

MIDDLESEX, SS

COMMONWEALTH OF MASSACHUSETTS

SUPERIOR COURT
THE TRIAL COURT

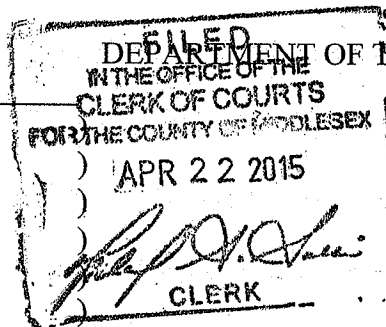
RAQUEL RODRIGUEZ, JOHN DOE A-Z,
on behalf of themselves and all others
similarly situated

Plaintiff,

v.

MASSACHUSETTS BAY TRANSPORTATION
AUTHORITY and KEOLIS COMMUTER
SERVICES, LLC

Defendants



15-2719

CLASS ACTION &
DECLARATORY JUDGMENT
COMPLAINT

DEMAND FOR JURY TRIAL

INTRODUCTION

Raquel Rodriguez (hereinafter, "Plaintiff"), by her undersigned attorneys, upon personal knowledge as to herself and her own acts, and upon information and belief as to all other matters (based upon an investigation conducted by her attorneys including, *inter alia*, interviews with customers/riders of the Massachusetts Bay Transportation Authority (hereinafter "MBTA") and/or Keolis Commuter Services, LLC (hereinafter "Keolis") (collectively "the Defendants" or "Defendants"); a review of documents; and a review of news reports, press releases and publicly available documents); alleges the following:¹

I. NATURE OF THE ACTION

1. Plaintiff brings this complaint as a Class Action pursuant to Massachusetts Rules of Civil Procedure 23(a) and (b), on behalf of all similarly situated persons who suffered financial harm

¹ Furthermore, Plaintiff believes that additional evidentiary support will exist after a reasonable opportunity for continued investigation and formal discovery.

as a result of the MBTA's and Keolis's complete and utter failure in providing commuter rail service for the end of January 2015, the full month of February 2015, and most of March 2015.

2. Plaintiff also seeks a Declaratory Judgment, pursuant to the Declaratory Judgment Act, Mass. Gen. Laws ch. 231A § 1, that: The 15% discount for monthly passes and the free day of rides the MBTA and/or Keolis are offering as a "refund" for the substandard service they provided in January, February and March 2015, have no binding legal effect with respect to the Plaintiff and the putative Plaintiffs in this matter, whether the putative Class members take the discount or not, either "forcibly" (e.g., the monthly passes are automatically discounted and the turnstiles are open at the T), or by choice.

3. Plaintiff and every other commuter rail monthly pass holder paid the MBTA and/or Keolis hundreds of dollars individually for monthly passes; in exchange, the MBTA and/or Keolis agreed to provide timely and reliable commuter rail service to their monthly pass holders to and from various locations throughout the Commonwealth of Massachusetts (hereinafter the "Commonwealth"), and in some instances, Rhode Island and Maine.

4. The Defendants breached the contract(s) they made with Plaintiff and every putative Plaintiff who purchased a commuter rail monthly pass for January, February or March 2015, when the Defendants failed to provide timely and reliable commuter rail service for the Plaintiff and the putative Plaintiffs for the end of January 2015, all of February 2015 and for most, if not all, of March 2015.

5. In addition, the Defendants breached the contract(s) they made with Plaintiff and every putative Plaintiff who purchased a commuter rail monthly pass for January, February or March 2015, when the Defendants failed to provide any reliable schedule updates for the end of January

2015, all of February 2015 and for most, if not all, of March 2015; rendering what limited service the Defendants did provide unusable.²

6. In addition, the Defendants breached the contract(s) they made with Plaintiff and every putative Plaintiff who purchased a commuter rail monthly pass for February or March 2015, when the Defendants switched to a "winter recovery schedule" at some point in February 2015 and the new schedule was so sparse (well below half) and at odd times,³ that Defendants effectively failed to provide timely and reliable commuter rail service for the Plaintiff and the putative Plaintiffs for the end of January 2015, all of February 2015 and for most, if not all, of March 2015.

7. It is unclear and was never explained by the Defendants, why they could run one or two trains in the morning, but not a full schedule. If the tracks were clear for one train, the tracks should have been clear for multiple trains throughout the day - this is especially so when it had not snowed for days or weeks.

8. Furthermore, the Defendants have been unjustly enriched by keeping the hundreds of dollars Plaintiff and putative Plaintiffs paid the Defendants for commuter rail monthly passes for parts of January and March, 2015 and all of February 2015, when Defendants failed to provide timely and reliable commuter rail service as discussed above.

² The Defendants' alert system was inaccurate and unreliable. On several occasions, Plaintiff and the putative Plaintiffs checking the alert system would go to a commuter rail stop for a scheduled train that was not cancelled or delayed per the Defendants' alert system, but nonetheless the scheduled train never arrived.

³ Plaintiff only had the option of taking a 7:00 a.m. train or a 10:50 a.m. train into work each work day morning. Unfortunately, Plaintiff could not take the 7:00 a.m. train, as she had to drop her children off at school at 7:30 a.m. Plaintiff could not take the 10:50 a.m. either, as she would lose her job if she continually showed up that late. Plaintiff normally took the 8:40 a.m. train to work each day, which was no longer an option - this is not the service Plaintiff purchased.

II. JURISDICTION AND VENUE

9. Personal jurisdiction is proper under Mass. Gen. Laws Ch. 223A § 2 as to the MBTA because the MBTA maintains its principal place of business in the Commonwealth and transacts business in the Commonwealth.

10. Personal jurisdiction is proper under Mass. Gen. Laws. ch. 223A § 3 as to Keolis because Keolis transacts business in the Commonwealth and has the requisite minimum contacts and the claims against Keolis arise out of such minimum contacts.

11. The amount in controversy exceeds or is reasonably expected to exceed \$25,000.

12. Venue is proper pursuant to Mass. Gen. Laws Ch. 223, §§ 1, 8.

III. PARTIES

13. Plaintiff Raquel Rodriguez is, and at all relevant times has been, a resident of the Commonwealth.

14. The putative class action Plaintiffs, monthly commuter rail pass holders, upon information and belief, are residents of the Commonwealth or surrounding states and conduct or transact business within the Commonwealth.

15. Defendant Massachusetts Bay Transportation Authority, ("MBTA"), was statutorily created by the Commonwealth and charged with providing commuter rail service and subway service.

16. Defendant Keolis Commuter Services, LLC, ("Keolis") is a Maryland corporation that transacts business in the Commonwealth and contracted with the MBTA to operate and provide the MBTA's commuter rail service.

IV. STATEMENT OF FACTS

A. THE MBTA AND KEOLIS OPERATE AND MAINTAIN THE COMMUTER RAIL⁴

17. The MBTA is responsible for providing commuter rail service along fourteen (14) trunkline routes in and around the Boston metro-area.
18. The MBTA contracted with a third party, Keolis, to operate and maintain the commuter rail lines.
19. The fourteen (14) active trunklines routes are essentially split into two districts:
- a. The "North Side: North Station routes", which run out of North Station and consist of: (1) the Newbury Line ("Eastern Line"), (2) the Rockport Line, (3) the Haverhill Line "Western" or "B&M" Line), (4) the Lowell Line ("New Hampshire Line"), and (5) the Fitchburg Line; and
 - b. The "South Side: South Station routes", which run out of South Station and consist of: (6) the Framingham/Worcester Line ("Boston and Albany" Line), (7) the Needham Line, (8) the Franklin Line, (9) the Providence Line ("Northeast Corridor" or "Shore" Line), (10) the Stoughton Line, (11) the Fairmount Line ("Midlands" or "Dorchester" Line), and
 - c. Additionally, there are three (3) other lines referred to as the "Old Colony Railroad": (12) the Middleborough/Lakeville Line, (13) the Plymouth/Kingston Line, and (14) the Greenbush line. *Id.*, ch. 4, pp. 1-2.
20. On a typical day, the MBTA provided commuter rail service to 131,161 people Monday through Friday; 25,703 people on Saturdays; and 20,907 people on Sundays. *Id.* ch. 4, p. 6.
21. On a typical weekday, the MBTA provided 62,244 inbound and 62,775 outbound commuter rail passenger rides.⁵ *Id.*, ch. 4, p. 6.

⁴ The information detailed in Section A here is taken from the most recent MBTA "Bluebook" titled "MBTA Ridership and Service Statistics, Fourteenth Edition 2014" and attached as **EXHIBIT A**. This information is from 2013 and the most up-to-date available at this time. Plaintiff intends to propound discovery in order to obtain similar information for January, February and March 2015.

⁵ Inbound meaning originating from any stop and heading towards North or South Station. Outbound meaning originating from any stop and heading away from North or South Station.

22. On a typical Saturday, the MBTA provided 12, 662 inbound commuter rail passenger rides and 13,017 outbound commuter rail passenger rides. *Id.*, ch. 4, p. 6.
23. On a typical Sunday, the MBTA provided 10,538 inbound commuter rail passenger rides and 10,180 outbound commuter rail passenger rides. *Id.*, ch. 4, p. 6.
24. There are approximately three hundred eighty-eight (388) route miles of service and the MBTA also owns the majority of the trackage upon which commuter rail service is provided. *Id.*
25. There are 138 commuter rail stations. *Id.*
26. The MBTA contracted with KEOLIS to operate, staff and maintain commuter rail service, including the tracks and equipment.

B. MONTHLY COMMUTER RAIL PASSES⁶

27. The MBTA sells monthly commuter rail passes to commuter rail passengers based on "zone pricing".
28. There are ten (10) zones and the MBTA offers both commuter rail "zone" and "interzone" pricing, essentially selling twenty (20) different monthly zone passes.
29. The monthly commuter rail pass prices are as follows:
- Zone 1A: \$75.00
Zone 1: \$182.00
Interzone 1: \$86.00
- Zone 2: \$198.00
Interzone 2: \$105.00
- Zone 3: \$220.00
Interzone 3: \$105.00
- Zone 4: \$239.00
Interzone 4: \$124.00

⁶ Upon information and belief, there are thousands of monthly commuter rail pass holders. The exact number for January, February and March 2015 is unknown to Plaintiff at this time. However, Plaintiff intends to propound discovery in order to obtain the exact number for these three months.

Zone 5: \$265.00
Interzone 5: \$141.00

Zone 6: \$289.00
Interzone 6: \$159.00

Zone 7: \$306.00
Interzone 7: \$175.00

Zone 8: \$330.00
Interzone 8: \$193.00

Zone 9: \$345.00
Interzone 9: \$211.00

Zone 10: \$362.00

30. The average monthly commuter rail pass is \$251.60.⁷
31. Upon information and belief, there are thousands of monthly commuter rail pass holders for any given month (including January, February and March 2015).

C. THE WINTER WEATHER & THE DEFENDANTS' BREACH

32. Winter 2015 in the Commonwealth featured several winter storms from January through the February 2015.
33. Upon information and belief, there were four (4) snow storms with double digit inches of accumulation this past winter: on or about January 27th, February 2nd, February 7th and February 14th, 2015.
34. Upon information and belief, it snowed seven (7) inches from February 15, 2015, through February 28, 2015, in Boston.
35. Upon information and belief, it snowed six (6) inches for all of March 2015 in Boston.
36. Although the Boston area received historic snow fall for the entire winter season, there were at least three (3) to seven (7) days between each double digit snow storm.

⁷ \$251.60 was arrived at by adding up the cost of each zone priced ticket and dividing by the total number of zones.

37. This should have been more than enough time to clear the snow and return to a full commuter rail schedule.

38. The MBTA announced that they would be cancelling all commuter rail, subway and most bus service from 7:00 p.m., Monday, February 9th through all day Tuesday, February 10th.

39. Massachusetts Governor Charlie Baker went on television that Monday and stated that he was "frustrated" and "disappointed" in the decision to suspend commuter rail and subway service and that "[although] these are unprecedented levels of snow that ha[d] fallen over the course of [the last] 14 days...this [the MBTA's decision to shut down service] is simply unacceptable."

40. In response to Governor Baker's statement calling out the MBTA, MBTA Chief Executive Officer and General Manager Dr. Beverly Scott said, "[MBTA employees] have been making a way out of no way and they've been doing it for years without significant investment" and that the MBTA system "was not a spring chicken system" and she described the MBTA's equipment as "ha[ving] age."

41. Dr. Scott resigned from her post on February 11, 2015, and released a statement saying, "No question, much more needs to be done to achieve the modern and first-class public transportation system that all want and deserve."

42. Later that week, Dr. Scott said "she had no conversation with the Governor throughout the [last] three weeks."

43. Upon information and belief, at some point in February 2015, the MBTA and/or Keolis announced a "winter recovery schedule" and continued to provide less than full commuter rail and T service for the rest of February and March 2015.

44. Upon information and belief, each commuter rail line would run four (4) to five (5) trains per day.

45. It was unclear why Defendants could run one (1) or two (2) trains per line in the morning on a weekday, but not more than that.

46. Also, the times the commuter rail trains were running were inconvenient, trains were still being cancelled and delayed frequently without proper announcements through the Defendants' alert system, and the service was well short of what the Plaintiff and putative Plaintiffs paid for.

47. The odd, inconvenient and unreliable winter recovery schedule left the Plaintiff and putative Plaintiffs unable to use the monthly commuter rail pass for the second half of February and most of March 2015.

48. The MBTA announced at some point in February that that they would not have commuter rail service fully operational until the end of March 2015, well after the last of the double digit winter storms.

49. On March 11, 2015, the MBTA admitted it failed its ridership and offered a fifteen percent (15%) discount to anyone who purchases a May, 2015 monthly commuter rail pass.

50. That discount would average approximately \$37.74 for any purchaser of a *May*, 2015 monthly commuter rail pass.

51. As the Defendants operated the commuter rail at much less than a 85% service level for almost *ten (10) weeks*, a 15% discount for one month falls well short of a fair refund for Defendants' breach.

52. Furthermore, the MBTA's proposed fifteen (15%) May, 2015 discount does not necessarily provide relief to the January, February and/or March, 2015 monthly commuter rail pass holders who suffered damages as a result of the Defendants' breach. The 15% off of May monthly passes potentially gives money away to persons unaffected by the Defendants' breach.

D. YEARS OF MBTA MISMANAGEMENT AND A CULTURE OF INDIFFERENCE ARE THE REASONS THE DEFENDANTS BREACHED THE CONTRACTS WITH PLAINTIFF AND THE PUTATIVE PLAINTIFFS - NOT THE WEATHER

53. Years of MBTA mismanagement and a culture of indifference are the real reasons the MBTA failed its customers and provided substandard service this past January, February and March.

54. Among other issues, the Defendants lacked the proper equipment to deal with winter storms.

55. It is unclear why the Defendants lacked the proper equipment to deal with the winter storms - perhaps the Defendants did not have the money to purchase the proper equipment.

56. Not so, said Governor Baker, as he pointed out at his April 8, 2015 press conference discussing the Action Report (attached as **EXHIBIT B**), issued by the Panel he commissioned to investigate the problems the MBTA and Keolis experienced this past winter.

57. According to the Governor and the Action Report, the MBTA failed to spend \$2.3 billion of its capital budget over the last five years. *Id.*

58. It is unclear why MBTA failed to spend its capital budget on equipment to deal with winter storms. *Id.*

59. The Action Report also noted that the MBTA is spending \$66.5 million on 444 employee salaries for an average annual salary of approximately \$150,000 for each such employee.

Apparently, paying employees high salaries is a better use of the money than purchasing the proper equipment. *Id.*

60. Another example of ineffective spending by the MBTA was reported in the Boston Globe days before the first snow storm hit. *See* Globe story, attached as **EXHIBIT C**. The Globe story details how the MBTA spent \$224 million on forty (40) locomotives that were delivered in an

unusable condition. As of January, 2015, only two (2) of the forty (40) locomotives were in service. The Globe story also references the \$144 million the MBTA paid to a South Korean company for seventy-five (75) passenger cars that were delivered thirty (30) months late and "so trouble-prone [that] many of their parts... had to be replaced." Perhaps if the MBTA had purchased working locomotives these locomotives would have worked during the winter months.

61. The **Governor's Report** also noted the following problems with the MBTA:

- a. The catastrophic winter breakdowns were symptomatic of structural problems that require fundamental change in virtually all aspects of the MBTA. **EXHIBIT B**, p. 4.
- b. Measured against national benchmarks and other transit systems, the... [MBTA's] operating costs are too high and its productivity and performance is too low. *Id.*
- c. The MBTA is largely ineffective in managing its work due to weak workplace customs and practices. **EXHIBIT B**, p. 24.
- d. Including vacation days, MBTA employees miss an average of 57 working days (11-12 weeks) per year. **EXHIBIT B**, p. 26.
- e. [The MBTA displays a] lack of customer focus [and]... is not organized to operate as the customer-oriented business it is. **EXHIBIT B**, p. 30.

62. Upon information and belief, on or about April 15, 2015, Governor Baker asked all members of the Board that oversee the MBTA to resign.

V. CLASS ALLEGATIONS

63. Plaintiff brings this action as a class action pursuant to Pursuant to Massachusetts Rules of Civil Procedure 23(a) and (b), on behalf of the following class (the "Class"): All persons who purchased commuter rail monthly passes from Defendants in exchange for commuter rail service in January, February or March 2015.

64. Plaintiff reserves the right to revise the Class definition based on facts learned in the course of litigating this matter.

65. At this time, Plaintiff does not know the exact number of the Class members; however, given the nature of the claims and the number of persons who ride the commuter rail every day, Plaintiff believes the Class members are so numerous that joinder of all members is impracticable.

66. There is a well-defined community of interest in the questions of law and fact involved in this case. Questions of law and fact common to the members of the Class that predominate over questions that may affect individual Class members include, but are not limited to:

- a. Whether, Defendants breached the contract they had with each member of the Class with the commuter rail service they provided in January, February and March 2015; and
- b. Whether Defendants have been unjustly enriched by keeping the full fares paid by each class member for January, February and March 2015.

67. Plaintiff's claims are typical of those of the Class members because Plaintiff and the other Class members sustained damages arising out of the same wrongful conduct by Defendants, as detailed herein.

68. Plaintiff will adequately protect the interests of the Class members. Plaintiff has retained counsel experienced in complex civil litigation. Both Plaintiff and her counsel have no interests adverse to those of the other Class members.

69. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The damages suffered by any individual class member are too small to make it economically feasible for an individual class member to prosecute a separate action, and it is desirable for purposes of judicial efficiency to concentrate the litigation of the claims in this forum. Furthermore, the adjudication of this controversy through a class action will avoid the potentially inconsistent and conflicting adjudications of the claims asserted herein. There will be no difficulty in the management of this action as a class action.

70. The prosecution of separate actions by members of the Class would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct for the Defendants. Additionally, individual actions may be dispositive of the interests of all members of the Class, although certain Class members are not parties to such actions.

VI. STATEMENT OF CLAIMS

COUNT I Breach of Contract (Against the MBTA)

71. Plaintiff and each putative class Plaintiff repeats and re-alleges each and every allegation above as if set forth in full herein.

72. The Plaintiff and each putative class Plaintiff paid the MBTA for monthly commuter rail passes in January, February and March 2015. *See* Rodriguez February ticket, attached as **EXHIBIT D**, and receipt, attached as **EXHIBIT E**.

73. In exchange for monies paid, the MBTA contracted to provide timely, reliable commuter rail service to Plaintiff and each putative class Plaintiff for each month.

74. For various reasons, the MBTA breached its contract with Plaintiff and each putative class Plaintiff when it failed to provide timely, reliable service for January, February and March of 2015.

75. As a result of the MBTA's breach, Plaintiff and each putative class Plaintiff suffered monetary damages.

COUNT II Unjust Enrichment (Against the MBTA)

76. Plaintiff and each putative class Plaintiff repeats and re-alleges each and every allegation above as if set forth in full herein.

77. The Plaintiff and each putative class Plaintiff paid the MBTA for monthly commuter rail passes in January, February and March of 2015. *Id.*

78. The MBTA failed to provide the services it promised Plaintiff and each putative class Plaintiff in January, February and March of 2015, but has kept all of the monies paid by Plaintiff and each putative class Plaintiff for these months.

79. As a result, the MBTA has been unjustly enriched and it would be unfair to allow the MBTA to keep the full monthly fare amounts Plaintiff and each putative class Plaintiff paid the MBTA.

COUNT III
Breach of Contract
(Against Keolis)

80. Plaintiff and each putative class Plaintiff repeats and re-alleges each and every allegation above as if set forth in full herein.

81. The Plaintiff and each putative class Plaintiff paid Keolis for monthly commuter rail passes in January, February and March of 2015. *Id.*

82. In exchange for monies paid, Keolis contracted to provide timely, reliable commuter rail service to Plaintiff and each putative class Plaintiff for each month.

83. For various reasons, Keolis breached its contract with Plaintiff and each putative class Plaintiff when it failed to provide timely, reliable service for January, February and March of 2015.

84. As a result of Keolis' breach, Plaintiff and each putative class Plaintiff suffered monetary damages.

COUNT IV
Unjust Enrichment
(Against Keolis)

85. Plaintiff and each putative class Plaintiff repeats and re-alleges each and every allegation above as if set forth in full herein

86. The Plaintiff and each putative class Plaintiff paid Keolis for monthly commuter rail passes in January, February and March of 2015. *Id.*

87. Keolis failed to provide the services it promised Plaintiff and each putative class Plaintiff in January, February and March of 2015, but has kept all of the monies paid by Plaintiff and each putative class Plaintiff for these months.

88. As a result, Keolis has been unjustly enriched and it would be unfair to allow Keolis to keep the full monthly fare amounts each Plaintiff and each putative class Plaintiff paid Keolis.

VII. REQUESTS FOR RELIEF

WHEREFORE, Plaintiff demands judgment in her favor and in favor of the Class and against the Defendants as follows:

- A. For an order certifying the proposed Class herein under Massachusetts Rules of Civil Procedure 23(a), (b)(2), and (b)(3); appointing Plaintiff as representative of the Class; and appointing his undersigned counsel as Class counsel;
- B. For a declaration that Defendant is financially responsible for notifying the Class members of the pendency of this action;
- C. For monetary relief in an amount to be determined at trial, together with pre-judgment and post-judgment interest at the maximum rate allowed;

D. For an Order awarding Plaintiff and the Class members the reasonable costs, and expenses of this action, including attorneys' and experts' fees and, if applicable, pre-judgment and post-judgment interest; and

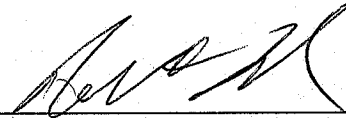
E. For a Declaratory Judgment that: The 15% discount for monthly passes and the free day of rides the MBTA and/or Keolis are offering as a "refund" for the substandard service they provided in January, February and March 2015, have no binding legal effect with respect to the Plaintiff and the putative Plaintiffs in this matter, whether the putative Class members take the discount or not, either "forcibly" (e.g., the monthly passes are automatically discounted and the turnstiles are open at the T), or by choice.

F. Granting Plaintiff and the Class members such other and further relief as this Court deems just, equitable and proper.

VIII. JURY DEMAND

Plaintiff demands a jury trial on all issues so triable.

Respectfully submitted, Plaintiff,
by her Attorney,



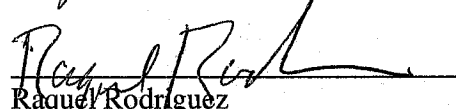
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DATED: April 21, 2015

VERIFICATION

I, Raquel Rodriguez, do hereby declare that I have read the foregoing Complaint and know the contents thereof. The same is true to my knowledge except to those matters that are alleged on information and belief; as to those matter, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on this 20th day of April, 2015 in Middlesex County, Massachusetts.


Raquel Rodriguez
Plaintiff