

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

PHILLIP FREEMAN \*  
3531 Hayward Ave. \*  
Baltimore, MD 21215 \*  
Baltimore City, \*

DEBORAH BENADERET \*  
16 Old Court Rd. #311 \*  
Pikesville, MD 21208 \*  
Baltimore County, \*

DANIELLE PHELPS \*  
706 Stone Barn Court \*  
Towson, MD 21286 \*  
Baltimore County, \*

FLOYD HARTLEY \*  
3044 E. Federal St. \*  
Baltimore, MD 21213 \*  
Baltimore City, and \*

MARYLAND DISABILITY \*  
LAW CENTER \*  
1500 Union Ave., Suite 2000 \*  
Baltimore, MD 21211 \*  
Baltimore City, \*

Plaintiffs, \*

v. \*

PETE K. RAHN \*  
Secretary, DOT \*  
7201 Corporate Center Drive \*  
Hanover, MD 21076 \*  
Anne Arundel County, \*

Civil No. CCB-15-cv-149

PAUL COMFORT  
Administrator, MTA  
6 St. Paul St.  
Baltimore, MD 21202  
Baltimore City, and

MARLON BATES  
Director, MTA Mobility  
4201 Patterson Avenue, 2nd Floor  
Baltimore, MD 21215  
Baltimore City,

in their official capacities,

Defendants.

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**AMENDED COMPLAINT FOR PRELIMINARY AND PERMANENT  
INJUNCTIVE AND DECLARATORY RELIEF**

Plaintiffs, by and through their undersigned counsel, on their own behalf and on behalf of all others similarly situated, sue State Defendants in their official capacities for discrimination in the provision of paratransit services, a public transportation service provided by the State to qualified individuals with disabilities who cannot access the State’s fixed route public transit system.

**I. INTRODUCTION**

1. This is an action for declaratory, injunctive, and equitable relief to remedy Maryland Department of Transportation’s (“MDOT”) and Maryland Transit Administration’s (“MTA”) (collectively referred to as “Defendants”) continuing violations of Plaintiffs’ right to access essential paratransit services pursuant to

Title II of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. § 12101 *et seq.*, Section 504 of the Rehabilitation Act of 1973 (“Rehabilitation Act”), 29 U.S.C. § 794 *et seq.*, the regulations promulgated under these statutes, and 42 U.S.C. § 1983.

2. Defendants operate public transportation services in Maryland and operate the paratransit services in Baltimore City and within select parts of Baltimore and Anne Arundel Counties.

3. Plaintiffs are four qualified individuals with disabilities who have used Defendants’ paratransit service and have been subjected to prohibited discrimination due to Defendants’ patterns and practices, and an organization whose constituents are persons with disabilities who use or have attempted to use Defendants’ paratransit service and have been subjected to prohibited discrimination (collectively “Plaintiffs”).

4. Defendants’ operational patterns and practices illegally exclude Plaintiffs from equal participation and meaningful access to the benefits of public transportation services.

5. Defendants’ flawed eligibility process fails to properly apply statutory eligibility criteria, impermissibly excludes Plaintiffs from service, and operates in a discriminatory manner in violation of the ADA.

6. Defendants' operational patterns and practices subject Plaintiffs to illegal discrimination by substantially limiting their access to paratransit service due to inadequate telephone and call center operations. Paratransit riders use the call center to schedule rides, inquire about late rides, cancel rides, request eligibility applications or appointments, make complaints, and for other purposes. Due to the constraints of Defendants' telephone and call center operations, Plaintiffs have been informed that their calls cannot be connected to a call agent; received a busy signal or dead air instead of connecting to Defendants' call center; been disconnected; and put on hold for unreasonably long periods of time.

7. Plaintiffs who need paratransit service to travel to and from dialysis, doctors' appointments, work, or for other life activities are impermissibly denied access to essential transportation service by Defendants' operational patterns and practices, in violation of federal law.

8. Dialysis social workers, Maryland Disability Law Center, and paratransit riders repeatedly have complained to MDOT or MTA about the systemic discrimination qualified individuals with disabilities experience while attempting to access paratransit services. In August 2014, the Federal Transit Administration met with MTA officials to report its findings that Defendants' eligibility process and telephone operations do not comply with the ADA.

9. Defendants' actions have caused major hardship and disruption in Plaintiffs' lives. Individuals who are eligible to access paratransit service, including individuals who have relied upon paratransit service for years and need the service to travel to and from life-sustaining medical treatment, have been and risk being improperly denied access to paratransit service.

10. Defendants' operational patterns and practices illegally limit the availability of paratransit services to eligible individuals, constitute illegal capacity constraints, fail to provide paratransit service for individuals with disabilities that is comparable to public transit services available to individuals without disabilities; and, in other ways set forth below, fail to provide Plaintiffs with a paratransit system that complies with federal law. Plaintiffs are entitled to declaratory, injunctive, and equitable relief.

## **II. JURISDICTION AND VENUE**

11. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1343(a)(3).

12. This Court has jurisdiction over Plaintiffs' request for declaratory judgment pursuant to 28 U.S.C. §§ 2201.

13. Venue of this action properly lies in the District of Maryland, Northern Division, pursuant to 28 U.S.C. § 1391(b)(2) because the events and omissions giving rise to Plaintiffs' claims are occurring in this District and Division.

## **III. PARTIES**

14. Plaintiff Phillip Freeman is a fifty-one year old resident of Baltimore City, Maryland. He is in end stage renal failure and has other health related impairments. He is a qualified individual with a disability under federal law. He was certified as eligible and used Defendants' paratransit services from 2011 until MTA denied his recertification request in September 2014. Mr. Freeman uses Defendants' paratransit services to attend dialysis treatments, other healthcare appointments, and activities of daily life and will be irreparably harmed if he is unable to access paratransit. Mr. Freeman suffers irreparable harm from the access limitations imposed by Defendants' operational patterns and practices and is at risk of future harm due to Defendants' illegal eligibility determination process.

15. Plaintiff Deborah Benaderet is a sixty-four year old resident of Baltimore City, Maryland. She has psychiatric disabilities. She is a qualified individual with a disability under federal law. Ms. Benaderet was certified as eligible for Defendants' paratransit services for ten years until she was denied recertification in December 2013. Ms. Benaderet uses paratransit services to attend regular mental health appointments and for other reasons. She suffers irreparable harm from the access limitations imposed by Defendants' operational patterns and practices and is at risk of future harm due to Defendants' illegal eligibility determination process.

16. Plaintiff Danielle Phelps is a thirty-eight year old resident of Towson, Maryland. She has a neurological disability and uses a wheelchair for mobility.

She is a qualified individual with a disability under federal law. Ms. Phelps has used Defendants' paratransit services for the past three years. She will have to re-apply for eligibility in February 2015. Ms. Phelps uses paratransit services to go to and from work and for other activities of daily life. She suffers irreparable harm from the access limitations imposed by Defendants' operational patterns and practices and is at risk of future harm due to Defendants' illegal eligibility determination process.

17. Plaintiff Floyd Hartley is a sixty-two year old resident of Baltimore City, Maryland. He has juvenile onset rheumatoid arthritis and uses a power wheelchair for mobility. He is a qualified person with a disability under federal law. Mr. Hartley has used Defendants' paratransit service for fifteen years. Mr. Hartley uses paratransit services to attend meetings, for health care appointments, to attend church, and for other activities of living. Mr. Hartley has experienced significant difficulties in accessing Defendants' paratransit services due to the constraints of its call center operations. While currently eligible for Defendants' paratransit service, he will be required to re-apply for eligibility. He suffers irreparable harm from the access limitations imposed by Defendants' operational patterns and practices and is at risk of future harm due to Defendants' illegal eligibility determination process.

18. Plaintiff Maryland Disability Law Center (MDLC), located in Baltimore City, has been designated by the State of Maryland as the state's federally required Protection and Advocacy agency.. Congress created Protection and Advocacy agencies to serve the interests of persons with disabilities. MDLC is obligated to advocate for and protect the legal rights of persons with disabilities. 42 U.S.C. § 15043; 42 U.S.C. § 10805; 29 USCS § 794e. MDLC has associational standing to represent the interests of qualified people with disabilities who use or are eligible to use Defendants' paratransit service and who have been or will be subjected to prohibited discrimination due to Defendants' actions. The individuals on whose behalf MDLC stands would otherwise have standing to sue in their own right. The transportation interests that MDLC seeks to protect are germane to its purpose. In addition, MDLC is a client-focused organization and receives guidance from its constituents in various ways:

- a. MDLC is controlled by a Board of individuals who represent the needs of clients served by MDLC and includes individuals who have received or are receiving services. As required by federal law, the Board includes significant representation of individuals with disabilities.
- b. MDLC seeks input from its constituents in setting its priorities and activities, including individuals with, and family members of, people with disabilities. Community inclusion is one of MDLC's priority areas



- under this plan and transportation has been identified as an area of importance for persons with disabilities.
- c. MDLC has a grievance process to assure it operates for its clients.
  - d. MDLC established a paratransit complaints line in 2014 to collect and investigate complaints from paratransit riders, has interviewed and reviewed records of paratransit riders and applicants, has developed educational materials related to the rights of paratransit riders, has provided outreach and training for paratransit riders, and for over a decade has represented the interests of paratransit riders, including through a previous class action lawsuit. MDLC has a long history of engaging with Defendants regarding issues with its paratransit system.
  - e. MDLC initiated a rider self-advocate group, Consumers of Accessible Ride Services (CARS), which meets monthly and is comprised of MTA paratransit riders. CARS provides guidance and advice to MDLC related to Defendants' paratransit service and has specifically provided information and advice related to the subjects of this Action.

19. Defendant Pete K. Rahn is the Secretary of the Maryland Department of Transportation which has operations in the State of Maryland and headquarters in Hanover, Maryland. Defendant Rahn is the Chief Executive Officer of MDOT, of which the Maryland Transit Administration is a constituent agency. In that

capacity, he is responsible for identifying within MDOT's annual budget the amount of funding necessary for disability transportation service in each county in Maryland. Md. Code Ann., Transp. § 2-103.3(b)(1) (LexisNexis 2014). He is also responsible for monitoring the use of such funds. *Id.* § 2-103.3(h). He is responsible for overseeing the MTA and ensuring that no individual with a disability is excluded from participating in, or denied the benefits of, the services, programs or activities of MDOT. He is further responsible for ensuring that MDOT does not otherwise discriminate against any person with a disability. MDOT is a public entity within the meaning of Title II of the ADA, 42 U.S.C. §12131(1), and is subject to the paratransit provisions of Part B of Title II, 42 U.S.C. §12141 *et seq.* MDOT is a recipient of federal financial assistance pursuant to Section 504 of the Rehabilitation Act, 29 U.S.C. § 794. Secretary Rahn is sued in his official capacity.

20. Defendant Paul Comfort is the Administrator and CEO of the Maryland Transit Administration. He is responsible for the management of the paratransit system and is responsible for ensuring that no individual with a disability is excluded from participating in, or denied the benefits of, the services, programs or activities of MDOT. He is responsible for operating the paratransit system in compliance with the law. He is further responsible for ensuring that the MTA does not otherwise discriminate against any person with a disability. MTA is a public

entity within the meaning of Title II of the ADA, 42 U.S.C. §12131(1), and is subject to the paratransit provisions of Part B of Title II, 42 U.S.C. §§ 12141 *et seq.* MTA is a recipient of federal financial assistance pursuant to Section 504 of the Rehabilitation Act. The MTA headquarters is located in Baltimore City, Maryland. Mr. Comfort is sued in his official capacity.

21. Defendant Marlon Bates is Director of MTA paratransit services, with offices headquartered in Baltimore City, Maryland. Mr. Bates is responsible for the day to day operations of the paratransit system and for operating the service in compliance with federal and state law. He is responsible for ensuring that no individual with a disability is excluded from participating in, or denied the benefits of, the services, programs or activities of MTA. The paratransit system receives federal financial assistance pursuant to Section 504 of the Rehabilitation Act and operates as a public entity. Mr. Bates is sued in his official capacity.

#### **IV. FACTS COMMON TO ALL PLAINTIFFS**

22. Congress enacted the ADA upon finding that “society has tended to isolate and segregate individuals with disabilities” and that such forms of discrimination “continue to be a serious and pervasive social problem.” 42 U.S.C. § 12101(a)(2).

23. Congress intended the ADA to provide “a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities” and to establish “clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities.” 42 U.S.C. § 12101(b)(1), (2).

24. Title II of the ADA protects individuals with disabilities from discrimination by public entities, including state and local governments. 42 U.S.C. § 12131. Title II of the ADA specifically provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132.

25. Congress considered access to public transportation to be a critical means of achieving the goals of the ADA. As articulated by the House Committee on Education and Labor, “[t]ransportation is the linchpin which enables people with disabilities to be integrated and mainstreamed into society.” H.R. Rep. No. 101-485(II), at 37 (1990), *reprinted in* 1990 U.S.C.C.A.N. 303, 319.

26. Recognizing the fundamental importance of transportation services and the lack of access to transportation encountered by persons with disabilities, Title II, Part B of the ADA requires public entities that provide fixed route public transportation services (bus and rail car service that does not deviate from a fixed,

predetermined route), to provide paratransit service for individuals whose disabilities prevent them from using the fixed route system. Paratransit service operates as a shared ride service where vehicles travel on a schedule and route that varies according to the needs of the individuals.

27. Pursuant to Title II of the ADA, Defendants are required to operate paratransit service in a manner that is comparable to transit service offered to individuals without disabilities, without capacity constraints.

28. Defendants are recipients of federal financial assistance and are therefore subject to the requirements of the Rehabilitation Act and its implementing regulations, which require Defendants to operate the paratransit service in compliance with all requirements of the ADA. 49 C.F.R. § 27.19. Thus, any violations of the ADA are necessarily violations of the Rehabilitation Act. Where this Complaint references ADA violations, Plaintiffs are simultaneously referencing violations of the Rehabilitation Act.

#### **A. The Eligibility Process**

29. Pursuant to 42 U.S.C. Section 12143(b) of the ADA, the Department of Transportation (“DOT”) is required to promulgate regulations to implement the ADA’s requirements. The regulations must instruct that public entities, such as Defendants, provide paratransit services to:

- (1) Eligible recipients of service

The regulations issued under this section shall require each public entity which operates a fixed route system to provide the paratransit and other special transportation services required under this section--

(A) (i) to any individual with a disability who is unable, as a result of a physical or mental impairment (including a vision impairment)....to board, ride, or disembark from any vehicle on the system which is readily accessible to and usable by individuals with disabilities;  
.....and

(iii) to any individual with a disability who has a specific impairment-related condition which prevents such individual from traveling to a boarding location or from a disembarking location on such system.

42 U.S.C. § 12143(c)(1)(A)(i), (iii).

30. DOT's regulations implementing the ADA are set forth in 49 C.F.R. part 37 subpart F.

31. The ADA regulations promulgated by the DOT permit public entities to require individuals to re-apply or recertify their eligibility for paratransit services periodically. Defendants require such recertification every three years. Defendants use the same process for initial and recertification eligibility determinations.

32. Defendants' operational patterns and practices for eligibility determinations do not comply with statutory requirements of the ADA and exclude eligible individuals based on impermissible factors. As a result, new applicants are wrongfully denied eligibility and individuals who previously were certified as eligible and whose condition has not improved (or has worsened) inexplicably

have been denied eligibility for paratransit. Because such individuals are unable to use the fixed route public transportation because of their disabilities, they are deprived of essential public transportation services and are irreparably harmed.

33. Defendants illegally deny eligibility upon a finding that an applicant uses the fixed route service. Federal law recognizes that individuals may be able to use portions of the fixed route system, but individuals are still eligible for paratransit if they are prevented from using the entire system under all circumstances.

42 U.S.C. § 12143(c)(1)(A)(i), (iii).

34. For example, individuals who use manual wheelchairs may be affected by distances to or from certain bus stops, lack of sidewalks or curb ramps, steep hills, or snowy or icy conditions. Individuals may be able to get to some bus stops when the distance is not too far and when they are feeling well, but not when they are fatigued from dialysis, chemotherapy, or other impairment-related conditions. Individuals with certain psychiatric or intellectual disabilities may be able to navigate short, routine bus trips but not long, complex or unfamiliar environments, and individuals may not possess the skills necessary to safely travel independently. Defendants' operational pattern and practice of denying eligibility upon a finding that the applicant has used the fixed route system is not consistent with the ADA requirement to consider such factors in making eligibility determinations and results in impermissible denials of access to the paratransit system.

35. Defendants also illegally deny recertification of eligibility upon a finding that an applicant has a history of non-use of paratransit service. Use of the paratransit service is not relevant to the federally-required eligibility criteria and it is improper for Defendants to deny service on this basis. In addition, there are many valid reasons why an individual may not have used the service they are eligible for, including that an individual may have been living in a nursing facility or rehabilitation center or may have had other transportation service available, such as from a family member, for a temporary period of time. Defendants' denial of eligibility based upon a lack of use of the paratransit system does not comply with federal law and results in impermissible denials of access to the paratransit system.

36. Federal law requires that all eligibility determinations must be in writing, and if eligibility is denied, the letter must state with specificity the reason for the denial. 49 C.F.R. § 37.125(d). DOT regulations provide that "the reasons must specifically relate the evidence in the matter to the eligibility criteria of this rule and of the entity's process. A mere recital that the applicant can use fixed route transit is not sufficient." 49 C.F.R. part 37, App. D p. 503 (2012).

37. The denial notices routinely used by Defendants fail to state with specificity the reasons why Defendants have determined an applicant fails to meet statutory eligibility criteria. The notices fail to identify key pieces of information or observations that led to Defendants' decision.



38. Defendants' denial notices rely upon boilerplate language, which may be phrased in the alternative, such that an applicant does not know the specific reasons for the denial. For instance, denial letters state:

Your usage of regular fixed route service and/or absence of use of Mobility [paratransit] service for the last three years indicates that you are not prevented from using fixed route service.

See example, Ex. 1.

39. Defendants' operational pattern and practice of failing to state with specificity the reasons for the denial violates Plaintiffs' rights and diminishes their access to a meaningful appeal.

40. Defendants' eligibility process fails to provide presumptive eligibility to applicants when eligibility determinations are not made within 21 days. Federal regulations provide that "[i]f, by a date 21 days following the submission of a complete application, the entity has not made a determination of eligibility, the applicant shall be treated as eligible and provided service until and unless the entity denies the application." 49 C.F.R. § 37.125(c). The 21 days is measured from the date of the in-person interview required of all applicants. 49 C.F.R. part 37, App. D p. 503 (2012). Defendants do not have a mechanism to allow applicants who do not receive a written determination within 21 days to schedule a ride through a reservation line as part of their presumptive eligibility rights.

41. Defendants' personnel and processes fail to elicit comprehensive and relevant information from applicants to ensure appropriate eligibility decisions. Information obtained in the current process does not allow Defendants to fully consider the connections between the variety of individuals' disabilities and causes of transportation limitations that may qualify applicants for paratransit according to federal law, resulting in erroneous determinations.

42. Defendants' personnel have not been trained to proficiency to make determinations regarding eligibility, resulting in erroneous determinations. To the extent that Defendants use contractual personnel in the eligibility determination process, Defendants must ensure that its contractors comply with the ADA, 49 C.F.R. § 37.23(a).

43. A recent Federal Transit Administration ("FTA"), ADA Compliance Review of Defendants' paratransit service made numerous findings of non-compliance related to Defendants' eligibility process. *See* Federal Transit Administration, *Maryland Transit Administration Paratransit Compliance Review Final Report*, Dec. 16, 2014, 15-23, available at, [http://www.fta.dot.gov/documents/MTA\\_Paratransit\\_Final\\_Report\\_12.16.14.pdf](http://www.fta.dot.gov/documents/MTA_Paratransit_Final_Report_12.16.14.pdf) (finding deficiencies with the comprehensiveness and accuracy of MTA's eligibility process and the protocols and standards used to determine ADA paratransit eligibility. This included: inaccurate and incomplete assessment of an applicants' ability to travel

throughout the complementary paratransit service area; failure to consider path-of-travel barriers for applicants who use mobility devices; inaccurate and incomplete assessment of an applicants' independent abilities to use fixed route transit; inappropriate eligibility denials based on past use of paratransit service; inappropriate eligibility denials based on non-use of paratransit service; inappropriate eligibility denials without clarifying possible inconsistencies).

44. Plaintiffs have suffered injury and irreparable harm or are at risk of injury and irreparable harm from being subjected to an eligibility process that does not comply with the requirements of the ADA. Frequently, individuals with disabilities who cannot access Defendants' fixed route system have no other transportation options.

45. Plaintiffs are individuals with disabilities who need reliable access to public transportation to travel to work, school, doctors' appointments, dialysis treatments, and other essential activities of daily life. Being improperly denied eligibility for paratransit service can condemn Plaintiffs to an isolated existence, or as in the case of some Plaintiffs, prevent access to critically necessary medical care. As all paratransit users are similarly subjected to Defendants' eligibility and recertification process, the allegations regarding Defendants' unlawful patterns and practices affect or will affect all Plaintiffs.

## **B. Telephone Operations**

46. Defendants established a call center as part of its paratransit service operations. The call center is staffed by reservation agents who respond to individuals' calls to schedule rides, inquire about late rides, cancel rides, request eligibility applications or appointments, make complaints, and for other purposes.

47. Defendants' paratransit call center operations do not provide the technological or human capacity to answer the volume of calls necessary to provide service to all of the people who rely upon paratransit. Individuals attempting to connect with the call center receive constant busy signals instead of being connected to reservation agents; are disconnected; are put on hold for impermissibly long periods of time; and have been informed that their call cannot be connected.

48. Under Title II of the ADA, a public entity discriminates against individuals with disabilities when it fails to provide them with paratransit services at a level of service comparable to the level of designated public transportation services provided to individuals without disabilities. 42 U.S.C. § 12143(a)(1). Section 12143(b) required the Department of Transportation ("DOT") to adopt regulations implementing the requirements relating to paratransit services. Section 37.121(b) provides that "[t]o be deemed comparable to a fixed route service, a complementary paratransit system shall meet the requirements of §§ 37.123-37.133 of this subpart." 49 C.F.R. § 37.121(b)

49. DOT regulations set forth “[s]ervice criteria for complementary paratransit” which requires “[t]he entity shall schedule and provide paratransit service to any ADA paratransit eligible person at any requested time on a particular day in response to a request for service made the previous day.” 49 C.F.R. § 37.131(b).

50. DOT regulations also prohibit Defendants from denying service based on “capacity constraints,” stating, in pertinent part, as follows:

(f) Capacity constraints. The entity shall not limit the availability of complementary paratransit service to ADA paratransit eligible individuals by any of the following:

...

(3) Any operational pattern or practice that significantly limits the availability of service to ADA paratransit eligible persons.

49 C.F.R. § 37.131(f)(3).

51. Frequent busy signals and long telephone hold times are examples of impermissible capacity constraints.

52. Based on its review of Defendants’ paratransit operations reports, and multiple site visits in August 2014, the FTA found that Defendants’ call center operated under prohibited capacity constraints due to long telephone hold times.

Federal Transit Administration, *Maryland Transit Administration Paratransit Compliance Review Final Report*, Dec. 16, 2014, 33, 34 available at

[http://www.fta.dot.gov/documents/MTA\\_Paratransit\\_Final\\_Report\\_12.16.14.pdf](http://www.fta.dot.gov/documents/MTA_Paratransit_Final_Report_12.16.14.pdf).

53. Defendants' inadequate telephone system and understaffing constitutes an operational pattern and practice that violates its duties to provide next day service to paratransit riders and to operate its paratransit system without capacity constraints. Defendants began representing in 2012, and periodically thereafter that they would install a new phone system with greater capacity, but such system has not yet been implemented. Defendants have reasserted this representation many times over the past three years that it plans to update its telephone system, but repeatedly has postponed the implementation date for the much needed new phone system.

54. Riders and disability advocates have made numerous complaints about problems with accessing paratransit service. In November 2013, Maryland Disability Law Center and several riders sent a letter to MDOT's previous Secretary James Smith that detailed concerns with the paratransit system, including concerns with its eligibility and telephone system. Maryland Disability Law Center and several riders also communicated their concerns to then MTA Administrator Robert Smith and to Daniel O'Reilly, MTA's previous Director of Paratransit Services.

55. In response, Defendants' have often represented that they are taking action to address the telephone system and call center understaffing, but to the extent any actions have been taken, they have been ineffective and unsuccessful at

resolving access limitations caused by their inadequate call center staffing and telephone system.

56. Maryland's public information website for information about the performance of state agencies, StateStat, reported in its meeting summary dated July 10, 2014, that MTA's "Mobility Call Center is falling well short of best practice standards outlined by the [FTA that 95% of calls be answered within three minutes] and wait times have been consistently heading in the wrong direction over the past year." *See* Maryland.gov StateStat, MDOT-MTA Meeting Summary, at 7 (July 10, 2014), [http://www.statestat.maryland.gov/reports/20140910\\_MTA\\_Meeting\\_Summary.pdf](http://www.statestat.maryland.gov/reports/20140910_MTA_Meeting_Summary.pdf). This statement is repeated in the August 13, 2014 StateStat report. *See* Maryland.gov StateStat, MDOT-MTA Meeting Summary, at 7 (Aug. 13, 2014) [http://www.statestat.maryland.gov/reports/20140813\\_MTA\\_Meeting\\_Summary.pdf](http://www.statestat.maryland.gov/reports/20140813_MTA_Meeting_Summary.pdf).

57. On October 8, 2014, the StateStat meeting summary indicated that "MTA expects to go-live with a new phone system on November 1st." *See* Maryland.gov StateStat, MDOT-MTA Meeting Summary, at 7 (Oct. 8, 2014) [http://www.statestat.maryland.gov/reports/20140910\\_MTA\\_Meeting\\_Summary.pdf](http://www.statestat.maryland.gov/reports/20140910_MTA_Meeting_Summary.pdf).

58. In October 2014, Defendants told the Maryland Disability Law Center and several riders that a new telephone operating system would be implemented on

or about November 15, 2014, but once again that deadline passed without implementation.

59. Effective July 2014, Defendants changed its call center staff from part time—30 hours a week—to full time—40 hours a week. The call center is scheduled to have 52 employees for a total of 2,080 work hours per week. Defendants have struggled, however, to maintain a sustained period of time with a full complement of full time staff.

60. Despite the staffing change, the level of staff currently planned is only marginally more than in 2012, when 68 employees were scheduled to work a total of 2,060 hours. At that time, the call center was serving only 23,021 riders. The demand has increased significantly since then. According to MTA, there were 32,228 eligible riders in 2014, and that number is projected to increase to 35,100 in 2015.

61. The growth in paratransit ridership over the past ten years has been steady and predictable. Defendants are required to plan for and to accommodate such growth so they can meet 100% of the demand. As demonstrated by rider complaints and Defendants' own telephone data, however, Defendants' operation of its paratransit service has not developed to match rider demand. By neglecting to update or improve MTA's telephone systems, Defendants violate their



obligation to plan to meet 100% of the demand for paratransit rides, as required under federal law. 49 C.F.R. § 37.131(b).

62. Defendants state MTA has an operational performance goal to answer 95% of all calls within three minutes and 99% of all calls within five minutes. Letter from Daniel O'Reilly, Dir. of Mobility Servs., to Katheryn Anderson, Maryland Disability Law Center (Sept. 19, 2014). Defendants' service falls severely below its operational standards.

63. According to Defendants' paratransit telephone data, for the thirteen month period of October 2013–October 2014, a monthly average of 46.8% of callers to the Defendants' "next day" line—used to reserve a ride for the following day—had to wait over five minutes to have their call answered, and a monthly average of 28.2% were on hold for ten minutes or longer..

64. According to Defendants' paratransit telephone data, for the thirteen month period of October 2013–October 2014, a monthly average of 41.2 percent of callers to the Defendants' future reservation line—used to schedule rides up to seven days in advance—had to wait longer than five minutes before their calls were answered. A monthly average of 23.1% were on hold for ten minutes or longer.

65. Telephone hold times for riders contacting the paratransit service for other reasons, such as to determine the status of a late ride, can also be extremely

long and frustrating, in violation of the requirement for comparable paratransit service. According to Defendants' paratransit telephone data, for the thirteen month period of October 2013–October 2014, a monthly average of 21.3% of callers to the Defendants' late line had to wait longer than five minutes before their calls were answered. A monthly average of 8.7% of callers were on hold for ten minutes or longer.

66. Many riders who are subjected to long hold times abandon their calls before they are answered. According to Defendants' paratransit telephone data, for the thirteen month period of October 2013–October 2014, a monthly average of 17.5% of callers to the next day and future reservation lines abandoned their calls.

67. In addition to long hold times and high percentages of callers who give up while waiting on hold, riders also experience busy signals, dead air, dropped calls, and disconnects that prevent them from accessing the service. Defendants do not adequately monitor the extent of busy signal and other such problems riders have with connecting to the Call Center, despite having a legal duty to do so.

68. In response to complaints from riders, Maryland Disability Law Center submitted a public information request to MTA requesting paratransit telephone busy signal reports for October 2013–October 2014. MTA reported

that it “only requested this information [from the phone company] once” and could provide data for only one week. For the week of May 4 through May 10, 2014, during the busiest hour of the day (either the 3:00pm or 4:00pm hour, depending on the day), an average of 89% of calls received a busy signal.

69. Problems with accessing the telephone system and call center result in Plaintiffs abandoning their trips and attempts to access the public transit system to which they are entitled.

70. Defendants’ paratransit operations are critically hinged on an inadequate telephone system that is unreliable and results in service levels that violate federal law. Defendants continue to discriminate against Plaintiffs by subjecting them to significant telephone and access problems. Individuals with disabilities who rely upon Defendants’ paratransit system have been unable to schedule rides, have lost untold hours of time waiting for someone to speak with them about the paratransit service, have been unable to connect to the service to report late rides and to learn if a ride was coming for them, have incurred costs and have been deterred from using the paratransit system. There is no doubt that the limitations on service created by the staffing and telephone system violate the rights of Plaintiffs who are individuals with disabilities who use the paratransit system; and that such violations are the result of Defendants’ operational patterns and practices.

71. Plaintiffs' allegations regarding Defendants unlawful operations affect or are at risk of affecting all individual Plaintiffs and constituents of MDLC.

## **V. FACTS AFFECTING NAMED PLAINTIFFS**

### **PHILLIP FREEMAN**

72. Plaintiff Phillip Freeman is a fifty-one year old resident of Baltimore City, Maryland. He has gout and is in end stage renal failure, requiring dialysis. He is a qualified individual with a disability.

73. Mr. Freeman uses Defendants' paratransit services six times a week to travel to dialysis treatment and uses the service to attend other health care appointments and activities of daily life.

74. Mr. Freeman has been eligible to use Defendants' paratransit service since 2011. Mr. Freeman is also certified to use the Washington Metropolitan Area Transit Authority's (WMATA) paratransit service through November 6, 2016. He has been certified to use WMATA paratransit service since 2010.

75. Mr. Freeman made an appointment and took his eligibility forms to Defendants for his re-certification appointment on July 25, 2014. Mr. Freeman's application included Part A, which he completed, and Part B, which was completed by his treating physician. Mr. Freeman noted in his application that he uses certain fixed route buses when he feels well enough to do so. Use of the specific routes he

identified, however, does not satisfy all of his travel needs, including his need to use transit services to get to dialysis.

76. Defendants required Mr. Freeman to return to MTA for a functional assessment on August 8, 2014. A functional assessment requires performance of physical tasks including tasks that replicate traveling to or boarding and disembarking Defendants' fixed route buses. At the functional assessment, Mr. Freeman presented Defendants with written information about side effects of dialysis to support that he often feels too ill to use the fixed route service.

77. During the functional assessment, Mr. Freeman began to feel ill and so notified the individual conducting Defendants' assessment ("assessor"). He repeatedly informed the assessor that he could not perform the tasks being requested of him and explained that he had undergone dialysis the previous day, however he was instructed to continue. When his situation worsened, the assessor took his pulse and blood-pressure. As a result of Mr. Freeman's vital signs, the assessor called paramedics to attend to him. Paramedics arrived and offered to transport him to the hospital. Mr. Freeman chose to go home. He was unable to complete his functional assessment.

78. On August 18, 2014 and September 2, 2014, Mr. Freeman visited the MTA offices to request a copy of the incident report from his functional

assessment and to obtain a copy of his paratransit application. He was told that he could not have copies of those documents unless he had legal representation.

79. By letter dated September 2, 2014, Mr. Freeman was informed by MTA that he was denied eligibility, stating:

- a) You did not present sufficient evidence in your application that your disability prevents you from accessing, boarding, or independently riding regular MTA service.
- b) Your usage of regular fixed route service and/or absence of use of Mobility service for the last three years indicates that you are not prevented from using fixed route service.
- c) The functional test performed by our Occupational Therapist, information provided in your application and during your interview do not indicate that an impairment prevents you from accessing, boarding, or independently riding regular MTA service.

Ex. 1.

80. Defendants' denial letter used boilerplate language that does not identify specific reasons that Mr. Freeman was found ineligible for paratransit services. The letter also includes reasons that clearly do not apply to Mr. Freeman. The letter denies Mr. Freeman based on his absence of use of paratransit (Mobility) service, although Mr. Freeman has consistently used such service numerous times each week.

81. Documents presented to Defendants by Mr. Freeman demonstrate he is functionally prevented, some or all of the time, from safely travelling to a boarding location, boarding, riding, disembarking and travelling to his final destination. Mr.

Freeman's physician noted on his application that Mr. Freeman is unable to stand for ten to twenty minutes at a bus stop without a bench following dialysis and he is unable to independently cross a busy intersection or negotiate hills or uneven terrain.

82. Although Mr. Freeman listed on his application four bus lines that he has used, this represents a limited number of fixed route lines within MTA's overall service. Mr. Freeman's application clearly states that he suffers from several conditions that affect his ability consistently to use fixed route service. Defendants' finding him ineligible for paratransit because he uses part of the fixed route system violates the eligibility provisions of the ADA. Defendants' denial letter concluding that the functional assessment done by their assessor did not indicate that an impairment prevents him from accessing, boarding, or independently riding regular MTA service is unfathomable given that Mr. Freeman was physically unable to complete the functional assessment and Defendants were required to contact paramedics to attend to Mr. Freeman's health needs.

83. Mr. Freeman filed an informal appeal and his nephrologist submitted a letter of Oct. 9, 2014 to Defendants stating that Mr. Freeman could not use the fixed route system because he suffers from shortness of breath before and after dialysis; high blood pressure before dialysis and low blood pressure after dialysis

resulting in dizziness, unsteady gait and fainting upon minimum exertion; nausea before and after dialysis.

84. By letter of Oct. 24, 2014, Defendants notified Mr. Freeman that his informal appeal was denied. The letter stated:

- a) Although your doctor's statement on your application stated you have several medical conditions, they do not limit or prevent you from using the regular buses.

Ex. 2.

85. Once again Defendants' denial notice fails to inform Mr. Freeman of the specific reasons for his denial and fails adequately to apply the required federal statutory eligibility criteria.

86. On Oct. 29, 2014, Mr. Freeman requested a formal appeal with the Maryland Office of Administrative Hearings. Mr. Freeman's right to a meaningful review is significantly compromised by Defendants' failure to provide specific reasons for this denial.

87. Mr. Freeman has suffered irreparable harm due to substantial stress and anguish caused by Defendants' eligibility process and denial of his eligibility for an essential public service upon which he relies for vital, life sustaining medical treatment and other activities of living. He remains at risk of irreparable harm.

88. Mr. Freeman has experienced unreasonable delays in trying to schedule rides, has been unable to connect to the service to schedule rides, and has been



unable to reasonably report a late ride to obtain assistance in getting his transit service. Mr. Freeman has suffered and continues to suffer irreparable harm due to Defendants' discriminatory call center operations which do not provide service comparable to Defendants' public transit system for persons without disabilities and operate with severe capacity constraints

89. Mr. Freeman alleges discrimination based on Defendants' eligibility processes, which do not operate in compliance with the ADA and Rehabilitation Act, and on Defendants' call center operations, which do not provide service comparable to Defendants' public transit system for persons without disabilities and operate under severe capacity constraints alleges that Defendants' paratransit eligibility and call center processes operate in violation of the ADA and Rehabilitation Act.

### **DEBORAH BENADERET**

90. Plaintiff Deborah Benaderet is a sixty-four year old resident of Baltimore City, Maryland. Ms. Benaderet has psychiatric disabilities and is a qualified person with a disability as defined by the ADA and Rehabilitation Act.

91. Ms. Benaderet repeatedly has been found eligible to use Defendants' paratransit services and used the service for approximately ten years. In December 2013, however, Defendants determined that she was no longer eligible for the service.

92. Ms. Benaderet relied on Defendants' paratransit service to travel to healthcare appointments and for other life activities.

93. Prior to being determined ineligible for service beginning in December 2013, and during her recertification and reapplication processes, Ms. Benaderet experienced delays in trying to connect to Defendants' call center to schedule rides or to seek recertification appointments. Ms. Benaderet did not experience such delays when she scheduled her rides through Defendants' premium (non-ADA) "Dial a Ride" taxi service, which she often used because it provides same-day reservation service. To be eligible to use Defendants' taxi access program, one must be certified as eligible for paratransit.

94. When Ms. Benaderet applied for recertification by attending her eligibility appointment on October 29, 2013, and submitting her application, Ms. Benaderet completed Part A of the application and Part B was completed by her treating psychiatrist who noted Ms. Benaderet's specific psychiatric disabilities.

95. On December 12, 2013, Defendants sent Ms. Benaderet a letter denying her eligibility for the following reasons:

- a) You did not present sufficient evidence in your application that your disability prevents you from accessing, boarding, or independently riding regular MTA service.
- b) We were unable to verify a history of an impairment that prevents you from accessing, boarding or independently riding regular MTA service.

Ex. 3.

96. Defendants' denial letter uses boilerplate language that does not provide Ms. Benaderet with the specific reasons for which she was denied continued access to the service.

97. An MTA document entitled "In-Person Interview Summary" completed on December 12, 2013, more than a month after Ms. Benaderet's certification appointment, noted that Ms. Benaderet has several specific psychiatric disorders, yet a box was checked indicating that she does not have a disability.

98. Because of Ms. Benaderet's disability, she is prevented, some or all of the time, from safely travelling to a boarding location, boarding, riding, disembarking and travelling from a disembarking location to her final destination as a result of her anxiety, poor judgment and panic disorders. On her application form, Ms. Benaderet's physician noted that her anxiety disorder could prevent her from using the fixed route by interfering with her ability to recognize her destination or to signal a driver to disembark or inform a driver that she was being dropped off at the wrong stop. While the denial notice stated that Defendants were "unable to verify a history of an impairment," Defendants themselves had a decade long history of certifying Ms. Benaderet as having a disability that qualified her for eligibility for paratransit services.

99. Ms. Benaderet called MTA to request an appeal form be sent to her in order to challenge her determination of ineligibility. Defendants do not make appeal forms available on their website or in any other manner.

100. After requesting an informal appeal, Defendants provided Ms. Benaderet a form entitled, "Professional Verification Form - Applicants with Psychiatric Disabilities." Ms. Benaderet had not been provided this form prior to registering her informal appeal. This form is not available on Defendants' website and is not part of the application form that Defendants sent to Ms. Benaderet.

101. Ms. Benaderet's mental health counselor submitted a letter of January 14, 2014 offering information in support of Ms. Benaderet's eligibility for service and completed the "Professional Verification Form - Applicants with Psychiatric Disabilities" on January 30, 2014.

102. Nonetheless, on February 20, 2014, MTA informed Ms. Benaderet that:

- a) Your original denial of full eligibility will be upheld because although your doctor's statement on your application stated that you have several medical conditions, they do not limit or prevent you from using the regular buses.

Ex. 4.

103. Again, Defendants' denial notice fails to inform Ms. Benaderet of the specific reasons for her denial or why Defendants determined that she could safely access, board, ride, and travel on the fixed route system. Defendants do not address how they are qualified or able to determine that the judgment of her health

care professionals is wrong, and Defendants fail to consider the federal statutory eligibility criteria that enabled Ms. Benaderet to receive paratransit services over the past ten years.

104. Ms. Benaderet sought a formal appeal with Maryland's Office of Administrative Hearings. She attended the hearing April 1, 2014 where she was not represented by counsel and her denial was upheld. Her opportunity to make a meaningful appeal was significantly compromised due to Defendants' failure to identify specific reasons for denying her continued eligibility for paratransit services.

105. Ms. Benaderet reapplied for paratransit service on December 11, 2014, after having waited Defendants' requisite six months from losing her appeal.

106. On December 19, 2014, Defendants notified Ms. Benaderet that she would need to undergo a physical functional assessment. Such assessments do not evaluate an individual's psychiatric disabilities and are not performed by mental health professionals. Ms. Benaderet had not been requested to complete a physical functional assessment during prior eligibility determinations. Neither Ms. Benaderet nor her doctors identified a physical impairment as the primary condition qualifying her for paratransit service. Despite that the thought of undergoing the physical assessment caused Ms. Benaderet anxiety, she completed it.

107. Because Defendants have failed to make an eligibility determination for Ms. Benaderet within 21 days of her application, Defendants are required by federal law to treat her as presumptively eligible, and she is legally entitled to use the paratransit system. Defendants, however, have denied Ms. Benaderet's repeated attempts to use the service and have informed Ms. Benaderet that presumptive eligibility after 21 days is available only for people who are recertifying eligibility.

108. After Ms. Benaderet's eligibility for paratransit was denied in December 2013, her travel options have been extremely limited. Due to her disabilities, she is not able to use Defendants' fixed route system. She sometimes walks to nearby locations, but has fallen several times in the past year and has been seriously injured. She also has resorted to hitchhiking and soliciting transportation to health care appointments from strangers, including approaching people at the local library. This behavior, which puts her at significant risk of serious harm, is one of the impairment-related conditions that prevents her from using the fixed route service, as was explained by Ms. Benaderet's health care professionals in support of her application for paratransit eligibility.

109. As a result of being denied eligibility for paratransit, Ms. Benaderet has been unable to attend medical treatment as frequently as recommended by her counselor. Ms. Benaderet attends counseling only once every two weeks, instead

of the recommended weekly treatment, because she cannot arrange transportation without access to paratransit.

110. Ms. Benaderet's recent experiences trying to contact MTA to schedule appointments and obtain appeal forms reflect the on-going limitations and capacity constraints of Defendants' telephone system. On January 9, 2015, Ms. Benaderet tried to connect with the certification line three times. The first time, her call was initially connected and then appeared to be dropped and she only heard silence. On her second call she was on hold for over ten minutes and had to abandon the call. On her third attempt she was on hold for approximately fifteen minutes before speaking to a certification agent who denied her the opportunity to use the paratransit system.

111. In the event Ms. Benaderet's eligibility for service is approved, Ms. Benaderet will be subject to unreasonably long hold times and busy signals by Defendants' call center reservation and late line and she will suffer irreparable harm.

112. Ms. Benaderet has suffered substantial stress and anguish due to Defendants' eligibility process and denial of her eligibility for an essential public service upon which she relies to travel to necessary health care and other activities of living. She has missed many important health care appointments and remains

subject to irreparable harm. She is not living with the level of safety and independence that she had when she was able to use public transit via paratransit.

113. Ms. Benaderet alleges discrimination based on Defendants' eligibility processes, which do not operate in compliance with the ADA and Rehabilitation Act, and on Defendants' call center operations, which do not provide service comparable to Defendants' public transit system for persons without disabilities and operate under severe capacity constraints.

### **DANIELLE PHELPS**

114. Plaintiff Danielle Phelps is a thirty-eight year old resident of Towson, Maryland. She has a neurological disability and uses a wheelchair for mobility. She is a qualified individual with a disability.

115. Ms. Phelps has used Defendants' paratransit service for the past three years. She will need to recertify for paratransit services in February 2015.

116. Ms. Phelps uses paratransit approximately three times a week to travel to and from work and for other activities of living.

117. Ms. Phelps has experienced numerous occasions when she was unable to complete a call to Defendants' paratransit call center because when she called the service she received a busy signal and was not able to connect to a reservation agent. She has also been subjected to long hold times before her calls are answered to schedule a ride or check on the status of a late ride. For example:



- a. On September 8, 2014, Ms. Phelps called the future reservations line and the phone rang more than ten times before she was connected to the automated system, whereupon she was placed on hold for seventeen minutes.
- b. On September 10, 2014, Ms. Phelps called the late line when her ride did not show up thirty minutes after her scheduled pick up time. She was placed on hold for twenty minutes before her call was answered.
- c. On September 27, 2014, Ms. Phelps called to schedule a ride and was on hold for seventeen minutes.
- d. On October 5, 2014, Ms. Phelps called to schedule a ride and was on hold for twenty-two minutes.
- e. On October 6, 2014, Ms. Phelps called to schedule a ride and was on hold for seventeen minutes.
- f. On October 7, 2014, Ms. Phelps called to schedule a ride and was placed on hold for thirty minutes.
- g. On October 8, 2014, Ms. Phelps called the late line and was on hold for ten minutes. When she finally spoke to a representative, she was informed that no ride had been scheduled for her.
- h. On November 24, 2014, Ms. Phelps called the call center twice to schedule a ride and was on hold for twenty minutes the first time and ten minutes the second time.
- i. On December 9, 2014, Ms. Phelps called the late line and was on hold for forty-eight minutes. After waiting for her late ride for over two hours, she attempted to call to cancel her Mobility ride, receiving a busy signal ten different times before her call was connected. She remained on hold for thirty minutes before her cell phone battery died, so she was unable to cancel her ride.
- j. On January 4, 2015, Ms. Phelps called to schedule a ride and was on hold for twenty minutes.

118. As evidenced by the twelve calls listed in ¶ 124, during which Ms. Phelps remained on hold for nearly five hours, Ms. Phelps is routinely subjected to long hold times both to schedule a ride and to check on late rides. The hold times are not isolated or occasional inconveniences, but rather are the result of Defendants' operational patterns and practices that fail to provide the required level of service. Ms. Phelps has been forced to make alternative travel arrangements on multiple occasions when she is unable to wait the unreasonably long hold times.

119. Ms. Phelps has suffered substantial stress as a result of the extremely long hold times and busy signals she experiences due to Defendants' failure to provide the technical or human capacity required to answer her calls at all or within a reasonable time. Ms. Phelps regularly experiences unreasonable delays in trying to schedule rides, has been unable to connect to the service to schedule rides and has been unable to reasonably report a late ride to determine if and when she will actually receive a ride.

120. Ms. Phelps has suffered and continues to suffer irreparable harm due to Defendants' discriminatory call center operations, which operate with severe capacity constraints and do not provide her with service comparable to Defendants' public transit system for persons without disabilities.

121. Ms. Phelps relies upon Defendants' paratransit system, for which she has been determined eligible, however she will need to re-establish her eligibility this year. Ms. Phelps is at risk of harm from being denied access to paratransit services due to Defendants' failure to operate their eligibility determination process in compliance with the ADA, as set forth in §§ 36-52 above.

122. Ms. Phelps alleges discrimination based on Defendants' eligibility processes, which do not operate in compliance with the ADA and Rehabilitation Act, and on Defendants' call center operations, which do not provide service comparable to Defendants' public transit system for persons without disabilities and operate under severe capacity constraints.

### **FLOYD HARTLEY**

123. Plaintiff Floyd Hartley is a sixty-two year old resident of Baltimore City, Maryland. He has juvenile onset rheumatoid arthritis and uses a power wheel chair for mobility. He is a qualified individual with a disability.

124. Mr. Hartley has used Defendants' paratransit services for the past fifteen years.

125. Mr. Hartley uses paratransit approximately eight times a week to travel for work and other activities of daily life.

126. Mr. Hartley has experienced numerous occasions when he was unable to access the paratransit service because he received busy signals when attempting

to call the service. He has also been subjected to long hold times before his calls are answered to schedule a ride or check on the status of a late ride. For example:

- a. On August 12, 2014, Mr. Hartley was on hold for twelve minutes.
- b. On September 10, 2014, Mr. Hartley was on hold for twelve minutes.
- c. On September 12, 2014, Mr. Hartley was on hold for twenty minutes with the late line.
- d. On September 16, 2014, Mr. Hartley was on hold for ten minutes and then again for twenty-five minutes.
- e. On September 19, 2014 Mr. Hartley was on hold with the late line for thirty minutes and hung up before someone answered.
- f. On September 21, 2014, Mr. Hartley was on hold with the next day reservations line for twenty-eight minutes.
- g. On September 25, 2014, Mr. Hartley was on hold for seventeen minutes
- h. On September 27, 2014, Mr. Hartley was on hold with the future reservations line for eighteen minutes.
- i. On September 30, 2014, Mr. Hartley called the next day reservations line and was on hold for thirty-one minutes.
- j. On October 4, 2014, Mr. Hartley called the future reservations line and was on hold for ten minutes.
- k. On October 7, 2014, Mr. Hartley called the next day reservations line and was on hold for nineteen minutes.
- l. On October 21, 2014, Mr. Hartley called the next day reservations line and was on hold for fifteen minutes.
- m. On November 2, 2014, Mr. Hartley called the next day reservations line and was on hold for twenty-one minutes.

- n. On November 4, 2014, Mr. Hartley called the next day reservations line and was on hold for thirty-two minutes.
- o. On November 5, 2014, Mr. Hartley called the late line and was on hold for eleven minutes and later that day called again and was on hold for twenty-four minutes.
- p. On November 9, 2014, Mr. Hartley called the next day reservations line and was on hold for twenty-three minutes.
- q. On November 11, 2014, Mr. Hartley called the next day reservations line and was on hold for nineteen minutes; he called back again and was on hold for twenty-three minutes.
- r. On November 12, 2014, Mr. Hartley called the late line and was on hold for thirty minutes.
- s. On November 18, 2014, Mr. Hartley called the next day reservations line and was on hold for twenty-three minutes.
- t. On November 24, 2014 Mr. Hartley called the late line and was on hold for twenty minutes.
- u. On December 5, 2014 Mr. Hartley called the late line and remained on hold for ten minutes.
- v. On December 7, 2014 Mr. Hartley called the next day reservations line and was on hold for twenty-four minutes.
- w. On December 8, 2014 Mr. Hartley called and remained on hold for twenty-six minutes. Later that day he was on old for forty-three minutes with the late line before he abandoned the call.
- x. On December 9, 2014 Mr. Hartley called the next day reservations line and was on hold for sixteen minutes.
- y. On December 11, 2014 Mr. Hartley remained on hold for forty-eight minutes with the next day reservations line.

- z. On December 14, 2014 Mr. Hartley called the next day reservations line and remained on hold for fourteen minutes.
- aa. On December 21, 2014 Mr. Hartley remained on hold for seventeen minutes with the late line before being answered by an agent; however, the agent then placed him back on hold (known as a secondary hold) twice before the call was concluded.
- bb. On January 4, 2015 Mr. Hartley called the next day reservations line and remained on hold for thirty minutes.

127. During the thirty-two calls reported above, Mr. Hartley remained on hold for over eleven hours.

128. Mr. Hartley has faced unreasonable delays in trying to schedule rides, has been unable to connect to the service to schedule rides and has been unable to reasonably report a late ride to obtain assistance in getting his transit service. Mr. Hartley has suffered and continues to suffer irreparable harm due to Defendants' operational patterns and practices by which it operates its call center, which do not provide service comparable to Defendants' public transit system for persons without disabilities and operates under severe capacity constraints.

129. Mr. Hartley also faces risk of irreparable harm due to the requirement that he re-certify and Defendants' failure to utilize and administer an eligibility determination process that conforms to law. Mr. Hartley alleges discrimination based on Defendants' eligibility processes, which do not operate in compliance with the ADA and Rehabilitation Act, and on Defendants' call center operations,

which do not provide service comparable to Defendants' public transit system for persons without disabilities and operate under severe capacity constraints

## **MARYLAND DISABILITY LAW CENTER**

130. MDLC incorporates the allegations above as germane to its constituents.

### **VI. CLAIMS**

#### **FIRST CLAIM FOR RELIEF**

##### **(Violations of the Americans with Disabilities Act)**

131. Plaintiffs re-allege all facts and allegations in the previous paragraphs.

132. Defendants' actions and omissions violate their duty to ensure that qualified individuals with a disability are not excluded from participation in or denied the benefits of its public transit services. 42 U.S.C. § 12132.

133. Defendants' actions and omissions violate their duty to provide paratransit service to any individual who is unable, as a result of a physical or mental disability, to use its fixed route system. 42 U.S.C. § 12143(c).

134. Defendants' actions and omissions violate their duty to provide paratransit services at a level of service which is comparable to the level of public transit services offered to persons without disabilities, 42 U.S.C. § 12143(a)(1), and which provides a response time comparable to the level of services provided to individuals without disabilities, 42 U.S.C. § 12143(a)(2); 49 C.F.R. §§ 37.123, 37.125.

135. Defendants' actions and omissions violate their duty under the ADA and implementing regulations to operate the paratransit service without capacity constraints that significantly limit the availability of paratransit service for eligible riders. 49 C.F.R. § 37.131(f).

136. Defendants' actions and omissions constitute ongoing and continuing violations of Title II of the ADA and, unless restrained and enjoined from doing so, Defendants will continue to violate Title II of the ADA. Defendants' acts and omissions, unless enjoined, will continue to inflict irreparable injuries for which Plaintiffs have no adequate remedy at law.

137. Defendants' violations establish a claim for declaratory and injunctive relief pursuant to 42 U.S.C. § 12133, and attorneys' fees pursuant to 42 U.S.C. § 12205.

138. WHEREFORE, Plaintiffs request the relief set forth below.

## **SECOND CLAIM FOR RELIEF**

### **(Violations of the Rehabilitation Act)**

139. Plaintiffs re-allege all facts and allegations set forth in the previous paragraphs.

140. Defendants' actions and omissions violate their duty to ensure that qualified individuals with a disability are not excluded from participation in or denied the benefits of its federally funded transit services and that such individuals are not subject to discrimination based upon disability. 29 U.S.C. § 794.



141. Defendants' actions and omissions violate their duty under the Rehabilitation Act and its implementing regulations to ensure the paratransit system "shall comply with all applicable requirements of the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. 12101-12213) including the Department [of Transportation's] ADA regulations (49 C.F.R. Parts 37 and 38)." 49 C.F.R. § 27.19.

142. Defendants' failures to provide complementary paratransit services in compliance with the ADA as alleged herein are also alleged as violations of its duties to provide paratransit services in compliance with the Rehabilitation Act.

143. Defendants' violations establish a claim for declaratory and injunctive relief pursuant to Section 505 of the Rehabilitation Act, 29 U.S.C. § 794a(a)(2), and attorneys' fees pursuant to 29 U.S.C. § 794(a)

144. WHEREFORE, Plaintiffs request the relief set forth below.

**THIRD CLAIM FOR RELIEF**  
**(Violations of the Civil Rights Act)**

145. Plaintiffs reallge all facts and allegations set forth in the previous paragraphs, and further allege:

146. Defendants' violations of 42 U.S.C. § 12132, *et seq.*, and Section 504 of the Rehabilitation Act, as set forth in Plaintiffs' first and second claims for relief, establish a cause of action, under 42 U.S.C. § 1983 for declaratory and injunctive relief against Defendants and attorneys' fees pursuant to 42 U.S.C. § 1988.

Specifically, Defendants, acting under color of state law, have violated Plaintiffs' rights under the ADA and Section 504 of the Rehabilitation Act.

147. WHEREFORE, Plaintiffs request the relief set forth below.

## **VII. PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray that this Court:

- a. Assume jurisdiction over this action;
- b. Issue a declaratory judgment declaring that Defendants' actions, omissions, and operational patterns and practices violate rights guaranteed to Plaintiffs under the ADA and Rehabilitation Act;
- c. Issue a preliminary and permanent injunction ordering the Defendants to immediately cease their discrimination and provide: eligibility for paratransit service for individuals with disabilities who qualify for such services pursuant to federal law and; provide a telephone system and call center operations that ensures equal access to the benefits of the facilities, programs, services, and activities of the paratransit service;
- d. Order Defendants to develop a remedial plan ending the unlawful patterns and practices, acts, and omissions complained of herein; to submit this plan to the Court and to Plaintiffs' counsel for their review and approval; and subject to approval by this Court, implement the plan.
- e. Retain jurisdiction over this action until implementation of this Court's decree has been fully completed;
- f. Award Plaintiffs' attorneys fees and costs of this proceeding, pursuant to 42 U.S.C. § 1988(b)-(c), 29 U.S.C. § 794(a), and 42 U.S.C. § 12133; and
- g. Issue such other and further relief as this Court may deem just and proper.

DATE January , 2017

Respectfully submitted,

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