THE ASSOCIATION OF LATE-DEAFENED ADULTS, INC., LINDA DRATTELL, RICHARD RUTHERFORD, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

CINEMARK HOLDINGS, INC., a Delaware Corporation, ANTHONY TAN, ROCKY YIP, DALE GARVEY, and DOES 1 -10.

Defendants.
INTRODUCTION

1. This is a class action suit brought on behalf of men and women with severe hearing loss. The suit is brought to end on-going discrimination by defendant Cinemark Holdings, Inc. ("Cinemark") because of its refusal to screen any captioned films at its theaters in Alameda County.

2. Over two-thirds (2/3) of Americans attend movies each year. Yet without some form of captioning, countless seniors and those with hearing loss, cannot enjoy a trip to the movies because they are unable to hear or understand the dialog.

3. Captioning displays dialogue in writing that is synchronized with the film. Closed captioning displays text only to those requesting it and is not seen by the entire audience. Closed captioning facilitates a complete movie experience for patrons with hearing loss without affecting the movie experience of other movie goers.

4. Closed captioning is readily available and affordable to theater owners and operators.

5. Cinemark, which is the third largest theater operator in the United States, refuses and has consistently refused to provide captioning for any movie, on any screen, at any time, at any of its theatres in Alameda County.

6. To make captioning possible, a computer disk is distributed with the movie and is furnished without charge to theatres. To display captioning, the theatres must only pay the onetime expense of installing captioning equipment.

7. The cost per theatre of such equipment for 35mm movies using film is less than $10,000.00.

8. Cinemark has the highest growth in total revenue among the three (3) largest motion picture distributors in the United States. Cinemark operates four (4) theatres in Alameda County.

9. By failing to provide captioned movies Cinemark deprives people with hearing loss in Alameda County of the opportunity to participate in a major part of mainstream American life.
10. Cinemark's refusal to provide the relatively inexpensive technology and equipment necessary to screen closed captioned films in the County violates the Unruh Civil Rights Act, California Civil Code sections 51 and 52, which prohibits discrimination on the basis of disability. Cinemark's conduct also violates the Disabled Persons Act, California Civil Code section 54.3. Further, Cinemark's conduct violates the Americans with Disabilities Act ("ADA"), 42 U.S.C. §12182 et seq., which specifically requires that a places of public accommodation, such as a "motion picture house" provide the auxiliary aids and services necessary to ensure that no individual is excluded, denied services, segregated or otherwise treated differently than others because of the absence of auxiliary aids and services.

**PARTIES**

11. Plaintiff ALDA is a national organization representing late-deafened adults, individuals who have suffered hearing loss and the ability to understand spoken speech later in life. ALDA is a non-profit corporation duly organized under the laws of the State of Illinois. ALDA’s principal place of business is in Rockford, Illinois. ALDA maintains several regional and local groups and chapters across the United States, including one located in San Jose, California.

12. ALDA has a threefold purpose: to advocate for the needs and desires of late-deafened individuals; to educate individuals, governments and corporations about late-in-life hearing loss; and to provide a support network for adults adjusting to serious hearing loss after having developed verbal language skills. ALDA sues on behalf of its members with hearing loss in who desire to see closed captioned movies in Alameda County.

13. Linda Drattell is an individual with a disability under all applicable statutes. Ms. Drattell has severe bilateral hearing loss. Ms. Drattell resides in Pleasanton, Alameda County and is a member of the ALDA-San Jose group.

14. Richard Rutherford is an individual with a disability under all applicable statutes due to his hearing loss. Mr. Rutherford resides in El Cerrito, Contra Costa County.
15. Defendant Cinemark Holdings, Inc. is a public company whose stock is traded on the New York Stock Exchange under the symbol “CNK.” It is incorporated under the laws of the State of Delaware, with its principle place of business in Plano, Texas.

16. Cinemark is the third largest theater operator in the United States with 294 theaters and 3,830 screens in 39 states.

17. For the year ending December 31, 2009, Cinemark’s revenues grew 13.4% to $1,976,500,000.

18. Over the last three fiscal years, Cinemark has grown its total revenue per patron at a compound annual growth rate of 6.8%, the highest among the three largest motion picture exhibitors in the United States.

19. Cinemark operates the following theaters in Alameda County: Century 16 Bayfair in San Leandro, California (hereafter “Bayfair Theater”); Century Theatres at Hayward in Hayward, (hereafter “Hayward Theater”); Cinedom 7 Newark in Newark, California (hereafter “Newark Theater”); and Century 25 Union Landing and XD in Union City, California (hereafter “Union City Theater”).

20. Defendant Anthony Tan is the general manager of the Bayfair Theater.

21. Defendant Rocky Yip is the general manager of the Hayward Theater.

22. Defendant Dale Garvey is the manager of Union City Theater.

23. Each named Defendant manager is sued in his individual capacity.

24. Defendant DOE 1 is the manager of the Newark Theater.

25. Defendant DOE 1 is a person or entity whose true name and capacities are unknown to Plaintiffs, who therefore sue them by their fictitious name. Plaintiffs are informed and believe, and on that basis allege, that the fictitiously named Defendant perpetrated or is responsible for some or all of the wrongful acts and omissions alleged herein. Plaintiffs will seek leave of court to amend this complaint to state the true name and capacities of such fictitiously named Defendant if and when they are ascertained.
26. At all times mentioned herein, each Defendant was the agent or employee of the other Defendants and was acting within the course and scope of such agency or employment. The Defendants are jointly and severally liable.

GENERAL ALLEGATIONS

27. The development of captioning technology over the past decade has made the provision of discreet or hidden captions each to accomplish through the Rear Window Captioning ("RWC") system easy to accomplish.

28. The RWC system was developed in the early 1990s. It is a proprietary technology licensed and sold by the Media Access Group at WGBH public television station in Boston.

29. Through a service called Motion Picture Access or MoPix, the Media Access Group contracts with movie studios to prepare captions for films on a computer disc. Movie studios then distribute the computer discs containing the captions to movie theaters at the same time the movies studios distribute the film.

30. Approximately 80% of the first-run movies released by the major studios are captioned using the MoPix Service.

31. The caption discs are furnished without charge to the theaters. In order to display captions, the theaters must pay the one-time expense of installing the necessary captioning equipment.

32. The cost per theater of installing equipment to display RWC captions for 35 millimeter movies using film is approximately $10,000.

33. The RWC system can be used without the need for special prints or separate screening of films.

34. The RWC system works by displaying reversed captions on a light-emitting diode ("LED") text display that is mounted in the rear of a theater.

35. Using RWC equipment, a movie theater can play a computer disc that is distributed with the movie, in synchronization with the film, and the captions are made visible only to patrons who use a small reflector screen attached to their seat.

36. The screens are portable, adjustable and simple to use.
37. The seat-mounted acrylic reflector mounts onto the drink holder or on the seat arm, while the freestanding reflector is placed beside the viewer’s seat.

38. The portability of the reflectors enables the movie patron to sit anywhere in the theater.

39. Hearing loss is among the most prevalent conditions which constitute a disability; more than 28 million Americans have some degree of hearing loss.

40. Hearing loss is highly correlated with age. Fifteen percent (15%) of the population has hearing loss in the age group 50-59; thirty one percent (31%) of those between the ages of 60-69 have hearing loss.

41. The most common form of hearing loss is high-frequency sensor neural hearing loss. The human voice is composed of both high-frequency (consonants) and low-frequency (vowel) sounds. Individuals with high-frequency hearing loss can often hear a speaker’s voice but cannot understand what is being said because he or she cannot hear higher-frequency consonant sounds. Higher-frequency consonant sounds shape and give meaning to speech.

42. Captioning is the only way that a substantial portion of the population of people with significant hearing loss can participate in the experience of movie-going.

43. Closed captioning, which Plaintiffs seek here, displays the text only to those requesting it and not to the entire audience.

44. In Arizona ex. Rel. Goddard v. Harkins Amusement Enterprises, 603 F.3d 666 (9th Cir. 2010), the Ninth Circuit clearly indicated that closed captioning technology is a valid “auxiliary aid” which is specifically mandated by the ADA.

45. Despite this controlling opinion, Defendants have knowingly and intentionally ignored their legal obligation to provide closed captioning in its theaters for patrons with hearing loss.

46. Because Defendants have not complied with their legal obligation to provide closed captioning, Plaintiffs and members of the proposed class of individuals with hearing loss are excluded from the experience of going to the movies despite their desire to attend closed captioned movies at Cinemark’s theaters in Alameda County.
47. For example, at Bayfair Theater, during the week beginning November 19, 2010, the theater was offering five different movies, "Harry Potter and the Deathly Hallows-Part 1," "Unstoppable," "Due Date," "Megamind 3D," and "Skyline."

48. All of these movies had closed captions prepared by MoPix.

49. Bayfair Theater is not offering closed captioning for any of its screenings.


51. All of these movies, except "Next Three Days" and "For Colored Girls" had closed captions prepared by MoPix.

52. Hayward Theater is not offering closed captioning for any of its screenings.


54. All of these movies, except "The Next Three Days" had closed captions prepared by MoPix.

55. Newark Theater is not offering closed captioning for any of its screenings.


58. Union City Theater is not offering closed captioning for any of its screenings.
CLASS ACTION ALLEGATIONS

59. Pursuant to Code of Civil Procedure §382, Plaintiffs bring this action on behalf of
themselves and all other persons similarly situated. The Class consists of all individuals with
hearing loss who desire to seek to attend movies at Cinemark theaters in Alameda County but
cannot because Cinemark theaters in Alameda County fail to screen films with closed captions.

60. The Class numbers in excess of 500 individuals and members of the Class are
sufficiently numerous that joinder of all members is impracticable.

61. There is a community of interest among the members of the proposed Class in
that there are questions of law and fact common to all of their claims. Those common issues
include, but are not limited to: whether Cinemark is legally obligated to provide closed
captioned films at its theaters in Alameda County; whether it is an undue burden or fundamental
alteration for Cinemark to purchase and install the equipment necessary to show closed
captioned films in Alameda County; whether Cinemark's practice of failing to provide any
closed captioned films at its theaters in Alameda County violates the Unruh Act, the Disabled
Persons Act, or the ADA.

62. Plaintiffs' claims are typical of, and not antagonistic to, the claims of all other
members of the Class because Cinemark conducted and continues to conduct its business in a
manner which caused, continues to cause, and will in future cause all Class members to suffer
the same or similar injury. Plaintiffs, by advancing their claims, will also advance the claims of
all other similarly-situated individuals.

63. Plaintiffs and their counsel will fairly and adequately protect the interests of
absent Class members. There are no material conflicts between Plaintiffs’ claims and those of
absent Class members that would make class certification inappropriate. Plaintiffs’ counsel are
experienced in disability rights and class action litigation, and will vigorously assert Plaintiffs’
claims and the claims of all Class members.

64. A class action is superior to other potential methods for achieving a fair and
efficient adjudication of this controversy. Whatever difficulties may exist in the management of
this case as a class action will be greatly outweighed by the benefits of the class action
procedure, including but not limited to providing Class members with a method for the redress and prevention of their injuries and claims that could not, given the complexity of the issues and the nature of the requested relief, be pursued in individual litigation. Further, the prosecution of separate actions by the individual Class members, even if possible, would create a risk of inconsistent or varying adjudications and incompatible standards of conduct for the Defendant.

JURISDICTION

65. This is a civil action under the Unruh Civil Rights Act, Cal. Civ. Code, §§ 51 and 52, the California Disabled Persons Act, Cal. Civ. Code §54.3 (statutory damages and attorneys' fees only), and the Americans with Disabilities Act of ("ADA"), 42 U.S.C. § 12101, et seq. This Court has jurisdiction over the California claims alleged herein pursuant to Cal. Civ. Code, §§ 51, 52, Cal. Civ. Code §54.3, and concurrent jurisdiction over the federal ADA claims.

VENUE

66. Venue is proper in Alameda County under California Code of Civil Procedure §395.5 because liability arises in Alameda County. Defendants have been and are committing the acts alleged herein in Alameda County, have been and are violating the rights of persons with disabilities in Alameda County, and have been and are causing injury to persons with disabilities in Alameda County.

67. Linda Drattell is a California citizen and resides in Alameda County. She has experienced injury in Alameda County as a result of Cinemark’s failure to provide the auxiliary aids and services necessary to watch closed captioned films.

68. Richard Rutherford is a California citizen and resides in Contra Costa County. He has experienced injury in Alameda County as a result of Cinemark’s failure to provide the auxiliary aids and services necessary to watch closed captioned films.

69. Plaintiff Association for Late-Deafened Adults operates a local chapter in San Jose, California. ALDA has members who have experienced injury in Alameda County as a result of Cinemark’s failure to provide the auxiliary aids and services necessary to watch closed captioned films at Cinemark’s theaters in Alameda County.
FIRST CAUSE OF ACTION

(Discrimination Prohibited by the Unruh Act)

70. Plaintiffs incorporate by reference the allegations in paragraphs 1-61 as if set fully herein.

71. The Unruh Civil Rights Act, Civil Code § 51 provides that all persons within California, “no matter what their sex, race, color, religion, ancestry, national origin, disability, ... [or] medical condition are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.”

72. Plaintiffs are persons within California who are protected by the Unruh Act.

73. The Bayfair, Hayward, Newark and Union City theaters are each a “business establishment” within the meaning of California Civil Code § 51.

74. Movie theaters offer the service of screening movies.

75. By failing to show movies with closed captioning, defendants have denied Plaintiffs the full and equal accommodations, advantages, facilities, privileges, and services of their business establishment.

76. The actions of Defendants were and are in violation of the Unruh Civil Rights Act, and therefore Plaintiffs are entitled to injunctive relief remedying the discrimination.

77. Plaintiffs are also entitled to statutory damages pursuant to Civil Code § 52 for each and every offense of discrimination.

78. Plaintiffs are also entitled to reasonable attorneys’ fees and costs pursuant to Civil Code § 52.

WHEREFORE, Plaintiffs request relief as set forth below.

SECOND CAUSE OF ACTION

(Disabled Persons Act - Cal. Civ. Code § 54.3)
(Claim for statutory damages and attorneys' fees only)

79. Plaintiffs incorporate by reference the allegations in paragraphs 1-70 as if set fully herein.
80. Civil Code §§ 54 and 54.1 (the Disabled Persons Act) guarantee that “individuals with disabilities shall be entitled to full and equal access, as other members of the general public, to all accommodations, advantages, and facilities,” including “places of public accommodation, amusement, or resort, and other places to which the general public was invited.”

81. Cinemark’s movie theater facilities are “places of public accommodation” within the meaning of Civil Code §54.1.

82. Cinemark is violating the right of class members to full and equal access to accommodations, advantages, facilities, and telephone facilities by refusing to show closed captioned films.

83. As an alternative damage remedy for the discrimination alleged in the First Cause of Action for violation of the Unruh Civil Rights Act, Plaintiffs are entitled to statutory damages for violation of the Disabled Persons Act pursuant to Civil Code §54.3, subdivision (a) for each and every act of discrimination.

84. Plaintiffs are also entitled to “attorney’s fees as may be determined by the court” pursuant to Civil Code section 54.3, subdivision (a).

WHEREFORE, Plaintiffs request relief as set forth below.

THIRD CAUSE OF ACTION
(Violation of Title III of the Americans with Disabilities Act)

85. Plaintiffs incorporate by reference the allegations in paragraphs 1-76 as if set fully herein.

86. Defendants are also violating Title III of the ADA, 42 U.S.C. §§12101 et seq., which prohibits discrimination in public accommodations, because they have failed “to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage or accommodation being offered, or would result in an undue burden.” 42 U.S.C. § 12182(b)(2)(A)(iii).
87. The "auxiliary aids and services" required to prevent discrimination in the full and equal enjoyment of a service provided by a place of public accommodation includes "effective methods of making aurally delivered materials available to individuals with hearing impairments." 28 C.F.R. §36.303(b)(1).

88. The Court of Appeals for the Ninth Circuit has held that "auxiliary aids and services" include equipment to display closed captioning at movie theaters. Arizona ex. Rel. Goddard v. Harkins Amusement Enterprises, 603 F.3d 666, 675 (9th Cir. 2010).

89. Discrimination under the ADA also includes the "failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities..." and the "imposition of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individualities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations being offered..." 42 U.S.C. §12182(b)(2)(A)(i)-(ii).

90. Cinemark has failed to take any prompt and equitable steps to remedy their unlawful and discriminatory conduct.

91. Plaintiffs are entitled to injunctive and declaratory relief and an award of reasonable attorneys' fees under the ADA. 42 U.S.C. § 1288.


PRAYER FOR RELIEF

92. A declaration that Defendants are violating the law by failing to provide the necessary auxiliary aids and services or to reasonably modify their policies and procedures, for Plaintiffs and similarly situated individuals with hearing loss, as required by the Unruh Act and the ADA.
93. A preliminary and permanent injunction to prohibit Defendant Cinemark from continuing to violate §51 of the Unruh Act and the ADA.

94. A preliminary and permanent injunction requiring Defendant Cinemark to take all steps necessary to ensure that their primary service, the screening of movies at the Bayfair, Hayward, Newark and Union City movie theaters are fully and equally enjoyable to persons with hearing loss through the provision of closed captioned films.

95. Damages in an amount to be determined by proof, including applicable statutory damages pursuant to Cal. Civ. Code §52, or, in the alternative, Cal. Civ. Code section §54.3;


97. Such other and further relief as the Court deems just and proper.

Dated: November 29, 2010

Respectfully Submitted,

DISABILITY RIGHTS ADVOCATES

By: Sid Wolinsky
Kevin Knestrick

LAW OFFICE OF JOHN F. WALDO

By: John F. Waldo

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