

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 07-cv-00598-LTB-MEH

COLORADO CROSS-DISABILITY COALITION, a Colorado non-profit Corporation,
TIMOTHY J. COENEN,
JULIE REISKIN,
LORAINA A. JOHNSON,
BARBARA MOCZYGEMBA, and
EILEEN HOPE KRAUSE,

Plaintiffs,

v.

GREYHOUND LINES, INC., a Delaware corporation,
CUSA PRTS, LLC, D/B/A, POWDER RIVER TRANSPORTATION SERVICES, a Delaware
corporation,
BURLINGTON STAGE LINES, LTD., D/B/A BURLINGTON TRAILWAYS, an Iowa
corporation,
TEXAS, NEW MEXICO AND OKLAHOMA (TNM&O) COACHES, INC., a Delaware
corporation, and
BUSCO, INC., d/b/a BUSCO, INC. ARROW STAGE LINES, a Nebraska corporation,

Defendants.

AMENDED COMPLAINT

Plaintiffs, Colorado Cross-Disability Coalition, Timothy J. Coenen, Julie Reiskin and Loraine A. Johnson, Barbara Moczygemba, and Eileen Hope Krause, by and through their attorneys, Kevin W. Williams, Legal Program Director, and Carrie Ann Lucas, Equal Justice Works Fellow, of the Colorado Cross-Disability Coalition and Fox & Robertson, P.C., hereby submit their Amended Complaint for violations of the Americans with Disabilities Act, the Rehabilitation Act, and the Colorado Consumer Protection Act. As grounds for this Amended

Complaint, Plaintiffs allege the following:

INTRODUCTION

1. Despite the passage of the Americans with Disabilities Act in 1990, 42 U.S.C. § 12101, *et seq.*, and the Rehabilitation Act in 1973, 29 U.S.C. § 794, *et seq.*, Defendants, all over-the-road bus (“OTRB”) transportation companies, still discriminate against persons with disabilities in ways that include but are not limited to: (1) failing to acquire accessible vehicles; (2) failing to reserve buses with wheelchair lifts when asked; (3) failing to allow passengers who use wheelchairs off the bus at stops; (4) failing to schedule all legs of a trip with one phone call; (5) failing to maintain wheelchair lifts in working order; (6) failing to remain courteous and respectful to passengers with disabilities; (7) failing to maintain the capacity to receive communications at all times concerning interline service for passengers with disabilities; and (8) failing to provide alternative transportation as required by the regulations.

2. Plaintiffs and their attorneys contacted these entities, with the exception of Busco, Inc., Busco, Inc. Arrow Stage Lines (who was not a defendant in the original complaint), in an effort to stave off litigation, but the companies that responded claimed they were in compliance with the law. Greyhound Lines, Inc. never responded.

3. As a result of Defendant OTRB companies’ actions, Plaintiffs, who use wheelchairs, have been stranded without transportation, have been forced to remain on buses for long hours when non-disabled passengers were free to get off the bus, and have had to spend an enormous amount of time scheduling trips that, by law, should only require a single call.

4. Plaintiffs seek to ensure that OTRB transportation is accessible to people who use

wheelchairs throughout Colorado and bring this Amended Complaint seeking injunctive relief, damages and recovery of their reasonable attorneys' fees and costs.

JURISDICTION

5. 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.

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

PARTIES

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

8. Timothy J. Coenen was at all times material hereto a resident of Colorado residing at 3490 West Quincy Avenue, Apartment 108, Englewood, Colorado 80110. Mr. Coenen is substantially limited in several major life activities, including walking, and requires the use of a motorized wheelchair for mobility. Timothy J. Coenen is a CCDC member.

9. Julie Reiskin was at all times material hereto a resident of Colorado residing at 3645 Milwaukee Street, Denver, Colorado 80205. Ms. Reiskin is substantially limited in several major life activities, including walking, and requires the use of a motorized wheelchair for mobility. Julie Reiskin is CCDC's Executive Director and a CCDC member.

10. Loraine A. Johnson was at all times material hereto a resident of Colorado residing at 2716 Abrams Avenue, Montrose, Colorado 81401. Ms. Johnson is substantially limited in several major life activities, including walking, and requires the use of a motorized

wheelchair for mobility. Loraine A. Johnson is a CCDC member.

11. Barbara Moczygamba was, at all times material hereto, a resident of Colorado, residing at 105 W. Weston # 5, Fleming CO 80728. Ms. Moczygamba is substantially limited in several major life activities, including walking, and requires the use of a motorized wheelchair for mobility. Ms. Moczygamba is a CCDC member.

12. Eileen Hope Krause was, at all times material hereto, a resident of Colorado, residing at 414 Southridge Street, Apartment 101A, Fort Morgan, Colorado 80701. Ms. Krause is substantially limited in several major life activities, including walking, and requires the use of a motorized wheelchair for mobility. Ms. Krause is a CCDC member.

13. Defendant Greyhound Lines, Inc. ("Greyhound") is a Delaware corporation, with its principal place of business at 15110 N. Dallas Parkway, Dallas, TX 75248. Greyhound is licensed to do business in Colorado. Greyhound is a subsidiary of Laidlaw Transportation Holdings, Inc., a Delaware Corporation.

14. Defendant CUSA PRTS, LLC, d/b/a, Powder River Transportation ("Powder River") is a Delaware corporation, and according to documents filed with the Colorado Secretary of State, has its principal place of business at One Riverway, Suite 500, Houston, TX 77056. Powder River is licensed to do business in the state of Colorado. Powder River has answered that it is a Delaware corporation with its principal place of business in Gillette, Wyoming.

15. Defendant Texas, New Mexico and Oklahoma Coaches, Inc. ("TMN&O") is a Delaware corporation with its principal place of business at 1313 13th St, Lubbock, TX 79401. TMN&O is licensed to do business in the state of Colorado. TMN&O is a subsidiary of

Greyhound.

16. Defendant Burlington Stage Lines, Ltd., d/b/a Burlington Trailways (“Burlington”), is an Iowa corporation, which conducts business in Colorado, with its principal place of business at 906 Broadway, West Burlington, IA 52655. On information and belief, Burlington is not registered to do business in the state of Colorado.

17. Defendant Busco, Inc., d/b/a Busco, Inc. Arrow Stage Lines (“Arrow”) is a Nebraska corporation, which is registered to do business in Colorado, with its principal place of business at 4220 S. 52nd Street, Omaha, Nebraska 68117.

GENERAL ALLEGATIONS

18. On information and belief, Greyhound has “interline agreements” with Powder River, Burlington and Arrow to provide transportation throughout Colorado and other states. Greyhound and TMN&O are members of the National Bus Traffic Association.

19. On information and belief, Greyhound, through its subsidiary TMN&O, operates OTRB buses under the TMN&O name, and/or has an interline agreement with TMN&O to provide transportation throughout Colorado and other states.

20. On information and belief, Defendants Powder River, Arrow and Burlington have interline agreements which cover OTRB services they provide in Colorado.

21. “Interline agreements” are governed by 49 C.F.R. § 37.187(a).

22. Each of the defendants operates OTRB services, regulated under 49 C.F.R., pt. 37, and, on information and belief, each of the defendants receives federal financial assistance, as defined in 29 U.S.C. § 794 *et seq.*, in the form of grants from federal agencies.

23. Tim Coenen, who uses a wheelchair, contacted Greyhound to make a reservation for a June 5, 2006 trip. Mr. Coenen can walk very little and does so with great difficulty. Greyhound reserved tickets for him for a Powder River bus to depart from Denver at approximately 10:00 p.m. on June 5, 2006. His destination was Butte, Montana. He told the sales agent that he would need a bus with a wheelchair lift. He was told to call again within one week of his trip and tell them again he needed an accessible bus. He did so. On information and belief, Mr. Coenen never received a communication confirming his request for an accessible bus, using the Service Request Form found in Appendix A of 49 C.F.R., pt. 37. 49 C.F.R. § 213(a).

24. During the long trip (24 hours total), there were four different drivers on the Powder River portion of the trip. There were five or six rest stops or intermediate stops during the time Mr. Coenen was on the Powder River trip. Only once was Mr. Coenen allowed to leave the vehicle. He was not asked or given the opportunity to exit the vehicle at other rest stops. He was left alone on the bus at times, which was very uncomfortable for him.

25. On Mr. Coenen's return trip from Butte, Montana to Colorado on June 28, 2006, Greyhound scheduled Mr. Coenen on a Rimrock Stages, Inc. ("Rimrock")¹ bus at 6:30 p.m. Mr. Coenen called Rimrock twice before his return trip to confirm that the bus would be accessible. The first driver Mr. Coenen encountered, named Jim, said he could not find the key to unlock the wheelchair lift door. He did not find the key. The driver said he was going to leave, and Mr. Coenen explained his bags were already on the bus. The driver removed Mr. Coenen's bags and

¹ Rimrock is not named as a defendant in this lawsuit because it does not do business in the state of Colorado.

left without him. The Rimrock office closed at 5:00 p.m., so Mr. Coenen was unable to call anyone to solve this problem or try to get another bus. He stayed in Butte an additional night.

26. Mr. Coenen called Rimrock at 8:15 a.m. the next day and explained what had happened. A woman named Heather told Mr. Coenen to be at the bus stop at 2:30 p.m. that day, and an accessible bus would be there. He did so. The bus that arrived did not have a wheelchair lift. Mr. Coenen called Heather again and told her the bus had no lift. Heather told him Greyhound made a mistake. The next bus was scheduled at approximately 7:30 p.m. Mr. Coenen waited in the rain for that bus.

27. The 7:30 p.m. bus arrived, and the driver was Jim again, the same driver Mr. Coenen encountered the previous day. Jim could not figure out how to open the lift door. Mr. Coenen's nephew was at the bus stop with him and went to look for the opening mechanism and found the keyhole. The driver had to go look for the key. He did not know where it was. He eventually found it, and Mr. Coenen boarded the bus; however, if Mr. Coenen's nephew had not determined how to operate the lift, Mr. Coenen likely would have been left again.

28. The bus arrived in Billings, Montana at approximately 12:45 a.m., and Mr. Coenen was scheduled to change buses there. The driver of the bus he was scheduled to ride was named Kory. Kory said Powder River did not send an accessible bus and berated Mr. Coenen for not having called for an accessible bus. Mr. Coenen explained that he spoke with the woman named Heather, and she was supposed to call Powder River to change the day for the accessible bus because the Rimrock bus was not accessible the day before. Kory informed Mr. Coenen that he would have to wait forty-eight hours for the next accessible bus to Colorado. Mr.

Coenen was upset. Kory said Mr. Coenen could either get out of his chair and walk on the bus, or wait for the next bus. Mr. Coenen did not have the resources to stay in Billings, so with great difficulty and pain, he got out of his wheelchair and on to the bus.

29. Greyhound through its interline agreements with Powder River and Rimrock was responsible for notifying Powder River and Rimrock of Mr. Coenen's need for accessible buses on each leg of Mr. Coenen's trip. Greyhound failed to do so.

30. Powder River was required to allow Mr. Coenen to exit the bus during intermediate rest stops.

31. As a result of Greyhound's and Powder River's failures, Mr. Coenen suffered injuries and damages. Mr. Coenen would like to use the services of the OTRB companies and will do so if the OTRB companies stop discriminating against him on the basis of his disability.

32. Plaintiff Julie Reiskin is the Executive Director of CCDC, and she uses a motorized wheelchair. Her job requires her to travel around the state of Colorado. She is a frequent user of Greyhound, TNM&O, and other OTRB companies. Over the years, Ms. Reiskin has experienced numerous problems with wheelchair access with these transportation services including, without limitation, the following: drivers not knowing how to operate wheelchair lifts and securement devices; scheduling accessible buses forty-eight hours in advance and having the bus arrive with no wheelchair lift; and not being permitted to leave the bus on rest breaks when all other passengers were permitted to do so. She has reported some of these problems on behalf of herself and other CCDC members for years, including filing a Department of Justice complaint on behalf of a CCDC member in or about 2003.

33. On information and belief, in or about October 10, 2005, Julie Reiskin contacted Burlington to schedule an accessible bus for a trip to Sterling, Colorado on October 19, 2005. Ms. Reiskin needed to get to Sterling and back in one day. When Ms. Reiskin called Burlington, she was informed they could not schedule an accessible bus for her return trip in one day. On October 17, 2005, Carrie Lucas, who was working at CCDC as an Equal Justice Works fellow, called Burlington to try to resolve the matter on Ms. Reiskin's behalf. Ms. Lucas was told Burlington only had one bus with a lift, and they would not be able to provide an accessible bus for both parts of Ms. Reiskin's trip. Ms. Lucas made several calls that day and talked with several individuals over three hours to try to schedule Ms. Reiskin's trip with two accessible buses. On information and belief, neither Ms. Reiskin nor Ms. Lucas received confirmation that Ms. Reiskin's bus would be accessible, using the Service Request Form found in Appendix A of 49 C.F.R., pt. 37. 49 C.F.R. § 213(a).

34. Ms. Reiskin experienced a discriminatory incident on July 28, 2006. Ms. Reiskin scheduled the trip from Denver to Delta, Colorado with Greyhound slightly more than forty-eight hours in advance. She called Greyhound again the day before she left on her trip to get confirmation that the TNM&O bus she was scheduled to transfer to in Grand Junction, Colorado, was accessible. She was told TNM&O had been notified, and the bus for her trip would be an accessible bus. Ms. Reiskin departed Denver on a Greyhound bus at approximately 12:00 a.m. She arrived in Grand Junction at approximately 4:15 a.m. As she was getting off the bus, the driver of the bus indicated to another employee that Ms. Reiskin was heading south. The driver of that bus came to Ms. Reiskin and asked where she was going. Ms. Reiskin informed the

driver that she was going to Delta, scheduled at 5:30 a.m. About an hour later, Ms. Reiskin was told that there was no bus with a wheelchair lift. None of the TMN&O employees seemed to know what to do. Ms. Reiskin is familiar with transportation in the area and suggested they call Millennium Cab Service. She explained that if TNM&O could get an accessible cab, TNM&O would have to pay the fare. The TNM&O employee agreed that the fare would be paid by TNM&O and worked out a payment arrangement with the owner of the cab company. Ms. Reiskin called and spoke with Stacy at TNM&O early in the morning to report that there had not been a bus with a wheelchair lift and to find out if there was going to be an accessible bus for her trip the following day. Stacy from TNM&O called Ms. Reiskin back before 8:00 a.m. She said she was not aware that Ms. Reiskin needed an accessible bus that morning and asked her for details about how Ms. Reiskin had made the scheduling arrangements with Greyhound. After several calls with Stacy, Ms. Reiskin learned that Greyhound had faxed the request for a lift bus to TNM&O and had never called to assure someone got it. Apparently, no one received the request. Stacy told Ms. Reiskin that a manager had spoken to the Greyhound ADA office manager and required that they no longer fax such requests without also making a call to assure that someone receives and acts on the information. Ms. Reiskin called Stacy a couple more times that day because she wanted to be sure that the bus for the trip on the 29th would have a lift. Ms. Reiskin was concerned because if she needed to find alternative transportation, she would have to make a reservation early. Stacy assured Ms. Reiskin the bus would have a lift.

35. Ms. Reiskin arrived at the Delta, Colorado station at approximately 9:50 a.m. The bus she was scheduled to ride on arrived and did not have a wheelchair despite Stacy's

assurances that it would. Both the person staffing the bus station, Debbie, and Ms. Reiskin asked the driver about this. The driver told them that he did receive paperwork stating that he needed a bus with a lift, but he was directed to take the bus without a lift. On information and belief, paperwork was also at the Delta station showing that Ms. Reiskin had made her reservation for an accessible bus at that time. Ms. Reiskin called the TNM&O number and was connected to the bus depot in Lubbock, Texas. After explaining what had happened to several people on the phone, she was connected to a supervisor. The supervisor said he would make some calls to figure out how to get a bus to her and call her back. Debbie had also made calls and received the same response. They waited an hour, and no one called back. Debbie called back to Lubbock and discovered that nothing had been done to get an accessible bus. Ms. Reiskin was informed she could go the next day, and TNM&O would have a bus with a lift. They agreed that if Ms. Reiskin got to Grand Junction and there was no accessible bus, the bus that took her from Delta to Grand Junction would take her to Denver. Ms. Reiskin called the cab company that brought her to Delta the day before, and they agreed to come back and transport her to Grand Junction. By the time Ms. Reiskin arrived in Grand Junction, it was 2:00 p.m. and too late for her attend the event for which she made the trip to Grand Junction.

36. On information and belief, Ms. Reiskin never received confirmation of her request for an accessible bus, using the Service Request Form found in Appendix A of 49 C.F.R., pt. 37. 49 C.F.R. § 213(a).

37. Ms. Reiskin has multiple sclerosis (“MS”). Like most people with MS, she is extremely sensitive to the heat. Neither the Delta or Grand Junction stations are air conditioned,

so Ms. Reiskin carefully plans her trips so she does not have to spend any more time than necessary at either. On Saturday, June 29, 2006, Ms. Reiskin was forced to sit in the heat from 10:00 a.m. to 1:15 p.m. in Delta, Colorado. She was in Grand Junction forty-five minutes later, which was too late to attend the event, so she had to sit in the heat of the bus station again from 2:00 p.m. to 4:30 p.m. when her next bus left. The heat affected Ms. Reiskin for days afterwards, making her less effective at her job and otherwise debilitating her.

38. Ms. Reiskin sent a letter to TMN&O on August 3, 2006, detailing the problems she had with Grand Junction and Delta trips and demanding an explanation of how TMN&O would resolve the wheelchair lift bus assignment problems. In the letter, Ms. Reiskin also requested damages for CCDC for TNM&O's discriminatory conduct and for time and resources CCDC had expended dealing with TNM&O's discriminatory practices. On or about September 6, 2006, Ms. Reiskin received a letter from Bobby Greenhill, Director of Operations of TNM&O explaining that a supervisor in the Albuquerque station had been replaced, and that this change in personnel should solve the wheelchair-lift bus assignment problem. TNM&O offered CCDC bus passes for TNM&O trips in the amount of \$125.00, which CCDC has used.

39. On the return trip from Grand Junction to Denver on September 8, 2006, at approximately 4:10 p.m., Ms. Reiskin encountered a Greyhound employee at the Grand Junction Greyhound station. The Greyhound employee asked Ms. Reiskin if she was going to Denver. Ms. Reiskin said that she was, and the driver asked her if she had informed Greyhound. She had and told the driver this. The employee looked at his computer, which had Ms. Reiskin's return trip to Denver scheduled the previous day. Ms. Reiskin is meticulous about confirming trip

dates and times over the phone. She received a confirmation form after her trip, and it showed the return trip was scheduled on the wrong date. The bus for this trip had a wheelchair lift, but it did not work. Employees at the station were able to repair the lift, but they were concerned about it malfunctioning again and asked Ms. Reiskin if she would mind not getting off at rest stops in case there was a lift failure. Ms. Reiskin needed the ride, so she boarded. Ms. Reiskin did not get off the bus for the five hour trip.

40. On or about September 11, 2006, Ms. Reiskin called Greyhound to schedule a trip from Denver to Sterling, Colorado for September 14, 2006. Greyhound told Ms. Reiskin to call Burlington. She did so on September 11, 2006. Burlington informed Ms. Reiskin they would not make a reservation until she purchased a ticket. She did so the next day and called back that day to make the reservation. Burlington also informed Ms. Reiskin that it could not provide an accessible bus for her return trip from Sterling on September 15, 2006. She was instructed to call another bus company to schedule a return trip.

41. On information and belief, Ms. Reiskin never received confirmation of her request for an accessible bus, using the Service Request Form found in Appendix A of 49 C.F.R., pt. 37. 49 C.F.R. § 213(a) for the trip described in paragraph 41.

42. Ms. Reiskin has used Powder River several times and most recently on or about March 29, 2007 to travel from Denver to Greeley, Colorado. Ms. Reiskin contacted Powder River at least forty-eight hours in advance of her trip and requested a bus with a wheelchair lift. On information and belief, Ms. Reiskin never received confirmation of her request for an accessible bus, using the Service Request Form found in Appendix A of 49 C.F.R., pt. 37. 49

C.F.R. § 213(a) for this trip.

43. As a result of Defendants' violations of law, Ms. Reiskin experienced injuries and damages. Ms. Reiskin would like to use the services of the OTRB companies and will do so if the OTRB companies stop discriminating against her on the basis of her disability.

44. In September of 2005, Plaintiff Loraine Johnson called TNM&O forty-eight hours in advance of her scheduled trip. She requested wheelchair lift-equipped buses on all legs of her trip from Montrose, Colorado to San Jose, California. Upon arriving at the bus station, Ms. Johnson was informed no lift bus would be available. At the time, Ms. Johnson got on the bus using the stairs. Because of her disabilities, doing so was very painful for Ms. Johnson. After leaving Montrose, Colorado, when she arrived in Grand Junction, Colorado, there was no bus with a lift. Ms. Johnson was told by TNM&O that the bus with a lift that was scheduled to be there had a broken lift. At that time, Ms. Johnson used a manual, collapsible wheelchair. The driver spent two-and-a-half hours trying to make the lift work. After this time, with great difficulty and effort, she was able to get on the bus. As a result of this delay, she was late getting to Los Angeles, CA. She had a six hour layover in Los Angeles, which was scheduled to be an hour and a half. All along the legs of her trip, no one along her trip knew that she needed a wheelchair accessible bus. Throughout the course of this trip, drivers did not assist Ms. Johnson with getting her wheelchair and exiting the bus at intermediate and rest stops.

45. In or about September 9, 2006, Ms. Johnson called TNM&O and Greyhound to schedule a trip from Montrose to Grand Junction. She requested a bus with a wheelchair lift. Ms. Johnson also called TNM&O's Albuquerque, New Mexico office to confirm her bus would

have a wheelchair, lift, which the office did confirm over the phone. When she got to the bus terminal, her scheduled bus did not have a wheelchair lift. Because of Ms. Johnson's increasing level of disability, she was no longer able to get on the bus without her wheelchair. At this time and since, she uses a motorized wheelchair for mobility. This wheelchair does not collapse. The bus was scheduled to depart at 1:20 p.m. The bus that did not have a lift left without Ms. Johnson. She waited until approximately 4:00 p.m. for TNM&O to find her an accessible bus or equivalent transportation. They provided neither. As a result, Ms. Johnson incurred hotel penalties and missed the class she wanted to attend. She contacted TNM&O again to complain about the missed trip, and she was told that her paperwork had mistakenly be sent to Colorado Springs, not Montrose.

46. Ms. Johnson would like to use the services of the OTRB companies and will do so if the OTRB companies stop discriminating against her on the basis of her disability. Ms. Johnson has been injured and harmed by Defendants' conduct.

47. Ms. Johnson never received confirmation of her request for an accessible bus within on either of her TNM&O trips, using the Service Request Form found in Appendix A of 49 C.F.R., pt. 37. 49 C.F.R. § 213(a).

48. On or about February 19, 2007, Barbara Moczygamba prepared to board a bus operated by Burlington, bound from Sterling, Colorado to Denver, Colorado. Ms. Moczygamba had contacted Burlington forty-eight hours in advance of the trip to ensure that a bus with a lift would be provided for her use.

49. When the bus arrived at the Sterling, Colorado stop, the lift and the kneeling

system on the bus did not function. Both were apparently frozen, and the driver, Paul, had no de-icer or other means to thaw the lift mechanisms, rendering the kneeling mechanism and lift inoperable.

50. The driver requested that Ms. Moczygemba crawl into the bus while he placed her motorized scooter below, with the luggage. Ms. Moczygemba agreed, with the caveat that the driver be very careful and follow her instructions regarding stowing the scooter so that it would not be damaged.

51. The driver ignored all of Ms. Moczygemba's instructions and inserted the motorized scooter on it's side, causing the scooter to break apart and in a manner that allowed baggage to repeatedly strike it while in transit.

52. Ms. Moczygemba crawled onto the bus with difficulty and rode to Denver.

53. Upon arrival in Denver, Ms. Moczygemba observed her scooter being removed from the baggage compartment and saw that it was in several pieces and the wiring had been torn. The transaxle and frame had been bent, and Ms. Moczygemba observed the scooter being dropped multiple times. Ms. Moczygemba's scooter did not function after it was returned to her.

54. Ms. Moczygemba notified Greyhound that her scooter had been damaged. Greyhound informed her that Greyhound was not responsible for the actions of Burlington regarding damage to the scooter.

55. The following Monday, Ms. Moczygemba contacted several motorized scooter shops in the Denver metropolitan area to get her scooter repaired. After the scooter's condition was evaluated by one repair shop, AMT, it was determined that the scooter could not be

repaired.

56. Because her scooter was damaged, Ms. Moczygamba has rented a scooter, though this scooter does not fully meet her needs. Ms. Moczygamba lives in a rural area of the state, and traditional scooters are not manufactured to handle rough terrain. She needs to replace her scooter, but she cannot afford to do so.

57. When Ms. Moczygamba contacted Burlington about reimbursement for the scooter, she was informed that she was only entitled to approximately \$300.00 for damaged “baggage,” and \$52.00 for ticket reimbursement.

58. Ms. Moczygamba never received confirmation of her request for an accessible bus using the Service Request Form found in Appendix A of 49 C.F.R., pt. 37. 49 C.F.R. § 213(a).

59. On or about May 11, 2007, Hope Krause contacted Burlington forty-eight hours in advance of her scheduled trip from Fort Morgan, Colorado to Denver, Colorado to ensure that a bus with a lift had been reserved for her trip as well as for her return trip from Denver to Fort Morgan on May 16, 2007. After being assured that appropriate buses had been reserved, Ms. Krause inquired as to whether she needed to call again on May 14, 2007, forty-eight hours prior to her return trip to ensure that a bus with a lift had been reserved. She was told that she did not need to make a second call to ensure that her the bus on her return trip would have a wheelchair lift.

60. On May 16, 2007, Ms. Krause, and her personal care attendant, Veronica Araujo, arrived at the Denver bus station to return to Fort Morgan. The bus arrived, and had a

wheelchair lift, but the driver said that the lift did not work and denied transportation to Ms. Krause and Ms. Araujo.

61. When Ms. Krause and Ms. Araujo contacted Burlington's dispatcher, the dispatcher said that the next accessible bus returning to Fort Morgan from Denver would arrive no sooner than forty-eight hours later. The dispatcher assured Ms. Krause that Burlington would contact her the following morning, May 17, 2007, by 9:00 a.m. with further details.

62. Ms. Krause and Ms. Araujo went to a hotel near CCDC's offices, the Marriott Town Plaza Suites on Acoma Street and Speer Boulevard, and made a reservation for two nights. Ms. Krause also had to contact a relative in Fort Morgan to care for her minor child and reached an agreement regarding paying her personal care attendant a higher rate for the over-time. Because Ms. Krause is on a limited income, she has been unable to pay Ms. Araujo who no longer works for Ms. Krause. Ms. Araujo, CCDC and Ms. Krause reached an agreement that she would stay in Denver and work for Ms. Krause as her attendant in exchange for \$370.00. Ms. Krause and CCDC incurred additional expenses as a result of Ms. Krause's having to stay in Denver.

63. On May 17, 2007, after 10:00 a.m., Ms. Krause contacted CCDC because she had not yet received a call from Burlington as they had promised. At the time, the only CCDC representative who could assist Ms. Krause was CCDC's Legislative Liaison, Sheila Hicks.

64. After several phone calls by Ms. Hicks, a representative of Burlington agreed to send a bus to the Denver station to take Ms. Krause and Ms. Araujo back to Fort Morgan. When Ms. Krause and Ms. Araujo arrived at the station, the bus Burlington sent did not have a

wheelchair lift. Eventually, they were sent back to Fort Morgan in a cab.

65. On June 1, 2007, Ms. Krause contacted Arrow forty-eight hours in advance of her trip from Fort Morgan to Denver, scheduled for June 3, 2007 at 6:00 p.m., to ensure that an accessible bus would be available for her use for both legs of her trip. She spoke with Connie, and was assured that there would be a bus with a lift for both legs of the trip.

66. On June 3, 2007, Ms. Krause and her personal care attendant, Jaimie Chosa, arrived at the bus station. The bus driver's name was Paul. The bus did not have a wheelchair lift or ramp. The driver rudely asked Ms. Krause if she had called ahead about requiring a bus with a lift. Ms. Krause informed him that she had requested a bus with a wheelchair lift. Paul said he had not been notified of this request, and that there was nothing he could do. He told Ms. Krause that the next bus would arrive at 4:00 a.m., and that she would have to take that bus.

67. Again, Ms. Krause contacted CCDC Legislative Liaison, Sheila Hicks, who spoke with the bus driver. Ms. Hicks asked the driver to contact dispatch, and the driver refused, stating that dispatch is only open from 9:00 a.m. to 5:00 p.m. Ms. Hicks insisted that he contact someone within the company. The driver eventually contacted dispatch, then asked Ms. Krause where she could be picked up. Ms. Krause's attendant gave the driver her home address and telephone number, and the driver informed Ms. Krause that she would receive a call from dispatch shortly.

68. More than two hours after returning home, Ms. Krause had not received a call, so her attendant contacted the Denver bus station to get the telephone number for Arrow. Ms. Chosa then contacted Arrow directly and was told that a bus would pick Ms. Krause up "some

time.”

69. At approximately 9:15 p.m., more than three hours after Ms. Krause’s original departure time, a bus arrived at Ms. Krause’s home and transported her and Ms. Chosa to Denver.

70. Ms. Krause never received confirmation of her request for an accessible bus using the Service Request Form found in Appendix A of 49 C.F.R., pt. 37. 49 C.F.R. § 213(a).

71. 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 programs, activities and services provided by OTRB companies, like those owned and operated by Defendants.

72. 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 Defendants’ violations of the laws cited herein.

73. Defendants’ actions have caused and continue to cause distinct, palpable, and perceptible injury to CCDC.

74. CCDC has devoted resources, which could have been devoted to its other outreach, advocacy, legislative, and educational efforts, to communicating with the Defendants in an attempt to secure non-discriminatory conditions for Defendants’ OTRB services.

75. CCDC has devoted resources, which could have been devoted to its other

outreach, advocacy, legislative, and educational efforts, to counseling members and others who have been injured by Defendants' discrimination.

76. Defendants' 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.

77. Defendants' 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, legislative, educational, and training missions.

78. 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 Defendants.

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

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

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

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

83. Defendants acted intentionally or with reckless, callous and/or deliberate indifference to the federally protected rights of others.

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

84. Plaintiffs reallege and incorporate by reference the allegations set forth above as if fully set forth herein.

85. No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of specified public transportation services provided by a private entity that is primarily engaged in the business of transporting people and whose operations affect commerce. 42 U.S.C. § 12184(a).

86. All Defendants operate specified public transportation services, OTRB services, that are primarily engaged in the business of transporting people and their operations affect commerce.

87. The regulations implementing 42 U.S.C. § 12184(a) are found at 49 C.F.R., part 37. These regulations took effect with respect to large operators on October 30, 2000, and to small operators on October 29, 2001. On information and belief, Defendant Greyhound is a “large operator,” and Defendants Powder River, Burlington, TNM&O, and Arrow are “small operators.”

88. All over-the-road, fixed route transportation providers that have purchased or

leased new vehicles since the effective dates above have been required to purchase or lease accessible buses, or, in the case of small operators, they have had the option of providing equivalent service. 49 C.F.R. § 37.183. For large operators, half of their bus fleet was required to be accessible by October 30, 2006, unless an extension was requested. 49 C.F.R. § 37.185.

89. On information and belief, Defendants have not acquired accessible buses as required by the regulations.

90. With respect to interline service, “[w]hen the general public can purchase a ticket or make a reservation with one operator for a fixed-route trip of two or more stages in which another operator provides service, the first operator must arrange for an accessible bus, or equivalent service, as applicable, to be provided for each stage of the trip to a passenger with a disability.” 49 C.F.R. § 37.187(a). Each operator retains the responsibility for providing the transportation required by the regulations to the passenger for its portion of an interline trip. 49 C.F.R. § 37.187(b). The passenger shall be required to make only one request, which covers all legs of the requested trip (e.g., in the case of a round trip, both the outgoing and return legs of the trip; in the case of a multi-leg trip, all connecting legs). 49 C.F.R. § 37.213(a). In addition, all fixed-route operators involved in interline service shall ensure that they have the capacity to receive communications at all times concerning interline service for passengers with disabilities, 49 C.F.R. § 37.187(c), and confirmation of requests for accessible buses must be communicated to the passenger in one business day, using the Service Request Form in Appendix A of 49 C.F.R., pt. 37. 49 C.F.R. § 213(a).

91. As described in this Amended Complaint, Defendants have failed to ensure that

individuals who require accessible transportation are able to schedule accessible vehicles for all legs of their trip and have failed to maintain the capacity to receive communications at all times concerning interline service for passengers with disabilities. As described herein, Defendants have failed to communicate confirmation of accessible buses to Plaintiffs within one business day, using the Service Request Form in Appendix A of 49 C.F.R., pt. 37. 49 C.F.R. § 213(a).

92. Until all buses in an operator's fleet are accessible, OTRB transportation providers must make accessible buses available on request. 49 C.F.R. § 37.193(a)(1). The operator may require up to 48 hours advance notice to provide this service. 49 C.F.R. § 37.193(a)(1)(I).

93. Despite Plaintiffs' efforts to make requests for accessible bus services 48 hours or more in advance and their repeated attempts to confirm accessible buses, Defendants failed to provide accessible buses.

94. With respect to intermediate and rest stops, "a passenger with a disability, including an individual using a wheelchair, shall be permitted to leave and return to the bus on the same basis as other passengers. The operator shall ensure that assistance is provided to passengers with disabilities as needed to enable the passenger to get on and off the bus at the stop (e.g., operate the lift and provide assistance with securement; provide other boarding assistance if needed, as in the case of a wheelchair user who has transferred to a vehicle seat because other wheelchair users occupied all securement locations)." 49 C.F.R. § 37.201(a).

95. As explained in this Amended Complaint, Defendants failed to allow Plaintiffs to leave and return to the bus on the same basis as other passengers and failed to provide other

boarding assistance.

96. Wheelchair lifts are required to be maintained and inspected to ensure they are operative, and buses with inoperative lifts are to be taken out of service for maintenance. 49 C.F.R. § 37.203.

97. On information and belief, during the incidents described in this Amended Complaint, and at other times, Defendants failed to inspect and maintain bus lifts to ensure they were operative and failed to take buses with inoperative lifts out of service.

98. Unlawful discrimination under the regulations includes, without limitation: (1) Denying transportation to passengers with disabilities; (2) requiring or requesting a passenger with a disability to reschedule his or her trip, or travel at a time other than the time the passenger has requested; (3) failing to provide reservation services to passengers with disabilities equivalent to those provided other passengers; and (4) failing or refusing to comply with any applicable provision of the regulations. 49 C.F.R. § 37.207.

99. Defendants, through their actions described in this Amended Complaint, engaged in unlawful discrimination prohibited by 49 C.F.R. § 37.207.

100. All bus drivers are required to receive training in proper operation and maintenance of accessibility features and equipment, boarding assistance, securement of mobility aids, sensitive and appropriate interaction with passengers with disabilities, handling and storage of mobility devices, and familiarity with the requirements of the regulations. 49 C.F.R. § 37.209. OTRB operators shall provide refresher training to personnel as needed to maintain proficiency. *Id.* Entities which operate fixed route systems shall ensure that personnel

are trained to proficiency, as appropriate to their duties, so that they operate vehicles and equipment safely and properly assist and treat individuals with disabilities who use the service in a respectful and courteous way, with appropriate attention to the difference among individuals with disabilities. 49 C.F.R. § 37.173.

101. On information and belief, during the incidents described in this Amended Complaint, Defendants failed to provide appropriate training as required by the regulations.

102. Defendant's violations of the ADA have harmed Plaintiffs, who have sustained damages as a result.

SECOND CLAIM FOR RELIEF
(Violations of Section 504 of the Rehabilitation Act)

103. Plaintiffs reallege and incorporate by reference the allegations set forth above as if fully set forth herein.

104. 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.

105. For OTRB companies entities receiving Federal financial assistance from the Department of Transportation, compliance with applicable requirements of 49 C.F.R., pt. 37 is a condition of compliance with section 504 of the Rehabilitation Act of 1973 and of receiving financial assistance. 49 C.F.R. § 37.21(b).

106. On information and belief, Defendants receive federal financial assistance from the Department of Transportation.

107. For OTRB companies entities receiving Federal financial assistance from the Department of Homeland Security, compliance with applicable requirements of 49 C.F.R., pt. 37 is a condition of compliance with section 504 of the Rehabilitation Act of 1973 and of receiving financial assistance. 49 C.F.R. § 37.21(b).

108. On information and belief, Defendants receive federal financial assistance from the Department of Homeland Security.

109. Defendants have violated Section 504 the Rehabilitation Act by denying Plaintiffs and other persons with disabilities the benefits of their OTRB services and otherwise failing to comply with the regulations applicable to OTRB companies as described in this Amended Complaint.

110. Defendant’s violations of the Rehabilitation Act have harmed Plaintiffs.

THIRD CLAIM FOR RELIEF

(Against Greyhound Lines, Inc. and Texas, New Mexico, and Oklahoma Coaches, Inc.:
Colorado Consumer Protection Act)

111. Plaintiffs reallege and incorporate by reference the allegations set forth above as if fully set forth herein.

112. The Colorado Consumer Protection Act (“CCPA”) requires that “[e]xcept in a class action, any person who, in a private civil action, is found to have engaged in or caused another to engage in any deceptive trade practice . . . shall be liable in the amount equal to the sum of . . . [t]hree times the actual damages sustained or two hundred and fifty dollars, whichever is greater; and . . . [i]n the case of a successful action to enforce said liability the costs of the action together with reasonable attorney fees as determined by the court.”

113. Plaintiffs Timothy Coenen, Julie Reiskin and Loraine Johnson seek recovery under the CCPA.

114. In addition, the CCPA provides, “[a]ny person who violates or causes another to violate any provision of [the CCPA] shall forfeit and pay to the general fund of this state a civil penalty of not more than two thousand dollars for each such violation [;] a violation of any provision shall constitute a separate violation with respect to each consumer or transaction involved; except that the maximum civil penalty shall not exceed one hundred thousand dollars for any related series of violations.” Colo. Rev. Stat. § 6-1-112(1).

115. Section 6-1-112 is enforceable by a plaintiff in a private cause of action.

116. Under the CCPA, “[a] person engages in a deceptive trade practice when, in the course of such person’s business . . . such person:”

- a. “[k]nowingly makes a false representation as to the characteristics . . . uses, alterations, or quantities of . . . services . . . ;
- b. “[r]epresents that . . . services . . . are of a particular standard, quality or grade . . . if he knows or should know that they are of another;”
- c. “[a]dvertises . . . services with intent not to sell them as advertised;”
- d. “[a]dvertises . . . services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;”
- e. “[e]mploys ‘bait and switch’ advertising, which is advertising accompanied by an effort to sell . . . services . . . other than those advertised

or on terms other than those advertised and which is also accompanied by [the] following practice . . . demonstrating defective . . . services which are unusable or impractical for the purposes set forth in the advertisement; and

- f. “[f]ails to disclose material information concerning . . . services . . . which information was known at the time of an advertisement or sale if such failure to disclose such information was intended to induce the consumer to enter into a transaction.

Colo. Rev. Stat. § 6-1-105(1).

117. Defendants Greyhound and TNM&O advertise that they provide accessible buses with 48 hours prior notice. As set forth in this Amended Complaint, these Defendants did not and, on information and belief, do not provide accessible buses with 48 hours prior notice.

118. Plaintiffs Timothy Coenen, Julie Reiskin and Loraine Johnson were led to believe and did believe that they would have accessible transportation based on Greyhound’s and TNM&O’s representations. Plaintiffs did not receive the service they were promised.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray:

- 1. That this Court assume jurisdiction.
- 2. That this Court issue an injunction ordering Defendants to comply with the ADA, the Rehabilitation Act, and the CCPA.
- 3. That this Court award compensatory damages to Plaintiffs.

4. That this Court award reasonable attorneys' fees and costs.
5. 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: August 31, 2007

Respectfully submitted,

/s Kevin W. Williams
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