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9
 10 **IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
 11 **COUNTY OF ALAMEDA**

DISABILITY RIGHTS ADVOCATES
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13
 14 **THE ASSOCIATION OF LATE-**
DEAFENED ADULTS, INC., LINDA
 15 **DRATTELL, RICHARD RUTHERFORD,**
 on behalf of themselves
 16 and all others similarly situated,

17 Plaintiffs,

18 v.

19 **CINEMARK HOLDINGS, INC., a**
 20 **Delaware Corporation, ANTHONY TAN,**
ROCKY YIP, DALE GARVEY, and DOES
 21 **1 -10.**

22 Defendants.

Case No.

PL 10548765

CLASS ACTION

COMPLEX LITIGATION

COMPLAINT FOR DISCRIMINATION
 AGAINST PEOPLE WITH
 DISABILITIES: CALIFORNIA CIVIL
 CODE §§ 51, 52; CALIFORNIA CIVIL
 CODE § 54.3; AND THE AMERICANS
 WITH DISABILITIES ACT 42 U.S.C. §
 12101, *et seq.*

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INTRODUCTION

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

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

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

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

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

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

21 7. The cost per theatre of such equipment for 35mm movies using film is less than
22 \$10,000.00.

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

26 9. By failing to provide captioned movies Cinemark deprives people with hearing
27 loss in Alameda County of the opportunity to participate in a major part of mainstream American
28 life.

1 15. Defendant Cinemark Holdings, Inc. is a public company whose stock is traded on
2 the New York Stock Exchange under the symbol "CNK." It is incorporated under the laws of
3 the State of Delaware, with its principle place of business in Plano, Texas.

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

6 17. For the year ending December 31, 2009, Cinemark's revenues grew 13.4% to
7 \$1,976,500,000.

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

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

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

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

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

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

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

21 25. Defendant DOE 1 is a person or entity whose true name and capacities are
22 unknown to Plaintiffs, who therefore sue them by their fictitious name. Plaintiffs are informed
23 and believe, and on that basis allege, that the fictitiously named Defendant perpetrated or is
24 responsible for some or all of the wrongful acts and omissions alleged herein. Plaintiffs will
25 seek leave of court to amend this complaint to state the true name and capacities of such
26 fictitiously named Defendant if and when they are ascertained.

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28 //

1 37. The seat-mounted acrylic reflector mounts onto the drink holder or on the seat
2 arm, while the freestanding reflector is placed beside the viewer's seat.

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

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

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

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

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

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

19 44. In *Arizona ex. Rel. Goddard v. Harkins Amusement Enterprises*, 603 F.3d 666
20 (9th Cir. 2010), the Ninth Circuit clearly indicated that closed captioning technology is a valid
21 "auxiliary aid" which is specifically mandated by the ADA.

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

25 46. Because Defendants have not complied with their legal obligation to provide
26 closed captioning, Plaintiffs and members of the proposed class of individuals with hearing loss
27 are excluded from the experience of going to the movies despite their desire to attend closed
28 captioned movies at Cinemark's theaters in Alameda County.

1 47. For example, at Bayfair Theater, during the week beginning November 19, 2010,
2 the theater was offering five different movies, "Harry Potter and the Deathly Hallows-Part 1,"
3 "Unstoppable," "Due Date," "Megamind 3D," and "Skyline."

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

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

6 50. At Hayward Theater, during the week beginning Nov. 19, 2010, the theater was
7 offering nine different movies- "Harry Potter and the Deathly Hallows-Part 1," "The Next Three
8 Days," "Skyline," "Unstoppable," "Morning Glory," "Due Date," "For Colored Girls,"
9 "Megamind 3D," and "Red."

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

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

13 53. At Newark Theater, during the week beginning November 19, 2010, the theater
14 was offering six different movies, "Harry Potter and the Deathly Hallows-Part 1,"
15 "Unstoppable," "Megamind 3D," "Skyline," "Morning Glory," and "The Next Three Days."

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

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

19 56. At Union City Theater, during the week beginning November 19, 2010, the
20 theater was offering seventeen different movies, "Guzaarish," "Harry Potter and the Deathly
21 Hallows-Part 1," "The Next Three Days," "Today's Special," "Skyline," "Unstoppable,"
22 "Morning Glory," "Due Date," "For Colored Girls," "Golmaal 3," "Megamind," "Megamind
23 3D," "Saw 3D: The Final Chapter," "Paranormal Activity 2," "Jackass 3D," "Red," and "The
24 Social Network."

25 57. All of those movies, except "Guzaarish," "The Next Three Days," "Today's
26 Special," "For Colored Girls," "Golmaal 3," and "Saw 3D: The Final Chapter" had closed
27 captions prepared by MoPix.

28 58. Union City Theater is not offering closed captioning for any of its screenings.

CLASS ACTION ALLEGATIONS

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

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

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

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

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

26 64. A class action is superior to other potential methods for achieving a fair and
27 efficient adjudication of this controversy. Whatever difficulties may exist in the management of
28 this case as a class action will be greatly outweighed by the benefits of the class action

1 procedure, including but not limited to providing Class members with a method for the redress
2 and prevention of their injuries and claims that could not, given the complexity of the issues and
3 the nature of the requested relief, be pursued in individual litigation. Further, the prosecution of
4 separate actions by the individual Class members, even if possible, would create a risk of
5 inconsistent or varying adjudications and incompatible standards of conduct for the Defendant.

6 **JURISDICTION**

7 65. This is a civil action under the Unruh Civil Rights Act, Cal. Civ. Code, §§ 51 and
8 52, the California Disabled Persons Act, Cal. Civ. Code §54.3 (statutory damages and attorneys'
9 fees only), and the Americans with Disabilities Act of ("ADA"), 42 U.S.C. § 12101, *et seq.* This
10 Court has jurisdiction over the California claims alleged herein pursuant to Cal. Civ. Code,
11 §§ 51, 52, Cal. Civ. Code §54.3, and concurrent jurisdiction over the federal ADA claims.

12 **VENUE**

13 66. Venue is proper in Alameda County under California Code of Civil Procedure
14 §395.5 because liability arises in Alameda County. Defendants have been and are committing
15 the acts alleged herein in Alameda County, have been and are violating the rights of persons with
16 disabilities in Alameda County, and have been and are causing injury to persons with disabilities
17 in Alameda County.

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

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

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

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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.

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1 87. The “auxiliary aids and services” required to prevent discrimination in the full and
2 equal enjoyment of a service provided by a place of public accommodation includes “effective
3 methods of making aurally delivered materials available to individuals with hearing
4 impairments.” 28 C.F.R. §36.303(b)(1).

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

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

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

17 91. Plaintiffs are entitled to injunctive and declaratory relief and an award of
18 reasonable attorneys’ fees under the ADA. 42 U.S.C. § 12888.

19 WHEREFORE, Pursuant to Unruh Civil Rights Act, Cal, Civ. Code §§ 51 and 52, Cal.
20 Civ Code § 54.3, the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.*, and the
21 remedies, procedures, and rights set forth and incorporated therein, plaintiffs request relief as set
22 forth below.

23 **PRAYER FOR RELIEF**

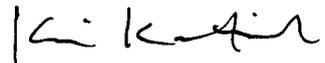
24 92. A declaration that Defendants are violating the law by failing to provide the
25 necessary auxiliary aids and services or to reasonably modify their policies and procedures, for
26 Plaintiffs and similarly situated individuals with hearing loss, as required by the Unruh Act and
27 the ADA.

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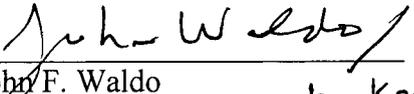
- 1 93. A preliminary and permanent injunction to prohibit Defendant Cinemark from
2 continuing to violate §51 of the Unruh Act and the ADA.
- 3 94. A preliminary and permanent injunction requiring Defendant Cinemark to take all
4 steps necessary to ensure that their primary service, the screening of movies at the Bayfair,
5 Hayward, Newark and Union City movie theaters are fully and equally enjoyable to persons with
6 hearing loss through the provision of closed captioned films.
- 7 95. Damages in an amount to be determined by proof, including applicable statutory
8 damages pursuant to Cal. Civ. Code §52, or, in the alternative, Cal. Civ. Code section §54.3;
- 9 96. Plaintiffs' reasonable attorneys' fees and costs as authorized by Cal. Civ. Code §
10 52, Cal. Civ. Code § 54.3, and 42 U.S.C. § 12188.
- 11 97. Such other and further relief as the Court deems just and proper.

12
13 Dated: November 29, 2010

Respectfully Submitted,
DISABILITY RIGHTS ADVOCATES

14
15
16 By: 
17 Sid Wolinsky
Kevin Knestrick

18
19 LAW OFFICE OF JOHN F. WALDO

20
21 By: 
22 John F. Waldo
by Kevin
Knestrick