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12 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
13 IN AND FOR THE COUNTY OF MARICOPA

14 THE STATE OF ARIZONA *ex rel.* TERRY
GODDARD, the Attorney General; and THE
15 CIVIL RIGHTS DIVISION OF THE ARIZONA
DEPARTMENT OF LAW,

16
17 Plaintiff,

18 vs.

19 MARQUEE HOLDINGS INC., AMC
ENTERTAINMENT INC., AMC
20 ENTERTAINMENT INTERNATIONAL, INC.,
AMERICAN MULTI-CINEMA, INC., PLITT
21 THEATRES, INC. and CORPORATIONS A-Z,

22 Defendants.

No. CV2006-017546

AMENDED COMPLAINT
(Non-classified Civil)

(Assigned to Hon. Anna M. Baca)

23 Plaintiff, the State of Arizona *ex rel.* Terry Goddard, the Attorney General, and the
24 Civil Rights Division of the Arizona Department of Law (collectively the "State"), for its
25 Complaint, alleges as follows:

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1 auditory representation of the visual aspects of a film because of their disability ("class of
2 persons who are blind or visually impaired"), pursuant to A.R.S. § 41-1492.09(A),(B) and (C).

3 5. Marquee Holdings Inc. ("Marquee") is the parent corporation of AMC
4 Entertainment Inc. AMC Entertainment Inc. ("AMCE") is, and at all relevant times has been, a
5 Delaware corporation headquartered in Kansas City, Missouri. AMCE is an intermediate
6 holding company which, directly and indirectly through its subsidiaries owns, operates and has
7 interests in movie theaters in the United States, Mexico, Argentina, Brazil, Chile, Uruguay,
8 China, France, Spain and the United Kingdom making it one of the largest theater chains in the
9 world. American Multi-Cinema, Inc. ("AMC, Inc.") operates all of the Arizona AMC theaters
10 in the Phoenix metropolitan market. Plitt Theatres, Inc. ("Plitt") operates the AMC theaters in
11 Tucson, Arizona. AMC Entertainment International, Inc. ("AMC International") and/or its
12 subsidiaries operate most of the AMC theaters in the international markets.

13 6. There may be unknown defendants that are corporations, subsidiary corporations
14 and/or business formations which wholly or partially own, lease, lease to or operate AMC
15 theaters in Arizona.

16 7. Defendants Marquee, AMCE, AMC, Inc., Plitt and Corporations A-Z
17 ("collectively the "Defendants" or "AMC and companies") own and operate 8 theaters with 163
18 auditoriums in Arizona.

19 8. AMC and companies own and operate the Ahwatukee 24, Arizona Center 24,
20 Arrowhead Center 14, Deer Valley 30, Desert Ridge 18, Esplanade 14, and Mesa Grande 24 in
21 the Phoenix metropolitan area and the Foothills 15 in Tucson, Arizona. These theaters are
22 places of "public accommodation" as that term is defined in A.R.S. § 41-1492(9)(c).

23 BACKGROUND

24 9. Frederick Lindstrom is, and at all relevant times has been, an individual with a
25 disability within the meaning of A.R.S. § 41-1492(5). Specifically, Frederick Lindstrom has
26 profound, bilateral hearing loss which is so severe that he cannot hear or discriminate

1 speech. Lindstrom does not use hearing aids or FM equipment for sound amplification.

2 10. Ava Crowell is, and at all relevant times has been, an individual with a disability
3 within the meaning of A.R.S. § 41-1492(5). Specifically, Ava Crowell has profound hearing
4 loss since birth in both her right and left ears, with more severe hearing loss in the right ear. As
5 a result of the severity of her hearing loss she cannot hear or discriminate speech.

6 11. According to statistics presented by the Arizona Commission on the Deaf and
7 Hard of Hearing, Arizona's state agency providing information, referral and resources materials
8 on issues which concern the deaf and hard of hearing communities, as of 2000, there were an
9 estimated 398,422 Arizona residents who were deaf or hard of hearing. By 2010 it is estimated
10 that population will rise to 496,121 Arizona residents.¹

11 12. Assistive listening devices which merely amplify the dialogue and the soundtrack
12 available in some movie theaters do not provide an effective accommodation for persons who
13 are deaf or hard of hearing and: 1) do not use hearing aids; 2) use hearing aids that are not
14 equipped to receive inductive transmissions; or 3) use hearing aids or cochlear implants to
15 supplement their residual hearing but have such a significant hearing loss that they can not
16 comprehend the dialogue and soundtrack of a film using assistive listening devices.

17 13. Assistive listening devices which merely amplify the dialogue and the soundtrack
18 do not provide Lindstrom, Crowell and the class of similarly-situated individuals with access to
19 aurally-delivered information. As a result of the severity of the hearing loss, Lindstrom,
20 Crowell and other similarly-situated people who are deaf or have a hearing loss that severely
21 limits their ability to hear and discriminate speech, cannot enjoy a significant portion of the
22 movies: the dialogue and soundtrack.

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26 ¹< http://acdhh.org/demo_aztotal.asp > (last visited November 14, 2006).

1 14. Due to a disability, Lindstrom, Crowell and the class of similarly-situated
2 individuals require textual representation of the soundtrack in the form of either open
3 captioning which appears on the screen for the entire audience's viewing or closed captioning
4 which is transmitted onto a seat-based reflector device for viewing by the movie customer who
5 is deaf or hard of hearing.

6 15. The technology exists for movie theater owners and operators to install in their
7 theater auditoriums which display captions to provide a textual representation of the soundtrack
8 of a movie either in open-captioned or closed-captioned format².

9 16. There are two types of open captioning. One type of open captioning requires the
10 captioning to be "burned" onto an individual reel of film. There may be a limited number of
11 reels of film upon which captioning is burnt. Open-captioned films may be obtained at an
12 additional cost per reel through a contractual arrangement between the theater and Insight
13 Cinema.³

14 17. A newer type of open captioning, Open Caption Projection ("OCP"), is also
15 available to movie theaters which provides "on-demand" screen captions. The OCP system
16 requires a theater to install a second projector which projects the captioning directly onto the
17 film as it is playing. Unlike open captioning burnt onto a reel of film, the theater may turn the
18 OCP on at the request of a patron for a particular show time if the movie is shown in a theater
19 with the second projector.

20 18. Closed-captioning technology, on the other hand, displays the text only to the
21 movie customer utilizing a seat-based reflector. One type of seat-based captioning is Rear
22 Window® Caption ("RWC"), a technology designed for movie theaters. With RWC, captions
23 are recorded on a computer disc and played simultaneously with regular screenings of the

24
25 ²See < <http://ncam.wgbh.org/richmedia/media/lionking/> > (last visited November 14, 2006) for
a video clip demonstrating this technology.

26 ³ < <http://www.insightcinema.org> > (last visited November 14, 2006).

1 movie. As the movie appears on the screen, the captions are transmitted to an LED data panel
2 installed on the rear wall of the theater auditorium; and the text is reversed. Movie customers
3 then use portable, clear reflector panels placed at their seats to reflect the captions where
4 captions appear superimposed on or beneath the movie screen. Other seat-based captioning
5 systems exist, including but not limited to Bounce Back Mirror Image Captioning System and
6 clip-on caption display which attaches to eyeglasses.

7 19. Major movie studios distribute wide release movies with captions for display
8 using RWC display systems and/or DTS Cinema Subtitling System (DTS-CSS) caption
9 projection systems.⁴

10 20. Larry Wanger is, and at all relevant times has been, an individual with a disability
11 within the meaning of A.R.S. § 41-1492(5). Specifically, Wanger is totally blind in his right
12 eye and has corrected visual acuity of less than 20/400 in his left eye. As a result of the
13 severity of his visual impairment he can not see visual aspects of a movie.

14 21. According to statistics published by the Arizona Department of Economic
15 Security about the prevalence of legal blindness and low vision in Arizona,⁵ it is estimated that
16 in 2004 there were 29,602 people living in Arizona who were legally blind and by 2014 that
17 figure is estimated to increase to 39,301 people. About 137,131 people with low vision resided
18 in Arizona as of 2004 and that figure is estimated to rise to 179,375 people by 2014.

19 22. Due to a disability, Wanger and the class of similarly-situated individuals who
20 require an audio representation of the visual aspects of a film.

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24 ⁴ < <http://ncam.wgbh.org/mopix/> > (last visited November 14, 2006).
25 ⁵ See < http://www.azdes.gov/rsa/blind_01.asp > (last visited November 14, 2006); also see
26 http://www.azdes.gov/rsa/vis_imp_01.asp (last visited November 14, 2006).

1 23. There is commercially-available technology, such as DVS Theatrical® (“DVS”)
2 which delivers descriptive narration of films via listening systems to movie patrons in headsets
3 or other receivers. The descriptive narration enables people who are blind or visually impaired
4 attending movies to hear the narration to get visually-delivered information about the film in an
5 audio format through descriptions.

6 24. The descriptive narration provides information about visual aspects of a movie by
7 describing scenery, facial expressions and costumes, action settings and scene changes during
8 natural pauses in dialogue.⁶

9 25. Major movie studios distribute wide release movies with descriptive narration
10 capability.

11 26. On February 17, 2006, Rachel Lindstrom filed a timely complaint of public
12 accommodation discrimination on behalf of her minor son with the State’s Civil Rights
13 Division pursuant to A.R.S. § 41-1492.09(A), in which she alleged that her son had been the
14 victim of disability discrimination by Defendants because he went to see the movie, King
15 Kong, on December 26, 2005 at the AMC Deer Valley 30 where the movie was showing but it
16 was not available with RWC technology or in open-captioned format.

17 27. On February 17, 2006, Ava Crowell filed a timely complaint of public
18 accommodation discrimination with the State’s Civil Rights Division pursuant to A.R.S. § 41-
19 1492.09(A), in which she alleged that she called the manager of the Foothills 15 operated by
20 the Loews Cineplex Entertainment Corporation to find out if the theater showed any captioned
21 films she could see but was told there were no captioned films at that location.

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25 ⁶See < <http://ncam.wgbh.org/richmedia/media/lionking/> > for a video clip demonstrating this
26 technology (last visited November 14, 2006).

1 28. On February 17, 2006, Larry Wanger filed a timely complaint of public
2 accommodation discrimination with the State's Civil Rights Division pursuant to A.R.S. § 41-
3 1492.09(A), alleging he was unable to attend a December 3, 2005 showing of Harry Potter and
4 the Goblet of Fire at the AMC Desert Ridge 18 because the equipment was not operating and
5 that information about movies and AMC theaters is not readily accessible to people who are
6 blind and visually impaired.

7 29. The State's Civil Right Division investigated the administrative complaints of
8 Rachel Lindstrom, Ava Crowell and Larry Wanger and investigated AMC and companies'
9 general compliance with the provision of auxiliary aids and services pursuant to its authority
10 under A.R.S. § 41-1492.09.

11 30. During the investigation, the Division determined that Marquee, the parent
12 company of AMCE, entered into a merger agreement with LCE Holdings, Inc., the parent
13 company of Loews Cineplex Entertainment Corporation ("Loews") on June 20, 2005. The
14 merger closed on January 26, 2006 and resulted in Loews merging with and into Marquee.
15 Following the transaction, the Foothills 15 became owned and operated as a theater by AMC
16 and companies.

17 31. The Division found that reasonable cause exists to believe that Defendants
18 discriminated against Lindstrom, Crowell, persons with a disability, and the class of similarly-
19 situated persons who are deaf or hard of hearing and require a textual representation for access
20 to a movie's soundtrack and dialogue, in violation of AzDA. Specifically, AMC and
21 companies offer only a limited number of films and show times for Frederick Lindstrom, Ava
22 Crowell and other people who are deaf or hard of hearing and who require a textual
23 representation of the dialogue and soundtrack of movies. The movies and show times are
24 limited because a limited number of auditoriums are equipped with RWC or other substantially
25 equivalent technology to deliver captions.

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1 32. The Division found that reasonable cause exists to believe that Defendants
2 discriminated against Wanger and the class of similarly-situated persons who are blind or
3 visually impaired and require an auditory representation of the visual elements of movies, in
4 violation of AzDA. Specifically, Defendants offer only a limited number of films and show
5 times for Wanger and similarly-situated individuals. The movies and show times are limited
6 because a limited number of screens are equipped with DVS.

7 33. The Division found that at the time of these administrative complaints that only
8 one auditorium at each theater in the Phoenix metropolitan area was equipped for providing
9 closed-captioned movies and only one theater showed an open-captioned film.

10 34. The Division also found that at the time these administrative complaints were
11 filed none of the 15 auditoriums at Foothills 15 was equipped for providing closed-captioned
12 movies and no open-captioned films were shown.

13 35. Effective September 14, 2006, one auditorium at Foothills 15 was equipped with
14 technology to provide closed-captioned movies.

15 36. The Division found that: only about 4% of the screens owned and operated by
16 Defendants in Arizona were equipped to provide captioned movies and described movies;
17 Defendants did not coordinate the selection of captioned movies and described movies to be
18 shown among their theaters in the Phoenix metropolitan area to maximize the number of
19 captioned movies available to people who are deaf or hard of hearing and descriptively narrated
20 movies available to people who are blind or visually impaired during each week; and
21 Defendants did not have an effective method of evaluating the training of their employees about
22 how to operate the equipment that did exist.

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1 43. Discrimination includes subjecting an individual, based on disability, to a denial
2 of the opportunity to participate in or benefit from the goods, services, facilities, advantages,
3 privileges or accommodations of an entity; or to a loss of the opportunity to participate in or
4 benefit from goods, services, facilities, privileges, advantages or accommodations that are not
5 equal to that afforded other individuals.

6 44. Discrimination also includes the failure of a covered place of public
7 accommodation from failing to take steps as may be necessary to ensure that no individual
8 with a disability is excluded, denied goods, segregated or otherwise treated differently than
9 other individuals because of the absence of auxiliary aids and services, unless the entity can
10 demonstrate that taking these steps would fundamentally alter the nature of the goods,
11 services, facilities, privileges, advantages or accommodations being offered or would result in
12 an undue burden, in violation of A.R.S. § 41-1492.02(F)(3).

13 45. Auxiliary aids and services include closed or open captioning because this
14 technology is an “. . . effective method[] of making aurally delivered materials available to
15 individuals with hearing impairments” as defined by A.R.S. § 41-1492(2)(a).

16 46. Auxiliary aids and services also includes descriptive narration because this
17 technology is an “. . . effective method[] of making visually delivered materials available to
18 individuals with visual impairments” as defined by A.R.S. § 41-1492(2)(b).

19 47. Auxiliary aids and services also include acquiring equipment or devices to
20 provide an effective alternative method of making visually and aurally delivered materials
21 available to people with disabilities under A.R.S. § 41-1492(2)(c).

22 48. Defendants discriminated against Lindstrom, Crowell and the class of similarly-
23 situated persons who are deaf or hard of hearing by not providing access to the soundtrack of
24 movies through a textual representation; and therefore, denying them full and equal enjoyment
25 of their services, in violation of A.R.S. § 41-1492.02(A).

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1 49. Auxiliary aids and services are commercially available for Defendants to
2 purchase and install in their movie theaters, which would allow for full and equal enjoyment of
3 their services through textual representations of the film by Lindstrom, Crowell and the class
4 of similarly-situated people who are deaf or hard of hearing.

5 50. Defendants discriminated against the class of persons who are blind or visually
6 impaired by not providing access to descriptions of visual aspects of films through descriptive
7 narration; and therefore, denying them full and equal enjoyment of their services, in violation
8 of A.R.S. § 41-1492.02(A).

9 51. Auxiliary aids and services are commercially available for Defendants to
10 purchase and install which would allow for full and equal enjoyment of their services through
11 descriptive narration by Wanger and the class of persons who are blind or visually impaired..

12 52. Defendants failed to take steps to install necessary auxiliary aid equipment to
13 display the captions and transmit the descriptive narration in a sufficient number of theater
14 auditoriums; and to evaluate staff training to ensure that staff can properly operate the
15 equipment upon request of the movie patron with the sensory disability.

16 53. By failing to take these steps to provide auxiliary aids and services, Defendants
17 discriminated against Lindstrom; the class of similarly-situated persons who are deaf or hard
18 of hearing and do not have access to the soundtrack of movies without a textual representation
19 because of their disability; and Wanger and the class of blind or visually-impaired persons who
20 do not have access to the visual aspects of a film without descriptive narration because of their
21 disability, in violation of A.R.S. § 41-1492.02(F)(3).

22 54. As a result of Defendants' discrimination, upon information and belief,
23 Lindstrom, Crowell, and the class of persons who are deaf and hard of hearing; as well as
24 Wanger and the class of blind and visually impaired have suffered denial of civil rights,
25 inconvenience, loss of enjoyment and other non-pecuniary monetary damages.

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PRAYER FOR RELIEF

WHEREFORE, the State requests that this Court:

A. Enter judgment on behalf of the State, finding that Defendants unlawfully discriminated against Lindstrom, Crowell, Wanger and the classes of similarly-situated persons because of their disabilities, in violation of AzDA because of their failure to install a sufficient number of system(s) for providing captioning and descriptions for films that have been described or captioned by the film industry and selected for showing(s) at any of their theaters.

B. Enjoin Defendants, their successors, assigns and all persons in active concert or participation with Defendants, from engaging in any public accommodation practice that discriminates on the basis of disability in violation of AzDA, as allowed by A.R.S. § 41-1492.09(B).

C. Enter injunctive relief against Defendants, including but not limited to, requiring Defendants to install necessary auxiliary aids and services in additional auditoriums in their existing theaters and any acquired or newly-built theaters; and implement an appropriate evaluation of employees and agents to ensure proper training has occurred about how to operate and assist movie patrons with sensory disabilities with the captioning or description equipment.

D. Assess a statutory civil penalty against Defendants to vindicate the public interest in an amount that does not exceed five thousand dollars (\$5,000) for the first violation, pursuant to A.R.S. § 41-1492(C).

E. Order Defendants to make Lindstrom, Crowell, Wanger and the classes of similarly-situated persons whole for any damage they suffered and award them damages in an amount to be determined at trial.

F. Order the State to monitor Defendants' compliance with AzDA.

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1 G. Award the State its costs incurred in bringing this action, and its costs in
2 monitoring Defendants' future compliance with AzDA as allowed by A.R.S. § 41-1492.09(F).

3 H. Grant such other and further relief as this Court may deem just and proper in the
4 public interest.

5 DATED this 2nd day of February, 2007.

6 TERRY GODDARD
7 Attorney General

8 By Rose A. Daly-Rooney

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