitted to ride the shuttle.

80. Plaintiff Lucas has also witnessed shuttle drivers asking people who use wheelchairs for their Row 1 tickets but not requiring this of people who do not use wheelchairs.

81. On June 19, 2014, Plaintiff Heffernan was denied a ride on the shuttle because she did not have a Row 1 accessible seat, forcing her to ascend the steep walkway from the Upper South Lot to the amphitheater in her wheelchair.

82. On February 1, 2013, Plaintiff Williams was denied access to the shuttle because he did not have a front row ticket.

83. On September 5, 2016, at the Sammy Hagar concert, Plaintiff Mango had to wait behind a long line of shuttle riders who did not use wheelchairs or other mobility devices before he was able to ride the shuttle.

84. Defendant City's Red Rocks shuttle policy is discriminatory in that it leaves people who use wheelchairs with limited access to the shuttle and to Row 1 accessible seats, while patrons who do not use wheelchairs have full access to the shuttle and to Row 1 without question.

Plaintiffs' Attempts to Notify the City of its Discriminatory Policies and Practices

85. Plaintiffs and putative class members have contacted representatives of the City and the City's contractors on numerous occasions to complain about the problems described above.

86. Plaintiff Vacik has contacted both Steve Jorgenson (in August, 2013) and Devon Petersen (in March, 2015), both City employees of the Arts and Venues Division, to complain about the ticketing and seating problems described above.

87. Plaintiff Mango contacted Ms. Petersen in 2015 to complain about the ticketing and seating problems described above. He contacted her again on August 28, 2016 to discuss being able to be reseated from his general admission tickets to the front row accessible seats at the August 30, 2016 Heart concert. Ms. Petersen told Plaintiff Mango that without accessible seats, he would not be allowed in the shuttle and his only option would be to sit in Row 70.

88. On August 29, 2016, Plaintiff Mango contacted RaeAnn Gagne of Denver's Parks and Natural Resources department, who forwarded his email to Mr. Jorgensen, who then called Mr. Mango. Mr. Jorgensen told Mr. Mango he would contact the box office but never called Mr. Mango back. Mr. Mango showed up at will-call the day of the concert (August 30, 2016) and was able to be accommodated in two obstructed view seats in the front row.

89. Plaintiff Lucas contacted a representative of Defendant City in 2015 to complain about her inability to get tickets to the Bare Naked Ladies concert. The representative referred her to AXS. AXS referred her to AEG Live. She left a message for AEG Live, got a call back a couple of days later, left a return message, and never got a response.

90. Plaintiffs' counsel Kevin W. Williams has spoken on several occasions with representatives of the City to attempt to resolve the ADA violations alleged herein.

91. Plaintiffs, through counsel, wrote a detailed letter to the City in August, 2016, explaining the violations alleged herein and requesting specific accommodations and policy changes.

92. Defendant City was unwilling to commit to the accommodations and policy changes necessary to address the ticketing and seating violations alleged herein.

CLASS ACTION ALLEGATIONS

93. Plaintiffs bring this action on behalf of themselves and, pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure, on behalf of a class defined as follows: Individuals with disabilities who use wheelchairs or other mobility devices who have been, or in the future will be, excluded from participation in, denied the benefits of the services, programs, or activities of,

denied meaningful access to, or subjected to discrimination at Red Rocks because of the City's policies and practices (or lack thereof) relating to ticketing and seating for such individuals.

94. Putative class members are so numerous that joinder of all such persons is impracticable because, without limitation, the class consists of numerous individuals, and these individuals are very difficult to identify and unlikely to be able to bring individual suits.

95. There are numerous common questions of law and fact, including but not limited to:

- a. Whether Defendant City has violated Title II of the ADA and Section 504 by failing to provide meaningful access to Red Rocks Amphitheater;
- b. Whether Defendant City has violated Title II of the ADA and Section 504 by failing to make reasonable modifications in its policies, practices, or procedures ensure people who use wheelchairs have the opportunity to purchase front row accessible seats at Red Rocks; and
- c. Whether Defendant City has violated the 2010 Department of Justice Standards for Accessible Design by not having enough accessible seating.

96. The claims of the Plaintiffs are typical of the claims of the class because they arise from the same course of conduct engaged in by Defendant, are based on the same alleged violations of the same statutes and regulations, and seek the same relief.

97. The Plaintiffs will fairly and adequately represent the interests of the class. They have no interests adverse to the interests of other members of the class. Further, proposed class counsel have been appointed as class counsel in, and have successfully litigated, numerous disability rights class actions across the country.

98. Certification under Rule 23(b)(2) is proper here because Defendant has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive or declaratory relief with respect to the class as a whole.

99. Counsel listed below have worked assiduously to identify and investigation the claims in this action, including investigating the claims of the six named plaintiffs and approximately 15 other Red Rocks patrons who use wheelchair, have extensive experience with class actions representing individuals with disabilities under the ADA and Section 504, have extensive knowledge of those statutes, and have the resources to vigorously represent the class in securing their rights under those statutes. Counsel listed below are thus appropriate to serve as Class Counsel pursuant to Rule 23(g).

FIRST CLAIM FOR RELIEF
(For violations of Title II of the ADA)

100. Plaintiffs incorporate the allegations set forth in the remainder of this Complaint as if fully set forth herein.

101. Title II prohibits discrimination on the basis of disability by public entities such as the City. 42 U.S.C. § 12131 *et seq.*

102. Plaintiffs and the Class are all individuals who are substantially impaired in the major life activity of walking and as such are individuals with disabilities within the meaning of the ADA. 42 U.S.C. § 12102.

103. Defendant City discriminated against Plaintiffs and the Class on the basis of disability in violation of Title II and its implementing regulations as more fully described herein.

104. Such discrimination includes *but is not limited to*:
- a. failing to provide meaningful access to ticketing and seating at Red Rocks;
 - b. denying people with disabilities the opportunity to participate in the benefits of ticketing and seating and providing such benefits that are not equal to those provided others;
 - c. using methods of administration that have the effect of defeating or substantially impairing accomplishment of Red Rocks's program with respect to people with disabilities;
 - d. effectively placing a surcharge on individuals with disabilities who desire equal treatment at Red Rocks;
 - e. failing to provide accessible seating positions in sufficient number, dimension, and location;
 - f. failing to ensure the accessible seating positions that are available remain available to people with disabilities who need them;
 - g. failing to modify City policies, practices, and procedures to ensure that individuals with disabilities have an equal opportunity to purchase tickets for accessible seating and as otherwise necessary to avoid discrimination on the basis of disability;
 - h. failing to ensure that individuals with disabilities who acquire inaccessible tickets through the secondary market or otherwise may exchange those tickets for tickets for equivalent accessible seats;

- i. failing to afford an individual or class of individuals, on the basis of disability or disabilities of such individuals or class, directly, or through contractual, licensing or other arrangements with the opportunity to participate in or benefit from the goods, services, facilities, privileges, advantages, and accommodations at Red Rocks that are not equal to that afforded to other individuals; and
- j. failing to take adequate steps to prevent and remedy fraudulent purchases of accessible tickets.

105. Defendant City is responsible for the discrimination of its contractors alleged herein.

106. Defendant City's actions described in this Complaint were intentional and/or were taken with deliberate indifference to the strong likelihood that pursuit of its questioned policies would likely result in a violation of the rights of Plaintiffs and the Class under Title II.

107. As a direct and proximate result of Defendant City's acts, omissions, and violations alleged above, Plaintiffs and the Class have suffered and will continue to suffer harm, including but not limited to unequal treatment, exclusion from seating, deterrence from trying to obtain seating, pain and suffering, inconvenience, and emotional distress.

108. Plaintiffs and the Class have been injured and aggrieved by and will continue to be injured and aggrieved by Defendant City's discrimination.

SECOND CLAIM FOR RELIEF

(For violations of Section 504 of the Rehabilitation Act)

109. Plaintiffs incorporate the allegations set forth in the remainder of this Complaint as if fully set forth herein.

110. Section 504 prohibits discrimination on the basis of disability by recipients of federal financial assistance. 29 U.S.C. § 794.

111. Defendant City is a recipient of federal financial assistance.

112. Plaintiffs and the Class are all individuals who are substantially impaired in the major life activity of walking and as such are individuals with disabilities within the meaning of the Rehabilitation Act. 29 U.S.C. § 705(9) (incorporating by reference 42 U.S.C. § 12102).

113. Defendant City discriminated against Plaintiffs and the Class on the basis of disability in violation of Section 504 and its implementing regulations as more fully described herein.

114. Such discrimination includes *but is not limited to*:

- a. failing to provide meaningful access to ticketing and seating at Red Rocks;
- b. denying people with disabilities the opportunity to participate in the benefits of ticketing and seating and providing such benefits that are not equal to those provided others;
- c. using methods of administration that have the effect of defeating or substantially impairing accomplishment of Red Rocks's program with respect to people with disabilities;
- d. effectively placing a surcharge on individuals with disabilities who desire equal treatment at Red Rocks;

- e. failing to provide accessible seating positions in sufficient number, dimension, and location;
- f. failing to ensure the accessible seating positions that are available remain available to people with disabilities who need them;
- g. failing to modify City policies, practices, and procedures to ensure that individuals with disabilities have an equal opportunity to purchase tickets for accessible seating and as otherwise necessary to avoid discrimination on the basis of disability;
- h. failing to ensure that individuals with disabilities who acquire inaccessible tickets through the secondary market or otherwise may exchange those tickets for tickets for equivalent accessible seats;
- i. failing to afford an individual or class of individuals, on the basis of disability or disabilities of such individuals or class, directly, or through contractual, licensing or other arrangements with the opportunity to participate in or benefit from the goods, services, facilities, privileges, advantages, and accommodations at Red Rocks that are not equal to that afforded to other individuals; and
- j. failing to take adequate steps to prevent and remedy fraudulent purchases of accessible tickets.

115. Defendant City is responsible for the discrimination of its contractors alleged herein.

116. Defendant City's actions described in this Complaint were intentional and/or were taken with deliberate indifference to the strong likelihood that pursuit of its questioned policies would likely result in a violation of the rights of Plaintiffs and the Class under Section 504.

117. As a direct and proximate result of Defendant City's acts, omissions, and violations alleged above, Plaintiffs and the Class have suffered and will continue to suffer harm, including but not limited to unequal treatment, exclusion from seating, deterrence from trying to obtain seating, pain and suffering, inconvenience, and emotional distress.

118. Plaintiffs and the Class have been injured and aggrieved by and will continue to be injured and aggrieved by Defendant City's discrimination.

WHEREFORE, Plaintiffs respectfully request:

1. That this Court assume jurisdiction;
2. That this Court certify, pursuant to Rule 23(b)(2), a class defined as follows:

Individuals with disabilities who use wheelchairs or other mobility devices who have been, or in the future will be, excluded from participation in, denied the benefits of the services, programs, or activities of, denied meaningful access to, or subjected to discrimination at Red Rocks because of the City's policies and practices (or lack thereof) relating to ticketing and seating for such individuals.
3. That this Court appoint the counsel listed below as Class Counsel pursuant to Rule 23(g);
4. That this Court declare the actions of Defendant City described in this Complaint to be in violation of Title II of the ADA and Section 504;

5. That this Court enter an injunction ordering Defendant to cease discrimination on the basis of disability against patrons who use wheelchairs and other mobility devices with respect to ticketing, seating and related policies and practices at Red Rocks;

6. That this Court award Plaintiffs and/or their attorneys their reasonable attorneys' fees and costs; and

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

Respectfully submitted,

s/ Amy F. Robertson

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