

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 99-D-1193

KEVIN WILLIAMS, CARRIE ANN LUCAS, KYLE STUBBS & ROANNE KUENZLER,

Plaintiffs,

v.

THE CITY AND COUNTY OF DENVER, COLORADO,

Defendant,

v.

STAFF PRO, INC.,

Third Party Defendant.

THIRD AMENDED COMPLAINT

Plaintiffs Kevin Williams, Carrie Lucas, Kyle Stubbs and Roanne Kuenzler by and through their attorneys Fox & Robertson, P.C., hereby submit their Third Amended Complaint for violation of the Americans with Disabilities Act and the Rehabilitation Act.

INTRODUCTION

1. Over seven years after Congress passed our nation's landmark civil rights law for people with disabilities, Defendant – which owns and operates Red Rocks Amphitheatre – continues to discriminate against persons who use wheelchairs and other mobility devices.
2. On July 12, 1990, Congress enacted the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12101, et seq., establishing the most important civil rights law for people with disabilities in our country's history.

3. Congress explicitly stated that among the purposes of the ADA are:
 - a. “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;”
 - b. “to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities, . . .;” and
 - c. “to invoke the sweep of congressional authority, including the power to enforce the 14th Amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.”

42 U.S.C. § 12101(b).

1. In spite of this abundant lead time and the extensive publicity the ADA has received since 1990, Defendant continues to discriminate against people who use wheelchairs in ways that include but are not limited to failing to provide accessible parking to persons who use wheelchairs and other mobility devices and failing to properly train and educate its employees in the requirements of the ADA and related issues.

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JURISDICTION

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343.
2. Venue is proper within this District pursuant to 28 U.S.C. § 1391.

PARTIES

1. Plaintiff Kevin Williams is and was at all times material hereto a resident of Colorado residing at 3425 S. Sherman Street, Unit 610, Englewood, Colorado 80110. Mr. Williams is a

tetraplegic – that is, he is paralyzed from the chest down with limited use of his arms and hands – who uses an electric wheelchair for mobility and is substantially impaired in several major life activities.

2. Plaintiff Carrie Lucas is and was at all times material hereto a resident of Colorado residing at 2901 York Street, Denver, Colorado 80205. As a result of a bone infection and bone tumor and related treatment, Ms. Lucas is substantially impaired in several major life activities, including but not limited to the major life activity of walking. She uses a power wheelchair for mobility.

3. Plaintiff Kyle Stubbs is and was at all times material hereto a resident of Colorado residing at 8261 Pecos Way, Denver, Colorado 80221. As a result of post-polio syndrome, Mr. Stubbs is substantially impaired in several major life activities, including but not limited to the major life activity of walking. He uses a power wheelchair for mobility.

4. Plaintiff Roanne Kuenzler is and was at all times material hereto a resident of Colorado residing at 1863 Wazee Street, Unit 1F, Denver, Colorado 80202. As a result of a spinal cord injury, Ms. Kuenzler is substantially impaired in several major life activities, including but not limited to the major life activity of walking. She uses a manual wheelchair for mobility.

5. Defendant City and County of Denver owns and operates Red Rocks Amphitheatre (“Red Rocks”), located in Morrison, Colorado. On information and belief, Defendant receives federal funding.

GENERAL ALLEGATIONS

1. Red Rocks is an amphitheater located at 12700 West Alameda Parkway, Morrison, Colorado 80465. According to material published by Defendant on the Internet, Red Rocks seats 9,200 persons and provides parking for approximately 3,500 vehicles in 14 lots. According to this material, only two lots have designated handicapped parking spaces, with each lot having only eight designated spaces. These lots are located near the top of the amphitheatre.

2. There are two seating areas in Red Rocks that are accessible to persons who use wheelchairs and other mobility devices – the first row and the last row. There is no wheelchair-accessible sidewalk, road or other path from the two parking lots with designated handicap parking spaces to the accessible seats in the front row of Red Rocks. Thus patrons with tickets for the front row of accessible seating cannot park in the two lots with designated handicap parking spaces.

3. Red Rocks also has a “backstage” parking lot, which is located near the front of the amphitheatre and from which persons who use wheelchairs can access first row seats. There are no designated accessible parking spaces in the backstage lot.

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ALLEGATIONS CONCERNING PLAINTIFF KEVIN WILLIAMS

1. On Tuesday, June 15, Kevin Williams and two friends drove in Mr. Williams’s van – which is equipped with a lift to allow Mr. Williams to enter the van – to Red Rocks for the Telluride Bluegrass Festival. They had purchased tickets for the front row wheelchair-accessible section.

2. Upon arriving at Red Rocks, Mr. Williams explained that he needed to park in the backstage parking lot. The Red Rocks employee told Mr. Williams that he could not park in the backstage lot but instead would have to park in a lot located near a gift shop called the Trading Post.

3. Mr. Williams, who had been to Red Rocks in the past, told the Red Rocks employee that he could not get to the amphitheatre from the Trading Post parking lot. After this conversation, Mr. Williams and his friends continued driving toward the amphitheatre.

4. When Mr. Williams and his friends arrived at the Trading Post, they explained to the employee stationed there that they needed to park in the backstage lot. This employee directed Mr. Williams to a parking lot just beyond the Trading Post.

5. Mr. Williams told the employee that Mr. Williams needed to park near the front row of wheelchair seats. The only way to get from the Trading Post lot to the amphitheatre was up a very steep ramp with no landings on it. Mr. Williams's wheelchair is old, and the motors do not work well except on regular ramp inclines. Therefore, he cannot get up the ramp. Further, even if he could get up the ramp, it would be very dangerous for him to attempt to come down the crowded ramp after the concert was over.

6. At this point, the Red Rocks employee became very rude. He asked where Mr. Williams's disabled placard was, even though Mr. Williams was plainly visible in his wheelchair in the van. Mr. Williams has a license plate with the access symbol instead of a placard.

7. The Red Rocks employee eventually told Mr. Williams and his friends to pull over on the road, and he appeared to contact someone on his radio. After approximately ten minutes the employee had still not returned, so Mr. Williams opened the lift doors and asked where he should go. Finally, the employee told Mr. Williams that he could be dropped off at the backstage lot, but Mr. Williams's friend would have to drive back down and park the van.

8. Mr. Williams and his friends drove up the hill to the backstage parking lot. There were numerous cars parked in the parking lot, but there were no spaces available. There was no sign of any designated accessible parking spaces. Mr. Williams and his friends parked in a place where he could get his wheelchair lift down and get out.

9. As Mr. Williams and his friends approached the gate to enter, another Red Rocks employee told them that they could not park there. Mr. Williams asked where he was supposed to park, and the employee said that Mr. Williams could be dropped off, but his friends would have to drive the van back down the hill and park elsewhere. Mr. Williams asked to speak with a manager.

10. Harris Marks, Events Manager, then approached. Mr. Marks, who was very hostile and rude, told Mr. Williams that Mr. Williams had to get the van out of there. Mr. Williams then

introduced himself as an attorney who represents a disability rights organization and told him that the ADA requires that they provide accessible parking. Mr. Harris replied that this was “the drop off area.”

11. Mr. Williams informed Mr. Marks that Mr. Williams needed to drive his own van out of Red Rocks because it was possible that he and his friends would leave the concert at different times, and therefore he needed the van parked where he could get to it and have room to let the lift down.

12. This drop-off rule is also unworkable because at the end of concerts, both lanes of the two-lane road leading to the backstage lot are opened for outgoing traffic, and thus persons who use wheelchairs must wait until all other concert-goers have left before they can leave. Further, Mr. Williams now has a van with special adaptations that is virtually impossible for other persons to drive, and thus Mr. Williams cannot be dropped off at the backstage lot.

13. Mr. Marks still refused to let Mr. Williams park there. Left with no other choice but to leave, Mr. Williams stated that either Red Rocks would allow him to park his van, or Mr. Williams would be forced to file an ADA claim against the City and County of Denver.

14. Mr. Marks radioed for yet another manager to “approve” Mr. Williams’s parking there. When Mr. Williams asked Mr. Marks how long it would take a supervisor to “approve” parking in the lot, Mr. Marks stated that he did not have a stopwatch.

15. Mr. Williams waited another five or more minutes for a manager by the name of Tad Bowman to arrive. Mr. Bowman stated that the area was for loading and unloading only, and that Mr. Williams could not park there. Once again, Mr. Williams explained that he had to park in the backstage lot. Finally, Mr. Bowman agreed to let Mr. Williams park there. A person believed to be Mr. Bowman also stated that the cars parked in the backstage lot belonged to Red Rock employees and caterers.

16. Mr. Williams and his friends finally arrived at their seats, and the concert began.

17. Mr. Williams regularly attends concerts. He would like to – and is ready, willing and able to – patronize Red Rocks if the discriminatory barriers are removed and the discriminatory attitudes end.

ALLEGATIONS CONCERNING PLAINTIFF CARRIE ANN LUCAS

1. Carrie Ann Lucas uses a power wheelchair and drives a van that has a lift in the middle of the passenger side. On or about August 21, 1999, she attended the Reggae on the Rocks concert at the Red Rocks Amphitheatre. She arrived at approximately 2:30 p.m. She was directed to park in the “Trading Post” parking lot.

2. When she arrived at the Trading Post parking lot, she found that there were no van accessible parking spaces. In addition, she was directed to park in an inaccessible space. Ultimately, she had to park along a curb in order to exit her van.

3. She rode an accessible shuttle to the backstage area to access her seats.

4. At or about 5:30 p.m., Ms. Lucas and a friend were talking near the restrooms when the driver of the accessible shuttle approached them and told them that the accessible shuttle would cease to run at 7:00 p.m. Because the concert would not be over at that time, Ms. Lucas was not prepared to leave at that time.

5. However, the path from the backstage area back to her van was too steep for her to negotiate in her wheelchair. As such, if she did not take the last shuttle, she faced being stranded.

6. Not wanting to leave the concert early, Ms. Lucas delayed her return to the concert by approximately 15 minutes to work with Red Rocks personnel to ensure that there would be an accessible shuttle when she left.

7. At or about 8:30, Ms. Lucas began to have trouble breathing. She discovered that she had left the medicine that she takes under such circumstances in her van. When she went to retrieve the medicine, however, she discovered that no accessible shuttle was running at that

time. An inaccessible shuttle was, however, running. If Ms. Lucas had not been disabled, she would have been able to return to her van and retrieve her medicine. Ultimately, she had to be treated by paramedics because she was unable to return to her van. She learned at that time that no accessible shuttle would be available until the end of the concert.

8. When the concert ended, the accessible shuttle was available. However, since it could only accommodate one wheelchair at a time, Ms. Lucas had to wait approximately 15 minutes while it transported another patron who used a wheelchair back to the parking lot.

9. Ms. Lucas regularly attends concerts. She would like to – and is ready, willing and able to – patronize Red Rocks if the discriminatory barriers are removed and the discriminatory attitudes end.

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ALLEGATIONS CONCERNING PLAINTIFF KYLE STUBBS

1. Kyle Stubbs uses a power wheelchair and drives a van with a lift. He attended a concert at Red Rocks Amphitheater in 1994.

2. Mr. Stubbs had purchased seats in the wheelchair seating area at the front of the amphitheater. Initially he was told to park in an upper parking lot, but when he arrived at that lot, an attendant looked at his tickets and told him he had to park in a lower lot.

3. When he got to the lower lot, there were no van-accessible spaces. The parking attendant told him to park off to the side in a grassy area. Because there would have been no way for Mr. Stubbs to exit his van in the location that the attendant had told him to park, he got out of the van on the pavement and a friend parked his van.

4. Mr. Stubbs attempted to access the amphitheater. In order to get to the amphitheater, he had to go up a hill that was very steep and slippery (it had been raining). Mr. Stubbs had to have

a friend hold up the back of his wheelchair to keep him from tipping over. This was very unsafe and prevented Mr. Stubbs from independently accessing the amphitheater.

5. Since that time, Mr. Stubbs has not returned to Red Rocks. He would have liked to have attended concerts there in the past five years, but has been deterred from doing so by the lack of accessible parking.

6. Mr. Stubbs would like to – and is ready, willing and able to – patronize Red Rocks once accessible parking is provided.

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ALLEGATIONS CONCERNING PLAINTIFF ROANNE KUENZLER

1. Roanne Kuenzler uses a manual wheelchair and drives a car with hand controls.

2. Ms. Kuenzler has attended at least ten concerts at Red Rocks Amphitheater in the last five years.

3. Each time Ms. Kuenzler has attended a concert at Red Rocks, she has purchased seats in the wheelchair seating area at the front of the amphitheater. Each time, she was dropped off in the backstage area by a friend.

4. She is unable to propel herself from the lower parking lots to the backstage area because it is too steep.

5. The refusal of Red Rocks to provide wheelchair-accessible parking in the backstage area has caused Ms. Kuenzler to limit the individuals with whom she can attend concerts. For example, because of the policy requiring someone else to park her car in a lot that is only accessible via a steep hill, she cannot attend a concert by herself or with friends who, because of their age or disability, cannot make the uphill trek to the amphitheater after parking her car.

6. On at least one occasion, Ms. Kuenzler's companions were forced to leave the concert early so that they could get to her car and get back up the hill before they were blocked by the rush of cars going down the hill at the end of the concert.

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FIRST CLAIM FOR RELIEF

(Violation of the Americans with Disabilities Act)

1. Plaintiffs reallege and incorporate by reference the allegations set forth in paragraphs 1 - 52 above as if fully set forth herein.

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

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

4. Defendant has violated the ADA by denying Plaintiffs and other persons who use wheelchairs the benefits of Red Rocks through, without limitation, failing to provide accessible parking facilities and services and failing to properly train Red Rocks employees.

5. Defendant's violations of the ADA have harmed and continue to harm Plaintiffs.

6. Defendant and its employees, agents and representatives intentionally discriminated against the Plaintiffs and/or acted with deliberate indifference to the strong likelihood that its actions and policies would likely result in a violation of Plaintiffs' federally protected rights.

SECOND CLAIM FOR RELIEF

(Violation of Rehabilitation Act)

1. Plaintiffs reallege and incorporate by reference the allegations set forth in paragraphs 1 - 58 above as if fully set forth herein.

2. The Rehabilitation Act prohibits recipients of federal funding 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.

3. On information and belief, Defendant receives federal funding.

4. Defendant has violated the Rehabilitation Act by denying Plaintiffs and other persons who use wheelchairs the benefits of Red Rocks through, without limitation, failing to provide accessible parking facilities and services and failing to properly train Red Rocks employees.

5. Defendant's violations of the Rehabilitation Act have harmed and continue to harm Plaintiffs.

6. Defendant and its employees, agents and representatives intentionally discriminated against the Plaintiffs and/or acted with deliberate indifference to the strong likelihood that its actions and policies would likely result in a violation of Plaintiffs' federally protected rights.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray:

1. That this Court assume jurisdiction.

2. That this Court issue an injunction ordering Defendant to comply with the ADA and Rehabilitation Act by providing accessible parking facilities and services, providing training to its employees on access issues, and otherwise bringing its amphitheatre into compliance with the ADA and Rehabilitation Act.

3. That this Court award reasonable attorneys' fees and costs.

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

Respectfully submitted,

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