IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.: 14-cv-03111-REB-KLM

JULIE REISKIN, *et al.*, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

REGIONAL TRANSPORTATION DISTRICT,

Defendant.

PLAINTIFFS' CROSS-MOTION FOR SUMMARY JUDGMENT SEEKING DECLARATION THAT SETTLEMENT AGREEMENT AND RELEASE APPLY ONLY TO FIXED ROUTE BUSES

Pursuant to Rules 56 and 57, Federal Rules of Civil Procedure, and 28 U.S.C. § 2201, Plaintiffs, by and through undersigned counsel, hereby submit their Cross-Motion for Summary Judgment Seeking Declaration that the Settlement Agreement and Release Apply Only to Fixed Route Buses.

INTRODUCTION

Defendant RTD has filed a Motion for Summary Judgment ("Motion")[1] [# 67], filed June 29, 2015, seeking to exclude four of the nineteen Plaintiffs in this case.[2] RTD

[1] The Motion is not really a separate motion at all, but rather an incorporation of the arguments RTD made in its Response to Plaintiffs' Motion to Dismiss RTD's Counterclaim ("Response") [# 66], filed June 29, 2015. *See* Motion at 2. It is unclear under D.C.COLO.LCivR 7.1(d) whether the Motion constitutes a "separate document," complying with the rule.

alleges three individuals and Plaintiff Colorado Cross-Disability Coalition ("CCDC") signed a release in a lawsuit prior to this one, *Colorado Cross-Disability Coalition v. Regional Transportation District*, 13-cv-02760-PAB-MJW, that RTD alleges bars them from bringing claims in the instant lawsuit. Defendant RTD is incorrect. This matter requires interpretation of the Settlement Agreement and release ("Agreement") (attached as Exhibit 1) reached in that case. This Court may make a final adjudication of the Agreement under Rule 56 or Rule 57, Federal Rules of Civil Procedure. There are three reasons why the Agreement does not prohibit the four Plaintiffs from proceeding with their claims in the instant lawsuit: (1) Plaintiffs have alleged claims in the instant lawsuit that occurred after the prior lawsuit and release terminated, and RTD has produced no evidence to dispute those claims; (2) Plaintiffs' claims in the prior lawsuit were strictly related to RTD's fixed route bus system, and their claims in the instant lawsuit are strictly related to RTD's light rail system; (3) the prior Agreement dealt with "fixed route bus services," and not the light rail vehicle design and construction issues, the chief claim in the current lawsuit. Because the individuals and CCDC have valid claims and are integral to this lawsuit, it is imperative that this Court determine their rights and whether that Agreement relates to the case at bar in any way.

ARGUMENT

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[2] This is the ninth time RTD has attempted to make this claim. The various other attempts are set forth in Plaintiffs' Response to Motion for Summary Judgment to Dismiss Plaintiffs CCDC, Reiskin, Howey and Lewis, filed contemporaneously with this motion. Plaintiffs have responded to Defendant RTD's Motion for Summary Judgment and incorporate the arguments made therein in this Motion as well. They are, essentially, the same arguments.

I. Standard of Review.

"Summary judgment is proper when there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law*.* Fed. R. Civ. P. 56(c)[.]" ***Lehman Bros. Holdings, Inc. v. Universal Am. Mortgage Co., LLC*** ("***Lehman Bros.***"), 12 F.Supp.3d 1355, 1358 (D. Colo. 2014) (*citing* ***Celotex Corp. v. Catrett***, 477 U.S. 317, 322 (1986)). "A dispute is 'genuine' if the issue could be resolved in favor of either party." ***Lehman Bros.***, 12 F.Supp.3d. At 1358 (*citing* ***Matsushita Electric Industrial Co., Ltd. v. Zenith Radio Corp***., 475 U.S. 574, 586 (1986); ***Farthing v. City of Shawnee***, 39 F.3d 1131, 1135 (10th Cir. 1994)). "A fact is 'material' if it might reasonably affect the outcome of the case." ***Lehman Bros.*** at 1258 (*citing* ***Anderson v. Liberty Lobby, Inc***., 477 U.S. 242, 248 (1986); ***Farthing***, 39 F.3d at 1134). When, as in this case, the evidence is "'so one-sided,' the movant 'must prevail as a matter of law.'" ***Joint Tech., Inc. v. Weaver****,* 567 F. App'x 585, 589 (10th Cir. 2014) (quoting ***Shero v. City of Grove, Okla.,*** 510 F.3d 1196, 1200 (10th Cir. 2007)).

There is no genuine dispute of fact in this case because even if RTD is correct, Plaintiffs have claims dating after the Effective Date of the Agreement, the Agreement at issue is solely about buses and not light rail, and the release language pertains to bus services and not the design and construction of light rail trains. Removing the four Plaintiffs from this case will have no material effect since there are numerous other Plaintiffs in the putative class. Contract language in the Motion references fixed route services, and Defendant RTD pretends that this language somehow supersedes the

rest of the Agreement, which refers to fixed route bus service. As will be explained below, there can be no question that the Agreement pertains only to fixed route bus service. For purposes of summary judgment, "[t]he question . . . is 'whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.'" ***Estate of Bleck ex rel. Churchill v. City of Alamosa, Colo.***, 540 F. App'x 866, 868 (10th Cir. 2013), *cert. denied sub nom.* ***City of Alamosa, Colo. v. Churchill***, 134 S.Ct. 2845 (2014) (quoting ***Anderson***, 477 U.S. at 243). A review of the Agreement in this case makes it abundantly clear that no part of the Agreement was intended to apply to RTD's light rail service, and that none of the four Plaintiffs should be dismissed from this case.

Furthermore, this Court has the power to make a Declaratory Judgment under Rule 57, Federal Rules of Civil Procedure. "The existence of another adequate remedy does not preclude a declaratory judgment that is otherwise appropriate. The Court may order a speedy hearing of a declaratory-judgment action." Fed. R. Civ. P. 57*. See also* 28 U.S.C. § 2201 ("[A]ny court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought."), ***Kunkel v. Cont'l Cas. Co.***, 866 F.2d 1269, 1275 (10th Cir. 1989) (*citing* E. Borchard, *Declaratory Judgments* 299 (2d ed.1941)) ("[A] court in the exercise of its discretion should declare the parties' rights and obligations when the judgment will (1) clarify or settle the legal relations in issue and (2) terminate or afford relief from the uncertainty

giving rise to the proceeding."). "[N]othing in the Declaratory Judgment Act prohibits a court from deciding a purely legal question of contract interpretation which arises in the context of a justiciable controversy presenting other factual issues**."** ***Kunkel****,* 866 F.2d at 1276. Plaintiffs request this Court enter a Declaratory Judgment that the Agreement in question applies only to RTD's fixed route bus system and not to its light rail system.

II. Plaintiffs Have Claims Against Light Rail After the Expiration of The Agreement.

RTD requests that this Court dismiss all claims of these four Plaintiffs in their entirety. *See* Motion at 2 ("RTD respectfully requests that Plaintiffs CCDC, Julie Reiskin, Douglas Howey and Jon Jaime Lewis be dismissed with prejudice from this case."). First, the only claims that would have been released are those that occurred prior to signing of the Agreement. *See* Agreement at 9[3] ¶ 4. The release specifically states, "Any claims that arise after the Effective Date are not included in the Released Claims." *Id*. The Effective Date was February 20, 2015. *Id.* at 12-14 ("This Agreement may be executed in counterparts. Signed electronic and/or faxed signatures will be treated as originals.") *See id.* at 10 ¶ 14. All Plaintiffs at issue have alleged claims relating to the design and construction and services on light rail trains after the Effective Date. Third Amended Complaint ("TAC") [# 65], filed June 19, 2015, at 16 ¶ 94; 19 ¶ 111; 23 ¶ 141. Therefore, any claims these Plaintiffs have that occurred after the Effective Date are still viable. RTD has provided no factual evidence that contradicts these claims. For this

3 All references to page numbers in exhibits will refer to the ECF page designations instead of the original document numbers.

reason alone, RTD's Motion must be denied. These Plaintiffs cannot be dismissed because, even under the release at issue, they have alleged claims that occurred after the expiration of the release, and there is no contrary evidence. "A party who does not have the burden of proof at trial must show the absence of a genuine fact issue." ***Lehman Bros.*** at 1358 (*citing* ***Concrete Works, Inc. v. City & County of Denver****,* 36 F.3d 1513, 1517 (10th Cir.1994), *cert. denied,* 514 U.S. 1004 (1995)). Plaintiffs have done so by demonstrating alleged discrimination that has occurred after the expiration of the Agreement. RTD has provided no contradicting evidence. "By contrast, a movant who bears the burden of proof must submit evidence to establish every essential element of its claim or affirmative defense." *See* ***In re Ribozyme Pharmaceuticals, Inc. Securities Litigation****,* 209 F.Supp.2d 1106, 1111 (D. Colo. 2002). RTD has failed to produce any evidence that such claims do not exist. "In either case, once the motion has been properly supported, the burden shifts to the nonmovant to show, by tendering depositions, affidavits, and other competent evidence, that summary judgment is not proper." ***Concrete Works****, Inc.,* 36 F.3d 1513 at 1518. All the evidence must be viewed in the light most favorable to the party opposing the motion. ***Simms v. Oklahoma ex rel. Dept. of Mental Health and Substance Abuse Services****,* 165 F.3d 1321, 1326 (10th Cir. 1999), *cert. denied,* 528 U.S. 815 (1999). Viewing the evidence in the light most favorable to the four Plaintiffs, the prior Agreement allows their claims to go forward, and they should not be dismissed from this case.

RTD is simply wrong and has wasted a considerable amount of this Court's time

and resources as well as those of Plaintiffs' counsel because any claims these four Plaintiffs have occurring after the Effective Date of the Agreement will go forward even if Defendant is successful in its current Motion.

III. The Settlement Agreement Focuses Solely on Buses, Not on Light Rail.

The words "bus" or "buses" are used 131 times throughout the Agreement and its attached Policy. *See generally* Agreement and Ex. A to the Agreement. The words "light rail" do not appear once. The words "fixed route," "fixed route bus" or "fixed route buses," and "fixed route bus system," (collectively) appear 15 times. Exhibit A to the Agreement, entitled "Boarding Individuals with Disabilities who Use Mobility Aids to Ensure Access Policy," (hereinafter, "Policy") states as its purpose, "RTD will ensure individuals who use Mobility Aids, including Wheelchairs, have equal access to its buses and to the Securement Areas." Policy at 15 (emphasis added). The entire Policy relates to how bus operators must deal with passengers who use wheelchairs and others in the wheelchair and securement areas who improperly try to use those areas and excludes light rail trains completely.

A glaring example of the distinction between the former Agreement and the current lawsuit is that only buses, not light rail trains, have "securement areas." *Compare* 49 C.F.R. § 38.23(a) (requiring securement locations and devices for wheelchairs on all buses under Subpart B of the regulations pertaining to buses) *to* 49 C.F.R., Subpart D (governing Light rail Vehicles and Systems, which do not require securement devices at all). In the Policy, the word "securement" appears 34 times. As in

the Agreement itself, the words "light rail" do not appear at all in the Policy that RTD employees are required to follow and enforce as a result of the Agreement.

Furthermore, RTD agreed to numerous obligations with respect to its fixed route bus system that have nothing to do with the operation of its light rail system. First: "Within 30 calendar days following the Effective Date, RTD will adopt a policy to ensure individuals who use Mobility Aids, including Wheelchairs, have equal access to its buses and to the Securement Areas, substantially in the form of Exhibit A ("Policy")." Agreement at 3 § 3.a. (emphasis added). The Agreement does not address access to light rail trains whatsoever, and, as noted, there are no "securement areas" on light rail trains to address, meaning all training for RTD employees in the Policy addressed bus training, not light rail training. As it states in the Agreement, this new policy will apply to "all bus operators" (emphasis added), "bus operator training staff" (emphasis added) and other RTD employees who deal with the fixed route bus service, but not with light rail. *See id.* at 3 § 3.a. Contractors must be bound by its terms. *Id.* RTD has contractors for its bus system, but not for its rail system. *See also id*. at 4-5 § 3.b.v.

The Agreement goes on to address ADA training, which applies to "every new bus operator, bus operator training staff, bus operator manager, street supervisor, dispatcher, and customer service representative (or similar positions for contractors)" (emphasis added), but not training of light rail operators. *Id*. at 3 § 3.b.i. The ADA training course required by the Agreement "will be incorporated into the initial training for each of the job positions identified in this sub-paragraph." *Id.* Again, no mention of

light rail operators is made. Refresher training is also required for "[e]very existing bus operator, bus operator, training staff, bus operator manager, street supervisor, dispatcher" (emphasis added) and other positions related to the operation of RTD's fixed route bus system, but not its light rail system. *Id.* at 4 § 3.b.ii.

The Agreement also anticipates CCDC involvement. *Id*. at 4. § 3.b.iv. CCDC has been involved with RTD with respect to the terms of the Agreement. At no time during these meetings and discussions has light rail services ever come into play. *See* Declaration of Douglas Howey ("Howey Decl.") [# 47-2] at 2 ¶ 5-8, submitted in connection with Plaintiffs' Response to Defendant RTD's Motion for Partial Dismissal [**#** 47], both filed March 25, 2015. In addition, ongoing bus training is anticipated under the Agreement: "Beginning in 2015 and for 3 years thereafter, the RTD Bus Operator Training Manager will meet with a CCDC staff member with the purpose of collaborating on the curriculum for the ADA Training and ADA Refresher Training" (emphasis added). Agreement, at 4 § 3.b.iv. CCDC's involvement was to be with the "RTD Bus Operator Training Manager" (emphasis added), not the light rail manager.[4] Again, no mention of light rail training is made.

Another telling aspect of the Agreement pertains to RTD's requirements with respect to signs. Section 3.c. of the Agreement applies to "Signage on Buses" (emphasis added). The ADA requires signage on buses and on light rail, *compare* 49

[4] In the instant lawsuit, through the discovery process, Plaintiffs have learned that there is an entirely different light rail staff, separate and distinct from those members of RTD's bus operations staff. *See* RTD disclosures (attached as Exhibit 2), highlighting the positions of numerous RTD staff dedicated only to light rail.

C.F.R. § 38.27 (requirements for priority seating signs on buses) *with* 49 C.F.R. § 38.75 (requirements for priority seating signs on light rail trains), and yet the Agreement only addresses signage on buses. Similarly, in the Agreement, there is an entire section devoted to the requirements pertaining to signage "on all fixed-route buses" (emphasis added) at "securement area[s]." *See* Agreement, at 5 § 3.c. As noted above, securement areas exist only on buses and not on light rail vehicles. As part of the Agreement, RTD agreed to "adopt a written procedure that directs RTD staff on how to preserve video evidence on fixed-route buses either upon receipt of a customer complaint concerning a bus operator's failure to follow the Policy or any incident in which the bus operator contacts dispatch using the 'ADA PAX PASS-UP' button[.]" Agreement at 5 § 3.d.i. (emphasis added). Although cameras exist on light rail trains, the Agreement failed to address any written procedure related to cameras on such trains. In addition, there is no such thing as an "ADA PAX PASS-UP" button on a light rail train. The Agreement specifically included assurance from RTD that when it procured buses in the future, it would ensure the installation of video cameras that met certain minimum specifications; RTD also agreed to retrofit the remaining vehicles in its "fixed-route bus fleet" to meet the same minimum specifications. Agreement at 5-6 § 3.d.iii. (emphasis added). No such obligation exists with respect to light rail trains.

Furthermore, the Agreement contains a section entitled "Reporting and Cooperation." *Id*. at 6 § 3.e. RTD is required to provide CCDC with an Initial Report. According to the Agreement at 6 § 3.e.i.:

> The Initial Report will include the following information: (1) each incident in which a bus operator presses the 'ADA PAX PASS-UP' button; and (2) each incident in which a passenger complains that an operator has violated the Policy. For each of (1) or (2) above, the Initial Report will include the following information: date, time, route and stop, time the next bus was due, whether a transfer was offered and accepted, whether the ADA PAX PASS-UP form was provided, whether alternative transportation was provided, whether RTD attempted to preserve video evidence, and whether video evidence was available.

(Emphasis added.)

Once again, nothing in the requirements for the Initial Report or within the Initial Report produced by RTD had anything to do with light rail. *See* Initial Report, attached as Exhibit 3. RTD is also required to provide CCDC with an Annual Securement Area Report to address issues pertaining to buses. *Id*. at 6-7 § 3.e.iii. RTD is not obligated to provide any information for this report with respect to its light rail operations. RTD agreed to engage in "a public outreach campaign with the purpose of (i) encouraging non-disabled passengers to make room for passengers using wheelchairs who need to use the securement area to board the bus, and (ii) informing passengers of the Policy ('Outreach Campaign'). The Outreach Campaign will include posters onboard fixed-route vehicles, flyers, web- and social-media based marketing, and one open meeting at a time and location mutually agreeable to both RTD and CCDC." *Id.* at 7 § 3.f. (emphasis added). Even the complaint process set forth in the Agreement (*id.* at 7-8 § 3.g.) envisions that complaints will involve the RTD Deputy Assistant General Manager of Bus Operations. *See also id.* at 8-9 § 3.j. regarding "Dispute Resolution." Quite simply, nowhere in the Agreement is there any mention of meeting with any person connected with RTD's light rail operations. As required under the Agreement, RTD

retained an expert to review its bus operations and provided a report to CCDC concerning these bus operations. According to the Agreement, "[t]he purpose of the ADA Expert's scope of work will be to ensure that individuals with disabilities who use mobility aids have equal access to fixed-route buses." *Id*. at 8 § 3.h. (emphasis added). The expert had no involvement whatsoever with RTD's light rail service. *See* Initial Report.

In its Response to Plaintiffs' Motion to Dismiss RTD's Counterclaim [# 66] ("Response") at 2, RTD argues the following: The release in the Agreement is much broader than the specific claims alleged in that case. RTD does not explain why CCDC or these individual Plaintiffs, individuals RTD refers to as "sophisticated litigants experienced in settling cases," *see* Response at 14, would be so willing to sign a release that gave RTD a free pass on any possible disability-related violations on any rail service, but that is the explanation it provides. The Agreement itself is completely focused on RTD's fixed route bus system, but, for some reason, according to RTD in its Response, the Plaintiffs decided to release claims concerning all aspects of RTD's light rail and, apparently, if one follows the logic of the Response, the commuter rail system that has not even been completely built yet, but is soon to come. *See, e.g.*, the upcoming North Metro Rail Line, http://www.rtd-denver.com/NorthMetroRailLine.shtml, the upcoming Northwest Rail Line, http://www.rtd-denver.com/NorthwestRailLine.shtml, the upcoming Southeast Rail Line extension http://www.rtd-denver.com/SoutheastRailLine.shtml, and the upcoming Southwest Rail Line

extension, http://www.rtd-denver.com/SouthwestRailLine.shtml.[5] To the extent that these services are already operating or in the process of being built, apparently, according to RTD's strained interpretation of the Agreement, these Plaintiffs released whatever claims they may have had as to these RTD services, whether such service exists yet or not. All rail lines, again, are "fixed route."

With respect to construction of the meaning of a contract, it is this Court's obligation to determine the intent of parties: "When a [contract] is unambiguous, its meaning must be ascertained in accordance with its plainly expressed intent." ***M & G Polymers USA, LLC v. Tackett***, 135 S.Ct. 926, 929 (2015) (citing 11 R. Lord, Williston on Contracts § 30:6, p. 108. p. 933). "[I]nterpretation of a contract is a question of law." ***Arapahoe Cnty. Water & Wastewater and Pub. Improvement Dist. v. HDR Eng'g, Inc.***, No. 08–cv–01788–WYD, 2011 WL 5025022, at *2 (D. Colo. Oct. 21, 2011) (*citing* ***Premier Farm Credit, PCA v. W–Cattle, LLC***, 155 P.3d 504, 517 (Colo. App. 2006)). "In construing [a contract], the primary obligation 'is to effectuate the intent of the contracting parties according to the plain language and meaning of the contract.'" *Id*. (quoting ***Albright v. McDermond***, 14 P.3d 318, 322 (Colo. 2000)). "'The overriding rules of contract interpretation require a court to apply the plain meaning of the words used, subject to interpretation from the context and circumstances of the transaction.'" ***Port-a-Pour, Inc. v. Peak Innovations, Inc***. 49 F.Supp.3d 841, 859-860 (D. Colo.

[5] Although RTD's new commuter trains are not yet in service, RTD unveiled them to the public on December 2, 2014. *See* http://www.denverpost.com/news/ci_27054763/rtds-new-rail-cars-fastracks-system-unveiled-public (last accessed July 7, 2015).

2014); ***Arapahoe Waste Water et al,*** at *2 (quoting ***Albright***, 14 P.3d at 322)). It seems particularly odd to claim that that was the parties' understanding of the Agreement, considering that now these three individuals, CCDC and 15 other individuals who use wheelchairs or other similar mobility devices have come forward to complain that RTD's light rail service, in fact, does violate the ADA and other disability-related laws. At the time CCDC and these three Plaintiffs, Julie Reiskin, Douglas Howey, and Jon Jaime Lewis, signed the Agreement, RTD was operating the Mall Shuttle, a bus line that transports passengers for no fee up and down the 16th Street Mall in downtown Denver, and the Metro Ride, a bus service that transports people downtown along 18th and 19th Streets for no fee. During the times that RTD was conducting training with respect to the Agreement, Douglas Howey, a CCDC member and Plaintiff in both lawsuits against RTD (the one that settled and the instant lawsuit), was attending the trainings on behalf of CCDC and received training slides demonstrating that RTD's training sessions were focused only on fixed route buses and not light rail. *See* Howey Decl. at 2 ¶ 6-8 *and corresponding* Exhibit B [# 49], filed on March 25, 2015 in connection with Plaintiffs' Response to Motion for Partial Dismissal [# 47]. Each and every Plaintiff in this case, including CCDC's Executive Director and its attorneys (as well as RTD's employees and attorneys) had every reason to believe that the previous case was and is limited to RTD's fixed route bus service. If light rail was to be included, these "sophisticated litigants" would have included the extremely detailed provisions pertaining to light rail in the same extreme detail as those in the Agreement now pertaining to RTD's bus

service. It simply strains logic for RTD and CCDC to come to such specific terms with respect to bus service, leave light rail and all other rail service unaddressed and then bring a lawsuit against RTD on behalf of CCDC and 18 individuals for its failures to comply with the light rail regulations.

Although the definition of "fixed route" service may include rail services, no one would dream of using the term "fixed route" with respect to rail service. This would be akin to saying, "wheeled car," or "winged plane." "Fixed route" is an identifier that is only useful when distinguishing one type of RTD service from another (fixed route versus demand responsive) and only becomes useful when talking about RTD's obligation to provide paratransit service. Of course light rail (just like the upcoming commuter rail) travels on a fixed route, but there was no reason for the signatories to this Agreement to think, after paragraphs and paragraphs and paragraphs (the Agreement is ten pages long) of information related specifically to the operation of RTD's fixed bus route and a 35 page Policy to address how bus operators are to provide service to customers who use wheelchairs on buses, that they were signing away any rights they had with respect to all of RTD's fixed route rail systems. RTD would have us believe that after each of the Plaintiffs read ten pages of an Agreement that refers only to buses and logically uses the terminology "fixed route services" and/or "fixed-route services"[6] solely in reference to buses, that those Plaintiffs believed "fixed route" or "fixed-route" that that applied to

[6] RTD uses both terms. The regulations do not hyphenate "fixed route." 49 C.F.R. § 37.3 (definition of "fixed route").

light rail, and that each of the Plaintiffs willingly understood that he or she was waiving any and all present and future claims regarding rail, and even the well-advertised but not-yet-in-use commuter rail, without any requirement whatsoever that RTD do anything to ensure its rail services or other fixed route services are in compliance with disability rights laws.

RTD is mistaken. RTD provides what it believes is the consideration it provided for such a broad release, *see* Response at 4 -- a monetary amount to cover damages, attorneys' fees and costs and "changes in RTD policies, training and oversight" -- but it is clear from the four corners of the document that all changes in policies, training and oversight were related to bus service. The Agreement does not show that RTD provided any consideration related to RTD's obligations with respect to its rail services. Claiming that CCDC twice[7] spent so much time thoroughly negotiating policy changes, training, daily operation, dispute resolution, etc., with respect to RTD's fixed route bus system and negotiated nothing with respect to RTD's many rail services borders on the ridiculous. *See, e.g.,* ***In re Kahn***, 133 F.3d 932 (10th Cir. 1998) ("This view of the

[7] Further evidence of the kind of detailed agreements CCDC and its members have reached with RTD can be found in a Consent Decree that was entered in a lawsuit between CCDC and some of its members and RTD in *Taylor, et. al. v. Regional Transportation District*, No. 00-Z-981 (D. Colo. 2000). In that case, as in the previous Agreement, CCDC and its members reached a very thorough agreement designed to fix RTD's noncompliance with the ADA, including ongoing monitoring procedures to ensure compliance and an enforcement mechanism that required Court intervention if necessary. If CCDC and its members understood the previous Agreement to cover light rail, provisions addressing the operations of that service would have appeared in the Agreement. The Consent Decree can be found on CCDC's website at http://ccdconline.org/case/265 (last accessed July 9, 2015).

settlement agreement-that Schigur gave up a $169,000 claim for nothing, when the sole purpose of the adversary claim was to receive something-is absurd[.]"). The fact that CCDC and the three individual Plaintiffs at issue may have had light rail claims existing at the time the Agreement was executed is irrelevant, because the Agreement was about fixed route bus service and not light rail trains. In summary, claims that were released at the time of the Agreement simply did not encompass RTD's rail services at all. This contract could not be any more unambiguous regarding its application to bus service and not light rail. RTD's employees understood that their bus personnel had obligations with respect to treatment of passengers under the Agreement, RTD's training staff understood that it had specific obligations with respect to its fixed route bus service under the Agreement, RTD's expert provided a report specifically related to the provision of fixed route bus service. "Fixed route" within the meaning of this Agreement has nothing to do with light rail and everything to do with buses.

IV. RTD Attempts to Evade the "Four Corners" of the Settlement Agreement.

When looking at the interpretation of a contract, this Court should look to Colorado state law for guidance. ***United Fire & Cas. Co. v. McCrerey & Roberts Const. Co., Inc***., No. 06-cv-00037-WYD-CBS, 2007 WL 867988, at *3 (D. Colo. Mar. 20, 2007) (order vacated on reconsideration sub nom), ***United Fire & Cas. Co. v. Boulder Plaza Residential, LLC***, No. 06-cv-00037-PAB-CBS, 2010 WL 420046 (D. Colo. Feb. 1, 2010) aff'd, 633 F.3d 951 (10th Cir. 2011); ***Budd v. American Excess Ins. Co.***, 928 F.2d 344, 346-47 (10th Cir. 1991). Also, "normally, contracts will be

interpreted according to the 'generally prevailing meaning' of its terms, and a court will not look beyond the 'four corners of the agreement' unless those terms are ambiguous[.]" ***Alward v. Vail Resorts***, No. 1:04-CV-00860-WDM-PA, 2006 WL 894958, at *5 (D. Colo. Mar. 31, 2006) (citing ***Pepcol Mfg. Co. v. Denver Union Corp***., 687 P.2d 1310, 1314 (Colo. 1984)). Under Colorado law, a "release is an agreement to which the general contract rules of interpretation and construction apply." ***Xedar Corp. v. Rakestraw***, No. 12-cv-01907-CMA-BNB, 2013 WL 93196, at *3 (D. Colo. Jan. 8, 2013) (citing ***Chase v. Dow Chemical Co***., 875 F.2d 278, 281 (10th Cir. 1989)). This Agreement pertains only to RTD fixed route bus services and has nothing to do with light rail services or train design. The four corners of the Agreement make this clear. There is no ambiguity, and, therefore, this Court need not look beyond the Agreement itself to determine that these Plaintiffs did not release claims that have any effect whatsoever on the case at bar. Even the training materials put out by RTD, which were attached as Exhibit B [# 49] (filed March 26, 2015) to the Howey Decl. [# 47-2] (filed March 25, 2015) says in big bold letters, "Revised policy will enhance use of wheelchair securement area and priority seating on RTD buses as intended. *See* Exhibit B [# 49] at 39. RTD should not be permitted to benefit from a bargain to which it never agreed. Just because during negotiations, the word "bus" was omitted in one sentence of the entire Agreement does not mean the Agreement covers all of RTD's rail systems.

V. The Agreement Released Claims Related to the "Fixed Route Services" on Buses and not the Design and Construction of Light Rail Vehicles.

The prior Agreement at issue did not release claims involved in this case. Instead

it released claims related to Defendant RTD's "fixed route bus services." Agreement at 8 ¶ 4. " . . . CCDC, Julie Reiskin, Douglas Howey, . . . and Jon Jaime Lewis . . . release . . . RTD . . . related to RTD's fixed-route services . . ." In the next paragraph, the "released claims" are defined as those which arise out of, relate to or are based upon . . . use of RTD's fixed-route services . . . ." In stark contrast, the current lawsuit expressly claims that RTD acquired vehicles for its light rail system that do not comply with the federal regulations pertaining to the design and construction of such vehicles. TAC at pp. 4-5 ¶¶ 9-13, pp. 10-12 ¶¶ 63-75, pp. 14-15 ¶¶ 81-86, p. 17 ¶ 99, p. 20 ¶ 117, p. 22, ¶ 133, p. 24 ¶147, p. 27 ¶ 165, p. 30 ¶ 185, p. 32 ¶ 197, p. 35 ¶ 215, p. 38 ¶ 230, p. 40 ¶ 246, p. 44 ¶ 268, p. 47 ¶ 287, p. 49 ¶ 302, p. 52 ¶ 321, p. 54 ¶ 330, p. 58 ¶ 355, p. 61 ¶ 371, p. 63 ¶ 385; *see also* pp. 68-70 ¶¶ 411-417. Finally, in their Prayer for Relief, Plaintiffs specifically request that this Court issue an injunction ordering RTD to provide compliant wheelchair seating locations on all of its light rail trains.

The crux of Plaintiffs' claims here, including the claims of the four Plaintiffs at issue, is the fact that RTD acquired vehicles for its light rail service that are not in compliance with the regulations developed by the Federal Transit Administration and may continue to do so. 49 C.F.R. § 37.79 ("Purchase or lease of new rail vehicles by public entities operating rapid or light rail systems."). Under these regulations, RTD should have acquired trains that complied with the regulations and "ensure[d] that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs." *Id.* No claims involving design and construction were

involved in the prior lawsuit.

CONCLUSION

For the foregoing reasons, Plaintiffs seek summary judgment and/or a declaration from this Court that the Agreement was limited to RTD's fixed route bus service.

DATED: July 9, 2015

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that on July 9, 2015, I filed the foregoing document using the CM/ECF electronic filing system, which will serve the foregoing by electronic mail upon the following:

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