

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JOANNE DANIELS-FINEGOLD,)
ROGERA ROBINSON, GENE SMITH,)
REGINALD CLARK, MADELYN JOAN)
GOLDEN, MYRNAIRIS CEPEDA,)
MAUREEN CANCEMI, ANDREW)
FORMAN, DANFORD LARKIN,)
ROBERT PARK, and BOSTON CENTER)
FOR INDEPENDENT LIVING,)
individually and as class representatives,)
Plaintiffs)
v.)
MASSACHUSETTS BAY)
TRANSPORTATION AUTHORITY,)
Defendant)

CIVIL ACTION NO: 02 CV 11504 MEL

AMENDED COMPLAINT

PRELIMINARY STATEMENT

1. The named plaintiffs bring this action to stop defendant's systemic failure to provide basic and necessary public transportation services to plaintiffs and other persons with disabilities. Each of the individual named plaintiffs is a person with a disability who needs to use public transportation to travel to work, shop, school, medical appointments, community activities, social events and other activities. The organizational plaintiff, Boston Center for Independent (BCIL), provides services, community education, advocacy and employment for individuals with disabilities. All named plaintiffs live within the geographic area served by the Massachusetts Bay Transportation Authority (MBTA) and use public transportation provided by the MBTA or would use such public transportation if it were readily accessible to and usable by persons with disabilities. On

a persistent and ongoing basis, defendant has discriminated against plaintiffs because of their disabilities, by denying them equal access to public buses and trains, in violation of Title II of the Americans With Disabilities Act of 1990, 42 U.S.C. §§12131-12163 (ADA) and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (Section 504). Plaintiffs seek a declaratory judgment and a permanent injunction to require the MBTA to comply with the ADA and Section 504 by among other things: making stations accessible; providing directional signage; providing telecommunications access; replacing or rehabilitating passenger elevators; preventing bus drivers from failing to stop for consumers with disabilities because of their disabilities; keeping wheelchair lifts in working condition; deploying lifts in locations appropriate for safe use by consumers with a disabilities; eliminating gaps on train platforms; reporting broken lifts or elevators; providing transportation for people with disabilities during street renovations/construction; requiring drivers to announce stops; preventing drivers from being rude or discourteous to passengers with disabilities because of their disabilities; and taking any other action required by the ADA and by regulations enacted by the U.S. Department of Transportation and the Architectural and Transportation Construction Barriers Compliance Board interpreting the ADA.

JURISDICTION AND VENUE

2. This is a civil action authorized by 42 U.S.C. §12133. This court has jurisdiction pursuant to 28 U.S.C. §§ 1331 because the claims herein arise under federal statutes: the Americans with Disabilities Act and the Rehabilitation Act of 1973.

3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b). All of the events or omissions giving rise to plaintiffs' claims occurred here and the defendant may be found here.

PARTIES

PLAINTIFFS

4. Joanne Daniels-Finegold resides in Braintree, Norfolk County, Massachusetts. She is an individual with a disability within the meaning of the ADA. Ms. Daniels-Finegold uses an electric wheelchair for mobility.
5. Rogera Robinson resides in Brighton, Suffolk County, Massachusetts. She is an individual with a disability within the meaning of the ADA. Ms. Robinson suffers from painful arthritis throughout her body and uses a cane for mobility.
6. Gene Smith resides in Dorchester, Suffolk County, Massachusetts. She is an individual with a disability within the meaning of the ADA. Ms. Smith has Multiple Sclerosis and uses an electric scooter for mobility.
7. Reginald Clark resides in Brookline, Norfolk County, Massachusetts. He is an individual with a disability within the meaning of the ADA. He is legally blind and uses a white cane for mobility.
8. Madelyn Joan Golden resides in Malden, Middlesex County, Massachusetts. She is an individual with a disability within the meaning of the ADA. Her left leg is amputated and she has hidden disabilities that include arthritis of the knees and arms. She uses a manual wheelchair for mobility.

9. Maureen Cancemi resides in Boston, Suffolk County, Massachusetts. She is an individual with a disability within the meaning of the ADA. She has multiple sclerosis and is a triplegic. She uses an electric wheelchair for mobility.
10. Myrnairis Cepeda resides in Dorchester, Suffolk County, Massachusetts. She is an individual with a disability within the meaning of the ADA. She has multiple hidden disabilities that include arthritis, spinal stenosis, and muscle degeneration.
11. Andrew Forman resides in Kingston, Plymouth County, Massachusetts. He is an individual with a disability within the meaning of the ADA. Mr. Forman is legally blind.
12. Danford Larkin resides in Revere, Suffolk County, Massachusetts. He is an individual with a disability within the meaning of the ADA. He is legally blind and uses a cane for mobility.
13. Robert Park resides in Lynn, Essex County, Massachusetts. He is an individual with a disability within the meaning of the ADA. He has cerebral palsy and is legally blind. He uses an electric wheelchair for mobility.
14. Boston Center for Independent Living Inc. (BCIL), located in Boston, Suffolk County, Massachusetts, is a consumer controlled non-profit organization which has provided services, community education, advocacy and employment for individuals with disabilities since 1974. As mandated by BCIL's organizational articles and overall philosophy, the majority of BCIL staff and board are people with disabilities.

DEFENDANT

15. The Massachusetts Bay Transportation Authority (MBTA) is a body politic and corporate and a political subdivision of the Commonwealth of Massachusetts established pursuant to General Laws, Chapter 161A§2, and has a usual place of business in Boston,

Massachusetts. The MBTA is a public entity within the meaning of Title II of the ADA, 42 U.S.C. §12131(1) and is subject to the provisions of Subpart B of Title II, 42 U.S.C. §§12141 et seq., in that it provides public transportation services including paratransit, bus, rapid transit, and commuter rail services.

THE PLAINTIFF CLASS

16. Plaintiffs bring this suit as a class action under Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure. The class consists of all individuals with mobility, hearing or visual disabilities, as defined by Title II of the Americans with Disabilities Act, 42 U.S.C. §12131(2), who use, will use, or would use the bus, light rail and heavy rail rapid transit services operated by the MBTA who are, or will in the future be, denied equal use of these services because the services are not readily accessible to and useable by individuals with such disabilities.
17. The plaintiff class is so numerous that joinder of all members is impracticable.
18. There are questions of law and fact common to the plaintiff class including:
 - a. Whether the defendant's failure to make the MBTA's fixed route bus system readily accessible to and usable by plaintiffs and other persons with disabilities by, among other things: (1) failure to adequately inspect, maintain, and service the mechanical bus lifts, which are needed to allow persons with mobility impairments to board and disembark; (2) failure to adequately inspect, maintain, and service the mechanical bus doors, which are needed to allow persons with mobility impairments to board and disembark; and/or failure to provide ramps needed to allow persons with mobility impairments to board and disembark; (3) failure to adequately inspect and maintain safety equipment used to secure

wheelchairs on buses; (4) failure to adequately inspect and maintain belts and straps used to secure people with mobility impairments inside buses; and (5) placing non-accessible buses on purportedly accessible bus lines, violates the ADA and the Rehabilitation Act of 1973;

- b. Whether the defendant's failure to make the MBTA's fixed route public train system readily accessible to and usable by plaintiffs and other persons with disabilities by, among other things: (a) failure to keep MBTA station elevators in operating condition; (b) failure to adequately supervise and monitor the cleanliness of MBTA station elevators; (c) failure to respond to calls from riders with disabilities seeking assistance in accessing a train; (d) failure to provide accessible paths of travel within and around the MBTA stations (e) failure to provide adequate and accessible directional signage; and (d) failure to provide accessible telecommunications violates the ADA and the Rehabilitation Act of 1973;
- c. Whether defendant's failure to provide transportation for people with disabilities during street renovations/construction violates the ADA and the Rehabilitation Act of 1973;
- d. Whether defendant's failure to adequately train and supervise employees on MBTA buses and trains regarding the proper and safe use of the equipment necessary to provide equal access to persons with disabilities violates the ADA and the Rehabilitation Act of 1973;

- e. Whether the defendant's failure to monitor the actions of employees who are disrespectful, discourteous, and unprofessional to people with disabilities, because of their disabilities violates the ADA and the Rehabilitation Act of 1973.
19. The interests of the named plaintiffs typify the interests of the class members because the defendant's practice of noncompliance with accessibility provisions of the ADA that is being challenged, are applicable to each member of the class.
20. The plaintiffs will fairly and adequately protect the interests of the class. Attorneys for the plaintiff class are experienced in disability law and have participated in other class actions.
21. The questions of law and fact common to the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of this case.
22. The plaintiffs seek certification of a class pursuant to Fed.R.Civ.P. 23(b)(2) on the grounds that the defendant's policies and practices deny plaintiffs equal access to public transportation, thereby making injunctive and declaratory relief appropriate.

STATEMENT OF FACTS

Joanne Daniels-Finegold

23. Joanne Daniels-Finegold is woman with a disability who uses an electric wheelchair for mobility. Ms. Daniels-Finegold has hyper-homocystoremia, a condition that causes blood clots, and other medical issues including joint problems and pain. Her left knee joint does not lock all the time and her left shoulder joint has deteriorated and may need replacement. Her left shoulder dislocates very easily and causes constant pain. Ms.

Daniels-Finegold resides independently in Braintree, Massachusetts. She depends on the MBTA's public transportation services for her travel needs. As a result of defendant's failure to provide accessible services, Ms. Daniels-Finegold regularly encounters many problems with trying to access MBTA's buses and trains, including: broken elevators and escalators; unsanitary conditions in elevators; MBTA's failure to regularly update the elevator message; and large gaps between the train and the platform.

24. Ms. Daniels-Finegold leads an active lifestyle. She has an Associate's Degree in communications and will soon earn her Bachelor's Degree. She enjoys jewelry making and is currently taking a silver smithing course at the Brookline Adult Education Center.
25. Ms. Daniels-Finegold teaches a jewelry making class and a knitting class at Michael's Crafts in Braintree. In addition, she is the sole proprietor of "Proverbs 31 Gifts," where she displays and sells her handmade jewelry. Ms. Daniels-Finegold is also a volunteer at Brigham and Women's Hospital where she works in the Kessler Library. Ms. Daniels-Finegold depends on defendant's public transportation services to engage in her work, teaching, social life and volunteering.
26. In the past she traveled about three miles a day with a manual wheelchair. However, it has now become too much for her due to her disability. Her home is located about three and a half miles from the Red line train stop. When she is unable to access a bus to take her to the train station, Ms. Daniels-Finegold uses her wheelchair.
27. Ms. Daniels-Finegold regularly uses the bus between Brockton and Quincy Center, to get to the Redline stop at Braintree Station, and to get to Ashmont. Ms. Daniels-Finegold uses buses and trains to go to Watertown, Central Square, and Brookline Avenue to

Brigham Women's Hospital. All the bus routes traveled by Ms. Daniels-Finegold are supposed to have lifts; however, these lifts often do not work.

28. Ms. Daniels-Finegold has ridden on all the train lines except for the Blue line. She most often uses the Red and Green lines. She does not like to use the Orange line because of the large gap between the train and platform. Her front wheels often get stuck in the gap.
29. In March 23, 2002, Ms. Daniels-Finegold was scheduled to work at a craft table at the Sheraton Boston Conference of Working Women. The closest train line was the Orange line, but the closest stop, Downtown Crossing, did not have a functioning elevator. Ms. Daniels-Finegold had to get out of the station and travel to the Sheraton using her wheelchair. It was bitterly cold and she had to travel approximately one mile in order to get to her destination.
30. In May 8, 2002, Ms. Daniels-Finegold was supposed to meet her business mentor at the Women's Educational and Industrial Union at Boylston for a 2:00 p.m. appointment. Ms. Daniels-Finegold took the bus to the Braintree station on the Red line but the elevator wasn't working. She then tried to take the bus to the next Red line stop but the wheelchair lift on the bus was broken. She waited for a second bus to take her to the next Red line stop. She finally arrived at her meeting around 3:00 p.m., about an hour late.
31. On September 29, 2002, Ms. Daniels-Finegold tried to attend the "Beach Show" in Providence. She called the MBTA's elevator update line and was informed that the elevator at South Station was working. Ms. Daniels-Finegold relied on the information from the elevator recording and took the Red line to South Station in order to take the train to Providence. At South Station she soon learned that the elevator from the subway platform to the mid-level of the station was working, but that the elevator was broken

from the mid level to the top level where the commuter rails were. She was trapped and could not make it to the top level to board the commuter rail. Ms. Daniels-Finegold was forced to return home.

32. On June 19, 2003, when Ms. Daniels-Finegold was returning home from class, the lift on the bus she was taking was malfunctioning. The driver eventually got it working but Ms. Daniels-Finegold was delayed in reaching home.
33. On July 10, 2003, Ms. Daniels-Finegold tried to get to the Braintree station on the Red line, but the lift was broken. The bus driver said he had to keep on schedule and would try again at Quincy Station. When the bus stopped at Quincy station the driver could not get the lift to work. The driver told Ms. Daniels-Finegold that the hydraulic cylinders were broken. She had to climb out of her wheelchair and slowly make her way down the stairs. Ms. Daniels-Finegold found this endeavor to be very dangerous and painful. Two MBTA workers carried her chair off the bus.
34. On July 24, 2003, Ms. Daniels-Finegold called the lift line and requested that a bus pick her up at approximately 10:45 a.m. so that she could get to a 1:00 p.m. appointment at Greater Boston Legal Services. Neither the first nor the second bus that came by had a working lift. The third bus that was sent out by the Quincy garage had a working lift. An MBTA supervisor who waited with Ms. Daniels-Finegold was not aware that the second bus had a non-functioning lift for months. By the time she was finally able to board a bus with a functioning lift, Ms. Daniels-Finegold was already late for her meeting.
35. Ms. Daniels-Finegold reports the barriers she encounters so often that the MBTA employees on her routes know her by name. The employees tell her to complain to Greater Boston Legal Services because they are also very frustrated with the old and

malfunctioning equipment. Ms. Daniels-Finegold has learned that Quincy station has some of the oldest buses in the system. Some buses are nineteen years old and are decaying.

36. Despite all of the above, Ms. Daniels-Finegold still uses MBTA's buses and trains. The alternative is to stay at home and she is simply not willing to sit at home doing nothing. The lack of accessibility affects her ability to remain active. It takes a great deal of time and planning to do anything involving traveling. She finds herself planning ahead of time for the defendant's inaccessibility so that she is prepared for lateness. Ms. Daniels-Finegold is a professional woman who wants her clients and customers to be able to rely on her. She has a good reputation for being reliable. She wants the MBTA to be readily accessible, clean, and safe so that she can: timely get to work; timely arrive at her appointments; and conduct her business in an efficient and effective manner instead of worrying about functioning lifts and elevators.

Rogera Robinson

37. Rogera Robinson is a woman with a disability. She has arthritis all over her body. The arthritis most severely affects her knees. Ms. Robinson sometimes relies on a cane for mobility. She resides in Brighton, Massachusetts. Ms. Robinson relies on the MBTA buses for her travel needs. She sometimes uses the trains, she frequently uses the MBTA buses, and some weeks she rides the buses up to six to eight times. Ms. Robinson is active in many disability rights organizations. Ms. Robinson has encountered problems with using public transportation as a result of the defendant's failure to provide accessible services. Ms. Robinson has endured the MBTA bus drivers' failure to lower buses (kneeling bus) so that she can safely access the bus.

38. Due to her disability, she often has problems getting on or off buses because the steps are not lowered for her. The steps on MBTA buses are too high for her to climb and require more flexibility than her knees can handle.
39. On nine out of ten bus rides that she takes, bus drivers fail to lower the steps for her. On many occasions Ms. Robinson has asked the driver to lower the steps for her and she has received many different responses. She has been told that the steps were not working; she has been ignored or the drivers are rude to her. Bus drivers fail to lower the steps even when they see Ms. Robinson struggling to pull herself up, using the hand rails at the bus entrance. She is simply ignored.
40. On one particular ride, Ms. Robinson encountered a driver who did not lower the steps and then ignored her while she was clearly struggling to make it up the steps on her own. Finally, a passenger who was standing in line behind her, placed his hand on her buttocks and pushed her onto the bus. This situation embarrassed Ms. Robinson, but she could not allow herself to be embarrassed or offended that this stranger touched her in this manner. Instead, she was forced to be grateful for his help.

Gene Smith

41. Gene Smith is a woman who has a disability. She has Multiple Sclerosis. Due to her disability, Ms. Smith's use of her legs is limited. She uses an electric scooter and a cane for mobility. Ms. Smith resides in the Dorchester area and relies on the MBTA buses and trains to travel. She only uses her cane when she travels on MBTA buses and trains because of the numerous problems she has encountered due to the defendants' failure to provide accessible services. The main problems encountered by Ms. Smith are broken bus lifts and broken elevators.

42. Even when using her cane Ms. Smith still faces great difficulties accessing the bus. She is often unable to access the seats reserved for persons with disabilities. Because of her disability, her body, especially her legs, are extremely weak. It is difficult for Ms. Smith to stand in one position for any length of time. When the bus is in motion, it is not only difficult but also dangerous for her to remain standing.
43. In October 2001, while traveling on a bus from Dorchester to the Beth Israel Hospital to see her doctor, she was unable to get a seat on the crowded bus. Ms. Smith saw a non-disabled passenger seated in a seat that is designated for the elderly and disabled. She asked the passenger to please allow her to have the seat but the passenger refused. Ms. Smith sought the help of the bus driver. The bus driver shook his head and laughed at Ms. Smith.
44. In the summer of 2001. Ms. Smith took the bus home from her doctor's office. On that day, Ms. Smith's feet were swollen and painful. When she boarded the bus, all of the seats were taken including the seats designated for disabled and elderly passengers. She asked for the bus driver's help, but she was ignored. The other passengers on the bus stared at Ms. Smith in such a hostile manner that she felt humiliated.
45. Around January 1999, Ms. Smith was seriously injured while trying to exit a bus through the back door. Due to her disability, it took her some time because she is only capable of going down one step at a time. At the last step with one foot on the ground and while in the process of removing her other foot from the step the bus driver closed the door on her ankle. Other passengers on the bus screamed for the driver to open the door, but he took a long time and when he finally opened it to release her foot, Ms. Smith had already suffered extreme pain and considerable injuries.

46. Recently Ms. Smith attempted to go back to college. She enrolled at Bunker Hill Community College, but was devastated to arrive at Community College Station on the Orange Line and find that she could not leave the platform because there is no elevator or accessible exit for her scooter. When she had a chance to confront the former MBTA chairman Mr. Sullivan on this matter, he discounted her inability to access an education with a smile and a trite promise to “work on it.” After two years the station is still inaccessible.

Reginald Clark

47. Reginald Clark is a man with a disability. He is legally blind and uses a white cane when he travels. Mr. Clark does not drive and relies upon public transportation. He resides in Brookline and travels by bus on a daily basis to attend meetings, medical appointments, and social events. As a result of the MBTA’s failure to provide accessible services, Mr. Clark encounters many problems with transportation. Some problems encountered by Mr. Clark include: drivers failing to pull next to the curb and instead stopping in the middle of the street; drivers failing to announce stops; and drivers failing to assist him with getting a seat designated for the elderly and the disabled.

48. When bus drivers fail to pull close to the curb it presents a safety concern for Mr. Clark. He must step onto the street, without being able to see if there is traffic approaching, in order to board or exit the bus.

49. MBTA bus drivers routinely fail to announce stops on the bus lines. In October 2000, Mr. Clark asked the bus driver to let him know when he reached his stop. The driver was talking on his cellular phone and neglected to announce the stop. When Mr. Clark asked him about his stop, he was told that the driver had already passed it. Mr. Clark was

ushered off the bus at the next stop and had to find his way back to the stop he needed.

This was extremely difficult and terrifying for Mr. Clark.

50. On Friday, December 14, 2001, the bus driver failed to announce any of the stops.

Madelyn Joan Golden

51. Madelyn Joan Golden is a fifty-five-year-old woman with a disability. Her left leg was amputated and her hidden disabilities include arthritis in the knees and arms. She has been unable to walk since age twenty-one. She used crutches for twenty-eight years and has been using a manual wheelchair for six years.

52. Ms. Golden has two children and currently lives with her eleven-year-old son. She is active in the community and has been a member of Massachusetts Disability Commission since 2001. This group of persons with disabilities meets and discusses many things that affect the community of persons with disabilities, including the barriers or discrimination people encounter while trying to access MBTA buses and trains.

53. Ms. Golden estimates that she uses the MBTA buses at least once per week to shop, to visit friends, to pay bills, and to get to social events. Ms. Golden does not rely on the MBTA to get to any medical appointments and only uses the transportation that is provided by the Massachusetts General Hospital due to the fact that she has had numerous bad experiences with the MBTA. Ms. Golden has been injured and treated disrespectfully during her encounters with public transportation. Ms. Golden is terrified of using the trains because of these previous bad experiences with the MBTA.

54. Ms. Golden uses a taxi whenever she can afford one; however, she is on a fixed income and is not able to afford a taxi for long trips. Therefore, she is forced to rely on buses.

55. Ms. Golden has encountered many problems trying to get buses to stop for her instead of simply driving by. When buses do stop, bus drivers have routinely informed her that the lifts are not working and that she should wait for other buses.
56. Bus drivers present a huge obstacle for Ms. Golden when she attempts to board. Bus drivers are rude and impolite. Additionally, the bus drivers do not even check or demonstrate those lifts that they claim do not work.
57. In November 1998, Ms. Golden was injured while departing from an MBTA bus when the equipment failed. The lift malfunctioned and disappeared from underneath her and she was only able to save herself by grabbing the handrails at the side of the bus. Ms. Golden grabbed the handrails and dangled from the bus with her wheelchair hovering over her. When she looked down, she saw that the driver had not pulled close to the curb, so if Ms. Golden did fall, she would hit her head on the curb. The driver jumped off the broken lift, pulled down the wheelchair, and settled Ms. Golden back into it.
58. Ms. Golden feels lucky to be alive after this incident. She also recalls extreme embarrassment from that day.
59. Due to the injuries sustained from that incident, Ms. Golden tore the cartilage in her knee. Her leg, ankle, and shoulder were also injured. Ms. Golden had extensive medical treatment including an MRI, physical therapy, and medication.
60. Ms. Golden filed a lawsuit against the MBTA for damages suffered while riding the MBTA and has subsequently settled.
61. In December 2002, Ms. Golden was heading home after shopping at the mall. Ms. Golden patiently waited in the cold to get on the bus. When the bus finally arrived, Ms. Golden knew that the driver saw her and she knew that he had to get the lift down. She

allowed the other passengers to board before her while she waited for the driver to lower the lift. After all the passengers got on board the bus, the driver shut the doors and started to drive away. She chased after the bus in her wheelchair shouting, "stop!" The driver eventually stopped after a passenger informed the driver that Ms. Golden wanted to get on the bus; the driver then told Ms. Golden that his bus didn't have a lift. Ms. Golden assumed that the driver would call for a lift bus; however, after waiting for 45 minutes, a second bus arrived and Ms. Golden was faced with the same situation: the bus driver closed the door and started to drive away. Again, Ms. Golden had to be vocal to get the driver to pay attention to her. This driver demonstrated that the lift was broken by going to the back of the bus and pressing the buttons to activate the lift, but it did not work. Even though this bus had the handicap accessibility symbol stamped on it, it did not provide Ms. Golden with means of boarding. Forty-five minutes more passed before Ms. Golden was able to board a bus and go home. This short trip, which should have taken twenty minutes, took hours.

62. On April 25, 2003, Ms. Golden was trying to board a bus to get to the mall. When she tried to board a bus the bus driver told her that "this [was] not a wheelchair route." Ms. Golden had been using that route for years and she knew it was supposed to be an accessible route with lift buses. When she told him that the route was a wheelchair route, his story changed, and he then told her that the lift did not work.
63. Ms. Golden is tired of being the first in line at the bus stop and having to watch as everyone boards the bus while she waits and is later told that she cannot get on board. She wishes she could use the MBTA buses the same way other people do.

Myrnairis Cepeda

64. Ms. Cepeda is a person with hidden disabilities that include muscle degeneration, spinal stenosis, diabetes, and arthritis. Ms. Cepeda experiences pain on a daily basis and cannot stand or walk for long periods of time. She also has difficulty bending or lifting her legs.
65. Ms. Cepeda's past work includes social work through the Department of Social Services, Department of Transitional Assistance, employment security, and the federal prison system. She is currently a community teacher on a volunteer basis at the Immigrant Workers Resource Center in Jamaica Plain, Casa Iris HIV, an AIDS program in Roxbury, and Women In Leadership Development.
66. Ms. Cepeda has Masters Degrees in Child and Adolescent Psychology and in Counseling Psychology. She also has Bachelors of Sciences in Social Services Management and Legal Services.
67. In June of 2003 Ms. Cepeda was on her way home from the Dudley station. The bus was very crowded and she struggled to pull herself up by the handles in order to board the bus. When she got on the bus, she paid her fare and showed the driver her transportation access pass (TAP card). When she asked for a transfer, the driver said: "you only pay fifteen cents and you want a transfer too?" Everybody on the bus stared at her; Ms. Cepeda was extremely embarrassed. She called the MBTA the next morning to confirm that she had a right to a transfer even though she paid a reduced fare. The customer service person stated that she had a right to a transfer and also told her that it was the second time that day that they had received a complaint about that particular transfer issue.

68. On February 27, 2003, Ms. Cepeda was visibly struggling to get on a bus and the driver did not lower the bus for her. Ms. Cepeda had to say to the bus driver, "this is really high" before he would lower the bus for her.
69. In June or July of 2002, Ms. Cepeda was departing from a bus. The driver had not lowered the bus for her and she expected the bus to be pulled right up to the curb. It was not and she tripped as she was getting off. Her foot went down into the gap between the sidewalk and the bus. She fell onto the sidewalk and hit her leg on the curb. Ms. Cepeda found this incident to be painful and humiliating.
70. One problem Ms. Cepeda often encounters is that the drivers rarely wait for boarding passengers to sit down before they pull away from the bus stop. This practice is particularly dangerous for Ms. Cepeda because she has difficulty moving very quickly and difficulty standing.

Maureen Cancemi

71. Maureen Cancemi is a fifty-two-year-old woman with a disability. She is a triplegic and uses an electric wheelchair for mobility. In 1982, Ms. Cancemi was diagnosed with Multiple Sclerosis and she began using a wheelchair in 1989. Ms. Cancemi has no movement of her legs, and very limited movement of her left arm and hand. Ms. Cancemi depends on the MBTA for all of her travel needs. She has encountered many problems with MBTA buses and trains, including broken lifts, broken and dirty elevators, and rude and discourteous drivers.
72. Ms. Cancemi resides independently in Boston, Massachusetts. Ms. Cancemi has a Bachelor's degree and a two-year certificate in Medical Records Technology. She taught English as a second language and has a teaching degree in art. Ms. Cancemi worked in

the medical records field for 8 years. She was a substitute teacher for junior and senior high schools and she also tutored persons studying for the naturalization test for citizenship.

73. Ms. Cancemi is very active in her community. She is an advocate for the civil rights of persons with disabilities and actively participates in forums where she can voice concerns for her community. She is a former board member of the Vivienne S. Thomson Independent Living Center (VTC) and was a member of a Multiple Sclerosis support group held by the VTC. She is a member of the Massachusetts Rehabilitation Commission, Home Care Division and is a consumer at the Boston Center for Independent Living (BCIL).
74. Ms. Cancemi began using the MBTA regularly in 1993. She uses the MBTA in different forms at least 2-3 times per week for doctor appointments, entertainment, meetings, food shopping, and other activities. She prefers to use the MBTA buses (above ground transportation) because of the barriers she encounters with train stations. When she uses the trains, she rides the orange and red lines. Ms. Cancemi does not use the green line because she finds this to be inaccessible.
75. The most common problem Ms. Cancemi faces when trying to access the trains is that elevators are often broken, soiled with urine or feces, or function improperly.
76. Elevators present a chronic problem for Ms. Cancemi when she travels by train. If she is able to take a train, she sometimes finds that the elevators in the train stations do not descend from the lobby to the train platform. For example, the doors will not open and when they do, sometimes they will not shut.

77. Ms. Cancemi can recall the several times that she has been trapped in the MBTA's elevators due to the placement of panels with buttons that are too high and angled such that they are inaccessible. Panels usually are located on the right side of the elevator. If the door closes as soon as Ms. Cancemi boards the elevator, she is unable to reach the panel and is stuck. This is quite a frightening experience for Ms. Cancemi because she is not able to push the emergency button because it is on the same unreachable panel. She usually has to wait in the elevator for 15-20 minutes until someone comes by and presses the button on the outside of the elevator; then the doors can open and Ms. Cancemi is released.
78. When Ms. Cancemi is stuck in an elevator in the heat or cold she finds the conditions unbearable.
79. In May 2003, Ms. Cancemi was in an elevator and the panel was located on the right side. She was unable to reach any button and began to call out for help. But her shouts were muffled since the elevator doors had closed. She continued to call out to people for over ten minutes before someone opened the doors.
80. Many MBTA station elevators are too narrow for Ms. Cancemi to maneuver her electric wheelchair. She is unable to turn her chair around while inside the elevator and therefore, she is unable to reposition it in order to exit properly.
81. Ms. Cancemi tries to find stations that provide an elevator that will fit her wheelchair. To find accessible elevators she often has to travel 2-3 stops beyond her destination and then backtrack to get to her intended destination. An additional problem is the fact that some elevators are dangerously close to the platform adjacent to the train tracks.

82. In April 2003, Ms. Cancemi used the #55 bus for the first time. She was heading from her home on Massachusetts Avenue to the State House for a scheduled meeting with the Commissioner of the Massachusetts Rehabilitation Commissioner. While she was trying to board the bus she found that there were no curb cuts in order for her to access the island where other passengers access the bus. She had to position her electric chair as close to the island as possible, but she was still on a main street during rush hour traffic at 9:00 am. She was frightened by the dangerous situation.
83. When Ms. Cancemi arrived at the State House, there were no curb cuts on the sidewalk there either. She had to access a steep hill and the sidewalks were cracked and torn up due to construction. These conditions presented additional barriers.
84. On Tuesday, June 24, 2003, Ms. Cancemi had a doctor's appointment at Jackson Square. She tried to use the Orange Line at the Massachusetts Avenue station (Mass. Ave.), but the elevator was not working. From the Mass. Ave. station, the nearest train station is Back Bay. In order for Ms. Cancemi to get to the Back Bay station it would have taken 15 minutes by way of the surface streets. Considering Ms. Cancemi's medical problems, this was a long way to travel on her wheelchair in the heat and humidity. She had no choice but to cancel the doctor's appointment.
85. Ms. Cancemi has noticed that when the weather is bad, when the bus is crowded, or when the roads are congested, the bus drivers claim that they do not have a key to the lifts or that the lift is not working. They tell her to wait for the next bus, but since she lives on a partially accessible bus route, she sometimes has to watch more than four buses pass before an accessible one arrives.

86. Ms. Cancemi has also been on the lift of a bus when the equipment failed and the lift malfunctioned. She has been forced to remain on the lift until a mechanic comes to fix the problem. This humiliating wait can be anywhere from 30-45 minutes for someone to arrive to fix the problem.
87. Another problem Ms. Cancemi experienced with the MBTA is that the bus drivers are not often able to secure her chair properly. Without being properly secured, Ms. Cancemi dangerously slides around during the trip.
88. In the summer of 2001, Ms. Cancemi was returning home from the South Bay Mall. After she boarded the bus, her chair was not strapped in and the chair began to skid across the aisle when the driver stopped abruptly. A passenger grabbed the arm of her chair and prevented her from further skidding. Had that passenger not stopped Ms. Cancemi from skidding, she would have tipped over into the stairwell due to her heavy chair. For Ms. Cancemi to be in situations where she often has little control and is susceptible to circumstances is not only frustrating, it is also terrifying. Ms. Cancemi reported this horrifying experience to the MBTA and never heard back.
89. Ms. Cancemi complains to the MBTA about the barriers she encounters. She finds that the employees who answer the complaint line are sympathetic and listen, but that nothing happens. She is usually told, "We will look into this," or "We will make a note of it." Ms. Cancemi has given the MBTA detailed information such as: the time, date, or number of bus, but she does not get a reply or report or anything to tell her that something was done to address the problems she encountered.
90. Ms. Cancemi's experiences using MBTA trains and buses have been frustrating because she is forced to plan well ahead of any trip to compensate for likely delays in

transportation. If the MBTA trains and buses were more accessible and safer for people with disabilities, Ms. Cancemi would feel more confident in using these services.

Andrew Forman

91. Andrew Forman is a 39-year-old man with a disability. He has been legally blind since birth. Mr. Forman resides independently in Malden, Massachusetts. He has a Bachelor of Arts degree in communications and is currently employed as a disability advocate for the Boston Center for Independent Living (BCIL). Prior to working for BCIL Mr. Forman was self-employed as an entrepreneur. He published his own magazine for eight years; operated his employment agency for two years; and later was an assistant telemarketing manager. Mr. Forman has always relied on the public transportation services provided by the MBTA. He uses the MBTA's buses and trains daily. Mr. Forman encounters many problems when trying to access the MBTA's buses and trains, including: failure to make stop announcements; improper signage; poor lighting; and bus drivers who do not provide assistance upon request.
92. Mr. Forman often encounters MBTA's dirty signs on buses and bus drivers who are not helpful in providing answers to simple questions such as the number of the bus or where it is heading. He is afraid of getting on the wrong bus because he is often unable to see the signs on the bus. He commonly asks the bus driver if the bus is the specific one he was waiting for and the driver usually nods. The problem is that Mr. Forman is unable to see the drivers nodding. When he asks again about the bus, the drivers become annoyed before they deliver a verbal response.
93. Mr. Forman's blindness is not readily noticeable. He does not wear dark glasses and he does not carry a white cane.

94. When going out to visit friends or clients, Mr. Forman uses the MBTA's trains and avoids having to use the buses. He would rather use the trains and walk up to a mile than use a bus that will drop him off closer to his appointment. Mr. Forman fears using the buses because the drivers fail to announce stops. Also, the drivers are rude to him for asking about the direction the bus is heading, and he generally is left feeling embarrassed about having to ask for assistance from drivers who do not want to help him.
95. When Mr. Forman uses the Red line, many of the stops look the same and he is unable to read the signs. If the train operators fail to announce the stops, he risks missing his destinations.
96. On June 3rd, 2003 around 8:30 a.m. Mr. Forman was traveling to work. He was taking the Red line to Downtown Crossing and intended to switch to the Orange line. The stops were not announced on the Red line; therefore, he missed his stop. He got off at a station that he was not familiar with and he had to backtrack to Downtown Crossing.
97. Mr. Forman would use the MBTA's buses more often if the signs were larger; then they would be easier to see. He has to use his telescope to see the bus route or number. He would be confident in using the buses if all stops were announced and the numbers of the bus, as well as the bus routes, were announced when the bus stops to pick up passengers. Mr. Forman would also like bus drivers and train operators to make vocal announcements when there is no automated stop announcement.

Danford Larkin

98. Danford Larkin is blind and uses a cane for assistance. Although he does not use the MBTA's public transportation services regularly at this time, he used it regularly in the past to get to and from work. When he worked at Perkins School for the Blind in

Watertown from approximately 1987 through 1995 he used the MBTA subways and buses regularly.

99. Mr. Larkin recalls a horrifying experience from 1990 when he was riding the MBTA's Red line. He attempted to get off the train at the Central Square stop but the conductor closed the door too fast and closed it on Mr. Larkin's left foot and left arm. The conductor then pulled away from the station and continued on to Harvard Square, all the while, Mr. Larkin's foot and arm were stuck in the door of the train. Mr. Larkin was too far back in the train to be heard if he had tried to yell to the conductor. When the train arrived at Harvard Square an MBTA inspector tried to open the door that Mr. Larkin's foot and arm were stuck in. The inspector asked him to move his foot so they could open the door. Mr. Larkin told him that if he could move his foot then he wouldn't be stuck. They were eventually able to get the door open and free Mr. Larkin's foot and arm.
100. After the train incident Mr. Larkin called the main number for the MBTA and reported it. A week later, an MBTA employee called Mr. Larkin and asked him if he wanted to file a suit against the MBTA. Mr. Larkin informed the employee that he did not want to file a lawsuit because, although the incident was upsetting and frightening to him, he was not physically hurt in the incident.
101. In the fall of 1987 an incident occurred while Mr. Larkin was riding a bus from Revere to Maverick Train station. Mr. Larkin encountered a bus driver who insisted that he see a pass and then the driver turned to another passenger on the bus and said, "These handicap people think they can get away with anything." Mr. Larkin was very embarrassed by the driver's statement. He reported the incident to the MBTA inspector at the Maverick Station.

102. On May 1987 Mr. Larkin was waiting for a bus at Maverick Station and a young man, who was there with friends, came up to Mr. Larkin and kicked his cane out of his hand. Although there was a MBTA inspector at the Maverick Station, he was inside the train station. Mr. Larkin felt vulnerable in that public area with no MBTA personnel to protect passengers, particularly passengers with disabilities, from harm.
103. In 1994 an incident occurred while Mr. Larkin was riding the bus to work. He asked the bus driver to let him off the bus about 20 to 30 feet before the bus stop because that was where he needed to cross the street. It was winter at the time; therefore, there were piles of snow on the sidewalk, making it difficult for Mr. Larkin to get from the actual bus stop to the intersection at which he needed to cross. He had to cross at the intersection because it had a stoplight and a button that he could press to indicate that he needed to cross the street. The bus driver refused to let him off the bus 20 to 30 feet before the bus stop. A passenger on the bus told the driver that he should let Mr. Larkin off. The driver responded by telling the passenger, "if I have to make allowances for him then I have to make allowances for everyone."
104. One problem, which Mr. Larkin views as very dangerous, is the lack of tactile tape at the Park Street Station. This heavily traveled station is not safe for blind persons or persons with visual impairments; a person who is blind could step over the edge and fall into the pit where the train tracks are due to the lack of tactile tape. Once, Mr. Larkin had to step backwards because of construction in the Park Street station. Mr. Larkin almost fell onto the tracks because there was no tactile tape indicating a ledge or drop off.
105. Mr. Larkin also had negative experiences when using MBTA elevators. He only used them a few times, but when he did, the elevators were unclean and smelled of urine.

106. Despite these incidents, Mr. Larkin did not stop using public transportation while he was working.

Robert Park

107. Robert Park is a 29-year-old man with a disability. He has cerebral palsy and is legally blind. Mr. Park uses an electric wheelchair for mobility. He resides independently in Lynn, Massachusetts. He receives Personal Care Assistants (PCA's) services but his PCA's rarely accompany him outside of his home. Mr. Park works fulltime as an advocate at the Boston Center for Independent Living (BCIL). He previously worked at the Independent Living Center of the North Shore as an independent living skills specialist. He is pursuing a degree in criminal justice at Salem State College in Salem, MA. Mr. Park relies on the MBTA's buses and trains for most of his travel needs; he prefers these modes over the RIDE because the RIDE is typically late and makes him tardy for work. Mr. Park encounters many problems with trying to access MBTA buses and trains. Problems include broken elevators and escalators as well as unsanitary conditions in elevators.

108. Mr. Park uses public transportation, provided by the MBTA, almost everyday. When the elevators in Lynn are working, he use the commuter rail from Lynn to North Station, then takes the Orange line train from North station to Back Bay. From there he uses his wheelchair to get work. If the elevators in Lynn are broken, he uses the buses from Central Square in Lynn to the Wonderland train station for the Blue line. He uses the Blue line from the Wonderland station to the State Street station where he transfers to the Orange line and travels from State Street to Back Bay.

109. Mr. Park commonly encounters broken lifts. Mr. Park usually has to wait, while two or three buses pass him by, before a bus arrives with a working lift. About a third of the buses that pass him by fail to stop.
110. On April 2, 2003, Mr. Park had a terrifying incident with a broken lift. Mr. Park was being raised into the bus on the lift and the restraint collapsed. Mr. Park almost fell off the lift platform. The back wheels were on the platform and his feet were on the ground and he was falling forward. Fortunately the driver was able to catch him before his head hit the cement curb.
111. Twice in 2003, the drivers did not have the key to the lift. The only reason Mr. Park was able to use the lift on those two occasions was because he had a key.
112. Mr. Park noticed many dangerous problems with the MBTA's buses such as the restraint mechanism, which almost never works. He usually has to grab a pole or grab the back of a seat to stabilize himself and to keep his chair from falling over or rolling around.
113. On June 12, 2003, the station elevator at Back Bay was broken, so he had to take the subway train back to New England Medical Center station and then used his wheelchair to travel a mile and a half to work on the sidewalk.
114. On June 16, 2003, at 8:30 a.m. the elevator at North Station on the Orange Line to Oak Grove was broken. There were no signs indicating that the elevators were not working. Mr. Park called the elevator update number at 3:30 p.m., which said that all elevators were functioning normally. However, at 4:15 p.m. the elevator at North Station was still not working, and there were no signs to indicate that the elevator was broken.

115. On July 22, 2003, the elevator was down at Back Bay so Mr. Park had to go back to New England Medical station and use his wheelchair to get to work. He was half an hour late for work that day.
116. Another barrier that Mr. Park encounters when using the MBTA's trains is that the gap between the MBTA train cars and the platforms is sometimes too wide and his front wheels get stuck. To get on the train he has to back himself into the car and use his larger rear wheels. Mr. Park finds this to be a very awkward way to get onto a train. Getting into the train cars when only one half of the two doors is open poses another barrier to boarding. The doorway is too narrow for his electric wheelchair when only one of the doors opens.
117. On July 24, 2003. Mr. Park attempted to transfer from the Blue Line at State Street to the Orange Line. The elevator at State Street is very awkward to enter. The doors are very narrow and anyone using a wheelchair must turn around in the elevator to fit inside. Sometime after 8:00 a.m., Mr. Park tried to leave the elevator but he got stuck. Before he could reposition myself to exit the elevator, the door would close. He spent 45 minutes trying to get out of the elevator. Eventually someone to held the door open for him so he had time to turn and get out. He was over a half hour late for work that morning.
118. On July 25, 2003, at 7:50 a.m. the elevator at the commuter rail station in Central Square, Lynn was shut down. Mr. Park waited for the bus to Wonderland so he could get onto the Blue Line to get to work. Five buses passed him; two had non-working lifts, and three were non-lift buses. He could not wait any longer. Therefore, he went back home to get a ride to Wonderland in order to access the Blue line. On that day, the State Street station was not accessible and again he had to find an alternative accessible route. He went to

Government Center. The doors on the train shut too quickly and they shut on him. Mr. Park found himself hurrying to get off the train but then his wheels got caught in the gap between the train and the platform. He almost fell over, head first. He arrived at work at 10:45 a.m.

119. One chronic problem encountered by Mr. Park is the failure of bus drivers to make stop announcements. Mr. Park has to make a special request to the drivers to get them to call out his stops. If he forgets to ask the drivers to make the stop announcement, they will not do it. Mr. Park found that drivers also seem to be annoyed when they have to lower the lift or when it takes him a while to get on the lift and into the bus.
120. Mr. Park has had to change his lifestyle significantly in order to respond to accessibility problems with the MBTA. When he needs to use a bus, he plans for waiting for two or three buses before a bus with a working lift arrives. If the elevator is broken, then he knows that he has to take the train back to the last stop with a working elevator and travel to work, or to appointments, using his wheelchair for a long distance on busy downtown streets. The MBTA's broken lifts and broken elevators make it difficult for Mr. Park to get to work on time and to meet scheduled appointments.

Boston Center for Independent Living

121. Boston Center for Independent Living Inc. (BCIL) is a private non-profit organization, which is controlled and directed by persons with disabilities. BCIL is a consumer-controlled organization that has been providing services, community education, advocacy and employment for individuals with disabilities since 1974.
122. As mandated by BCIL's organizational articles and overall philosophy, the majority of BCIL staff and board are people with disabilities. BCIL's mission statement, as stated in

their articles of organization, is “We empower others and ourselves with disabilities to advocate and take control over our lives, and become active members of the communities in which we live. As a center we work to promote the civil rights of all people with disabilities and to respond to the needs of persons with many different disabilities.”

123. BCIL's goals are to empower people with disabilities with the practical skills and self-confidence to freely determine their own life choices in the community; and, to promote access and change within society, to make full and equal participation by individuals with disabilities a reality.
124. At present there are approximately 25 BCIL staff providing services to more than 7000 individuals annually. BCIL volunteers provide an additional 100 hours or more services monthly.
125. The BCIL Board of Directors is made up of 15 members representing different interests in the community and is diverse in disability, race and occupation.
126. BCIL collaborates with many local, statewide and national organizations including, but not limited to: The Disability Law Center, ten independent living centers in Massachusetts, Massachusetts Office on Disabilities, Boston Community Medical Group, Department of Mental Retardation and The Boston Self Help Center.
127. Consumers set the policy and direction of BCIL, provide assistance to other consumers as peers and represent visible role models of successful independent living.
128. Inherent in BCIL's philosophy of independent living is a focus on assisting staff, consumers and members in obtaining rights, services and full access to the many life activities that exist in the community at large.

129. Access to the MBTA's fixed route public transportation system is vital to meeting BCIL's mission and goal of full access to the many life activities that exist in the community at large.
130. Due to the defendant's systemic failure to provide basic and necessary public transportation services to BCIL's employees, consumers, and members, BCIL as an organization is harmed.
131. BCIL staff members Andrew Forman and Robert Park are persons with disabilities. Both men are members of BCIL as defined under BCIL's bylaws. Both men are regular consumers of the services provided by the MBTA. As a result of the MBTA's failure to provide accessible buses and trains Mr. Forman and Mr. Park have been harmed by being late to work, missing business appointments, and spending time documenting for their employer the incidents of accessibility failures caused by the MBTA. This results in delays in visiting clients and performing other work for BCIL.
132. The difficulties encountered by staff members using the MBTA directly harm the operational services of BCIL. BCIL employees have missed work appointments, have been late to work, and have experienced difficulty meeting clients because of broken wheelchair lifts, the lack of stop announcements and broken elevators.
133. BCIL suffers real and ongoing harm because employees are unable to engage in BCIL's work as a result of the MBTA's accessibility failures.
134. The harm to BCIL is visible when BCIL expends resources in the form of mentoring services to consumers harmed by the MBTA. BCIL must also reschedule appointments for clients who are unable to attend skills training sessions due to an inability to access the MBTA.

135. Due to the barriers encountered by BCIL's staff, consumers and members as a result of defendant's failure to provide readily accessible to and usable transportation services to persons with disabilities, the organization is prevented from meeting its goals and mission to: empower people with disabilities with the practical skills and self-confidence to freely determine their own life choices in the community; to promote access and change within society; and to make full and equal participation by individuals with disabilities a reality.

POLICIES AND PRACTICES OF THE MBTA

136. The MBTA is the fourth largest transit system in the United States. It boasts the oldest subway transit system in the nation. The MBTA's service district includes seventy-eight communities in Eastern Massachusetts, providing approximately 819,700 one-way passenger trips per day with a daily ridership of over 1,052,750. The MBTA employs a workforce of approximately 6,500 persons and operates 365 days a year. In 2001 the MBTA reported to the Federal Transit Administration revenue from fares totaling \$250,311,545; funds from federal assistance totaling \$91,125,876; and total operating funds from fares, local, state, federal and other sources totaling \$898,950,623. By the MBTA's own figures at least ten percent of the MBTA's total operating funds are derived from the federal government.

137. The U.S. Census Bureau estimates that in the year 1991 over 49 million Americans had a disability. The presence of a disability creates an increased likelihood of poverty. For this reason it is more likely that persons with disabilities will require accessible public transportation for daily travel. The U.S. census conducted in the year 2000 demonstrates

that there are approximately 1,084,746 persons with disabilities (age five and over) residing in Massachusetts. In the Boston area and nearby suburbs, there are 145,514 persons with disabilities in Suffolk County, 217,049 in Middlesex County, 125,438 in Essex County, and 89,792 in Norfolk County.

138. The MBTA runs buses and trains in the city and nearby suburbs that are regularly used by plaintiffs and other persons with disabilities. Plaintiffs are regularly prevented from readily using the MBTA. Some plaintiffs cannot access the MBTA at all, others are not able to use it in a manner equal to the non-disabled population when they need to do so.
139. The MBTA operates fixed route transit lines along prescribed routes according to a fixed route schedule as these terms are used in the ADA. 42 U.S.C. §12141(3).
140. The MBTA advertises and holds itself out to the public as offering routes on its buses and trains that are accessible to riders with disabilities.
141. On a persistent, ongoing, and systemic basis the defendant has failed to provide the plaintiffs with equal access to the fixed route public bus and train lines that it operates. Through its acts and omissions, set out more fully in the paragraphs that follow, the defendant has denied the plaintiffs equal access to the buses and trains that it operates.

Bus Lines

142. Defendant has failed to make the MBTA's fixed route public bus system readily accessible to and usable by plaintiffs and other persons with disabilities by, among other things:
 - a. Failing to adequately inspect, maintain, and service mechanical assistive devices such as bus lifts, which are needed to allow persons with mobility impairments to board and disembark. Lifts on defendant's buses, marked in the schedule and on

the bus itself as accessible, are frequently malfunctioning or non-functioning, thereby denying basic public transportation services to plaintiffs and other people with disabilities;

- b. Failing to adequately inspect, maintain, and service the bus doors through which persons with mobility impairments board and disembark. The doors and steps on defendant's buses, marked in the schedule and on the bus itself as accessible, are frequently malfunctioning or non-functioning, thereby denying basic public transportation services to plaintiffs and other individuals with disabilities;
- c. Failing to adequately inspect and maintain the safety equipment such as clamps used to secure the wheelchairs of persons with mobility impairments on buses, and the belts and straps used to secure people with mobility impairments inside buses. These vital safety devices are frequently missing, malfunctioning, or non-functioning;
- d. Failing to adequately train and supervise its employees, including drivers, regarding the proper and safe use of the accessibility and safety devices necessary to provide equal access to persons with disabilities on the buses the MBTA operates, including lifts, doors, clamps, and safety straps;
- f. Frequently and persistently placing non-accessible buses on bus lines marked in the schedule or in other ways purported to be bus lines accessible to people with disabilities, including people who use wheelchairs;
- g. Frequently and persistently failing to provide alternative transportation for people with disabilities during renovations/construction of city streets.

- h. Frequently and persistently failing to assign a sufficient number, as determined by MBTA's own analysis, of buses with working lifts to bus lines designated as accessible to persons with disabilities, including persons who use wheelchairs;
- i. Frequent and persistent failure of MBTA bus drivers' and other personnel to properly and safely use the assistive devices needed to provide equal access to persons with disabilities on bus lines operated by the defendants, including lifts, doors, clamps, and safety straps. On numerous occasions, defendant's employees have failed to, lacked knowledge of the proper use of, or openly refused to operate these assistive devices, seriously endangering plaintiffs' health and safety.
- j. Frequent and persistent failure of MBTA bus drivers' to stop for or to pick up plaintiffs and other riders who have clearly identifiable disabilities and are waiting at bus stops, because of plaintiffs' disabilities.
- k. Frequent and persistent failure of MBTA bus drivers to allow persons with disabilities to board buses because of their disabilities.
- l. Frequent and persistent failure of MBTA bus drivers to deploy lifts or lower the buses' "kneeling" mechanism, when requested by plaintiffs or other people whose disabilities are not readily apparent.
- m. Frequent and persistent failure of MBTA bus drivers to provide plaintiffs or other persons with disabilities with adequate time to complete their boarding or disembarking from defendant's vehicles before continuing en route.
- n. Frequent and persistent failure of MBTA bus drivers to clearly announce the bus number and make stop announcements, severely impeding the ability of visually impaired persons to know when to disembark defendant's buses; and

- o. Frequent and persistent tendency of MBTA personnel to treat individuals with disabilities in a discourteous and unprofessional manner because of their disabilities, including MBTA employee's failure to adequately document and address complaints about accessibility to the MBTA bus system.

Train Lines

143. Defendant has failed to make the MBTA's fixed route public train system readily accessible to and usable by plaintiffs and other persons with disabilities by, among other things:

- a. Frequent and persistent failure to maintain elevators in MBTA stations in operating condition;
- b. Frequent and persistent failure to adequately supervise and monitor the cleanliness of elevators in MBTA stations;
- c. Failing to provide accurate and conspicuous information, at stations and/or over the telephone, as to whether or not elevators in specific MBTA stations are in service;
- d. Frequent and persistent failure to provide prompt alternative accessible transportation to riders with mobility disabilities when a designated accessible station is not in fact accessible to said riders;
- e. Frequent and persistent failure of MBTA employees' to respond to calls from riders with disabilities seeking assistance in accessing the public train system;
- f. Failing to eliminate gaps between station platforms and train cars so riders with mobility impairments can safely board or disembark trains;

- h. Failing to employ adequate numbers of personnel to ensure that riders with disabilities have equal access to the trains and the train stations in general;
- i. Failing to provide an adequate number of designated wheelchair spaces on trains and to properly mark and designate those cars that do have wheelchair spaces;
- j. Failing to implement a proper emergency evacuation program for the safe evacuation of riders with disabilities;
- k. Frequent and persistent failure of MBTA employees to provide sufficient time for persons with disabilities to board and disembark from the trains;
- l. Frequent and persistent failure of MBTA employees, upon arriving at a given station, to clearly announce the train line and destination and current stop, severely impeding the ability of visually impaired persons to know when to board or disembark from the defendant's trains;
- m. Frequent and persistent failure to provide accessible paths of travel for people with disabilities, including persons who use wheelchairs, in and around MBTA stations;
- n. Frequent and persistent failure to provide alternative transportation for people with disabilities during renovations/construction of city streets;
- o. Frequent and persistent tendency of MBTA employees to treat plaintiffs and other individuals with disabilities in a discourteous and unprofessional manner, because of their disabilities, including MBTA employees' failure to adequately document and address complaints about accessibility to the MBTA train system.

144. Defendant's conduct, as set forth herein, violates clearly established federal law.

145. Defendant is continuing to discriminate against plaintiffs and other persons with disabilities based on their disabilities by denying plaintiffs and other persons with disabilities equal access to fixed route public transit, resulting in ongoing and irreparable injury.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

VIOLATION OF TITLE II OF THE AMERICANS WITH DISABILITIES ACT, 42 U.S.C. §12131 ET SEQ., BY THE MBTA

146. In enacting the Americans with Disabilities Act of 1990 ("ADA"), Congress made specific findings that society tends to isolate and segregate people with disabilities; that individuals with disabilities continually encounter various forms of discrimination, including not only exclusion but also the failure to make modifications to exclusionary criteria. Congress stated that the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; that the continuing existence of unfair and unnecessary discrimination denies individuals with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous; and that continuing existence of discrimination and prejudice against people with disabilities cost the United States billions of dollars in unnecessary expenses. 42 U.S.C. §12101(a).
147. The express purpose of the ADA is to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities; to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities; and to ensure that the federal government plays a central

role in enforcing the standards established in the Act on behalf of individuals with disabilities. 42 U.S.C. §12101(b).

148. Each individual plaintiff is a "qualified individual with a disability" under the meaning of Title II of the ADA, 42 U.S.C. §12131(2). The organizational plaintiff Boston Center for Independent Living includes members and staff who are qualified individuals with disabilities under the meaning of Title II of the ADA, 42 U.S.C. §12131(2).
149. The MBTA is a "public entity" within the meaning of Title II of the ADA. 42 U.S.C. §12131(1).
150. The MBTA operates a fixed route system of public transportation, under the meaning of Title II of the ADA. 42 U.S.C. §12141(3).
151. Through the acts and omissions alleged herein, the defendant has, by reason of plaintiffs' disabilities; excluded plaintiffs from participation in the MBTA programs, services and activities; denied plaintiffs the benefits of the MBTA programs, services, and activities; and subjected plaintiffs to discrimination in violation of Title II of the ADA, 42 U.S.C. §12132.
152. The defendant's acts and omissions are in violation of the equal access and nondiscrimination requirements set forth in Title II of the ADA, and the regulations promulgated thereunder, and have resulted in injury to plaintiffs.
153. The defendant's conduct constitutes an ongoing and continuous violation of Title II of the ADA and, unless restrained and enjoined from doing so, the MBTA will continue to violate Title II of the ADA. The defendant's acts and omissions, unless enjoined, will continue to inflict irreparable injuries for which plaintiffs have no adequate remedy under the law.

SECOND CAUSE OF ACTION

VIOLATION OF SECTION 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED, BY THE MBTA

154. Each individual plaintiff is an "otherwise qualified individual with a disability" under the meaning of Section 504 of the Rehabilitation Act, 29 U.S.C. §794 ("Section 504"). The organizational plaintiff Boston Center for Independent Living includes members and staff who are otherwise qualified individuals with a disabilities under the meaning of Section 504 of the Rehabilitation Act, 29 U.S.C. §794 ("Section 504").
155. The MBTA receives a significant portion of its operating funds from Federal sources, therefore it operates a "program or activity receiving Federal financial assistance" as defined by Section 504.
156. Through the acts and omissions alleged herein, the MBTA has, by reason of plaintiffs' disabilities: excluded the plaintiffs from participation in the MBTA's programs, services and activities, denied the plaintiffs the benefits of the MBTA's programs, services, and activities, and subjected the plaintiffs to discrimination.
157. The defendant's acts and omissions set forth herein are in violation of the equal access and nondiscrimination requirements set forth in Section 504, and the regulations promulgated thereunder, and have resulted in injury to plaintiffs.
158. The defendant's conduct constitutes an ongoing and continuous violation of Section 504 and, unless restrained and enjoined from doing so, the defendant will continue to violate Section 504. The defendant's acts and omissions, unless enjoined, will continue to inflict irreparable injuries for which plaintiffs have no adequate remedy under the law.

PRAYER FOR RELIEF

WHEREFORE, the plaintiffs pray that this Honorable Court order relief as follows:

1. Certify the class described in the complaint;
2. Declare that the defendant's acts and omissions complained of herein deny the plaintiffs equal access to public transportation in violation of the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973 and regulations thereunder as alleged in the complaint;
3. Issue a permanent injunction to require defendant to comply with the Americans with Disability Act of 1990 and Section 504 of the Rehabilitation Act of 1973, and regulations enacted thereunder, with respect to providing individuals with disabilities full and equal access to its public transportation operation and system, by among other things:
 - a. Assuring that buses scheduled to be, and/or marked as, accessible to persons with disabilities actually be accessible by adequately inspecting, maintaining and servicing all mechanical assistive devices such as: bus lifts, bus doors, safety clamps and belts;
 - b. Assuring by a routine of monitoring and maintenance that all other necessary assistive devices such as: bridge plates, telecommunication devices, LED displays, signage, and other devices as required by law or regulation are in place, fully operational, and can be used by consumers in a safe manner;
 - c. Assuring by a routine of monitoring and maintenance that each subway station has at least one elevator that is fully operational, in working order, providing access to all train lines served by the station (in both directions), well lighted both inside the cab and in the elevator boarding areas, sanitary both inside the cab and

in the elevator boarding areas, and adequately patrolled to ensure the safety of the consumers. If an elevator is not operational, a system must be in place to alert consumers in transit, such as clear and audible announcements made over the public announcement system on the trains as well as in the station, and signs posted in conspicuous locations on the subway trains, as well as in the station, alerting consumers to the location of the station where the elevator is out of service, and providing directions to the nearest station with an operational elevator;

- d. Clear and audible announcements shall be made over the public address system of buses and trains in a timely and consistent manner at each stop announcing the current location of the vehicle and its destination;
- e. The MBTA will assure that all bus and train operators are adequately supervised and trained to provide reasonable assistance to all individuals with disabilities assuring equal access to the MBTA. This training must include but is not limited to operating mechanical assistive and safety devices, sensitivity to the unique travel needs of persons with disabilities, and ensuring that individuals with disabilities have priority access seats that are designated for the elderly and disabled;
- f. Each and every bus must approach all bus stops and stations at a safe and appropriate speed, and must come to a stop at a distance from the curb close enough to ensure reasonable safety to disembarking passengers with disabilities;

- g. Assuring by a routine of monitoring and maintenance that each bus stop or station shall be free and clear of all impediments, including but is not limited to illegally parked vehicles, snow, ice, or any other type of debris;
 - h. Assuring that alternative transportation will be provided for people with disabilities during renovations/construction of city streets;
 - i. Assuring by a routine of monitoring and maintenance that paths of travel within and around MBTA stations are accessible to people with disabilities, including those who use wheelchairs, and are free of obstructions;
 - j. Establishing a monitor and system of monitoring and reporting, independent of the MBTA's current system, accountable to the community and responsible to track the MBTA's performance in responding to the violations and prayers for relief listed above. The monitor will compile data on the MBTA's progress and complaints having to do with disability access or accommodations;
4. Issue a permanent injunction to require the defendant to refrain from discriminating against individuals with disabilities who use their public transportation system;
 5. Award the plaintiffs their attorneys' fees, litigation expenses and costs; and
 6. Grant such further relief as is equitable and just.

JOANNE DANIELS-FINEGOLD, et al
Plaintiffs

Dated: February 4, 2004

BY THEIR ATTORNEYS :

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