

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

THE WASHINGTON STATE
COMMUNICATION ACCESS PROJECT, a
Washington Non-Profit Corporation,

Plaintiff,

vs.

REGAL CINEMAS, INC., a subsidiary of
Regal Entertainment Group, a Delaware
Corporation, AMC ENTERTAINMENT, INC.,
a/k/a American Multi-Cinema, Inc., a Delaware
Corporation, CINEMARK HOLDINGS, INC.,
a Delaware Corporation, SILVER CINEMAS
ACQUISITION CO., LLP., d/b/a Landmark
Theaters, a Delaware Limited Partnership,
LINCOLN SQUARE CINEMAS, LLC, a
Delaware limited liability company, and
KIRKLAND PARKPLACE CINEMAS LLC, a
Washington liability company,

Defendants.

No. 09-2-06322-2 SEA

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND FINAL ORDER**

In February 2009, Plaintiff filed the present case. Plaintiff asserted claims under RCW 49.60, Washington Law against Discrimination (“WLAD”), asking defendants to purchase, install, and operate the necessary equipment to show movies in captioned form. Plaintiff claimed that captioning would be a reasonable accommodation that would enable patrons with substantial hearing losses to understand movie soundtracks by reading the dialogue and other information delivered aurally.

ORIGINAL

1 Plaintiff sought: (1) declaratory relief; (2) injunctive relief; and (3) reasonable attorney's
2 fees and court costs. Plaintiff did not seek monetary damage or any findings that any defendant
3 engaged in discriminatory practices.

4 On May 4, 2010, this Court granted in part and denied in part plaintiff's motion for
5 partial summary judgment and denied Defendants' motion for summary judgment. The Court
6 ruled that the WLAD required defendants to take those steps "reasonably possible in the
7 circumstances" to make movie soundtracks understandable to patrons with hearing loss, which
8 would include but not be limited to, captioning. Trial would be limited to determining what
9 accommodation, if any, would be reasonable for each defendant to provide.

10 Following the Court's ruling, Defendant Cinemark installed enough equipment at its
11 Federal Way theater complex to display captions for every showing of every movie for which
12 captions are provided by the studios. Thereafter, Defendant Cinemark moved to dismiss the case
13 against it as moot. On February 24, 2011, the Court denied Cinemark's Motion to Dismiss as
14 Moot based on Plaintiff's request for declaratory relief.

15 The parties¹ agreed to proceed to trial on written submissions against Defendants
16 Cinemark Holdings, Inc. ("Cinemark"), Regal Cinemas, Inc. ("Regal"), and AMC
17 Entertainment, Inc ("AMC").²

18 In the spring of 2011, the parties filed their written submissions and the Court held oral
19 argument on May 20, 2011. Plaintiff requested the following: (1) a declaratory ruling as part of
20 a final judgment; (2) injunctive relief against AMC; and (3) a prevailing party determination.
21 Plaintiff also filed a Motion for Summary Judgment against AMC requesting injunctive relief
22 stating that based on undisputed facts, it is reasonably possible for AMC to provide the necessary
23 equipment to display captions for every movie for which captions have been provided.³

24 Defendants filed a Trial Brief requesting that all claims be dismissed. Cinemark renewed
25 its Motion to Dismiss as Moot, and Regal joined that Motion. (Regal had also equipped all their

26 ¹ Plaintiff dismissed claims without prejudice against Defendants Kirkland Parkplace Cinemas, LLC. and Silver
27 Cinemas Acquisition Co., LLP, d/b/a Landmark Theatres and dismissed claims with prejudice against Lincoln
28 Square Cinemas.

² Defendants had also filed a Motion to Stay to allow for the completion of digital conversion and to install closed-
captioning equipment. At oral argument on February 18, 2011, the parties acknowledged that the Court could make
its decision based on the commitment of the parties even though the plans had not yet been completed. On February
24, 2011, the Court denied the Defendants' Request for a Stay.

³ At oral argument, Plaintiff acknowledged that this could be viewed as a trial submission given the procedural
posture of the case. Accordingly, the Court will decide all the issues as a stipulated trial.

1 theaters in King County to be able to display captions for every showing of every movie for
2 which captions are provided by the studios.) All Defendants renewed their arguments that any
3 captioning requirement must come from agency rule-making not a court of law; that the
4 imposition of any captioning requirement would be a denial of their due process rights; that the
5 Court erred when it ruled that WLAD imposed any captioning requirements; that the type of
6 declaratory relief requested is inappropriate for a declaratory judgment; and that Plaintiff is not
7 entitled to attorneys fees. New issues were raised in Defendant's reply brief or at oral argument
8 on May 20, 2011: (1) WLAD does not authorize declaratory relief; (2) numerical standards are
9 more appropriately determined by agency rule-making; and (3) the claim for injunctive relief
10 against AMC is not ripe. The parties agreed that instead of striking these arguments, it was best
11 to provide additional briefing and address them.

12 Plaintiff and Defendants have also filed evidentiary objections, and the Court has
13 addressed them by separate order.

14 The Court considered all submitted materials, including:

- 15 1) Defendants' Opening Trial Brief, dated April 26, 2011;
- 16 2) Appendix of Facts in Support of Defendants' Opening Trial Brief, and exhibits
17 thereto;
- 18 3) April 26, 2011 Declaration of M. Brett Burns in Support of Defendants' Trial
19 Brief, and exhibits thereto;
- 20 4) April 26, 2011 Declaration of Raymond Smith in Support of Defendants' Trial
21 Brief, and exhibits thereto;
- 22 5) Declaration of Phil Hacker, filed on April 26, 2011, in support of Defendants'
23 Trial Brief;
- 24 6) April 25, 2011 Declaration of Dan Huert in Support of Defendants' Trial Brief;
- 25 7) April 25, 2011 Declaration of George Mann in Support of Defendants' Trial
26 Brief;
- 27 8) April 26, 2011 Declaration of Deron Harrison in Support of Defendants' Trial
28 Brief, and exhibit thereto;
- 9) Plaintiff's Motion for Summary Judgment Against Defendant AMC, dated April
26, 2011, and exhibits thereto;
- 10) Defendants' Response to Plaintiff's Opening Trial Brief and Opposition to
Motion for Summary Judgment, dated May 11, 2011;

- 1 11) Plaintiff's Memorandum in Opposition to Defendants' Opening Trial Brief, dated
2 May 11, 2011;
- 3 12) Defendant' Reply Brief, dated May 16, 2011;
- 4 13) May 16, 2011 Declaration of Michael Brett Burns in Support of Defendants'
5 Reply Trial Brief, and exhibits thereto;
- 6 14) May 16, 2011 Supplemental Declaration of Raymond Smith in Support of
7 Defendants' Reply Brief, and exhibits thereto;
- 8 15) Plaintiff's Memorandum in Reply to Defendants' Response to Plaintiff's Opening
9 Brief and Opposition to Summary Judgment, dated May 16, 2011;
- 10 16) May 16, 2011 Declaration of John Waldo in Support of Plaintiff's Reply
11 Memorandum, and exhibits thereto;
- 12 17) Plaintiff's Citation of Authority Rebutting Argument First Raised in Defendants'
13 Reply Brief;
- 14 18) Plaintiff's Corrected Memorandum in Reply to Defendants' Opposition to
15 Summary Judgment;
- 16 19) Plaintiff's Post-Hearing Memorandum Addressing Defense Arguments raised
17 initially in Reply Brief or at Oral Argument, dated May 27, 2011; and
- 18 20) Defendants; Response to Plaintiff's Post-Hearing Memorandum, dated June 13,
19 2011.

20 After reviewing the facts and briefing submitted by the parties, and hearing arguments of
21 counsel, the Court DENIES Defendant's Motion to Dismiss and GRANTS final judgment for
22 Plaintiff.

23 FINDINGS OF FACT

24 1. Plaintiff Washington State Communication Access Project (Wash-CAP) is a
25 Washington non-profit corporation whose stated purpose is "to enable those with hearing losses
26 to enjoy public places and participate in public life as fully as those without hearing losses to
27 the extent such full participation is technologically and economically possible."

28 2. Most of Wash-CAP's members have hearing losses of a magnitude such that they
are unable to discern some or all spoken movie content when they attend movie exhibitions at a
movie theater even with the use of an Assistive Listening Device.

1 3. The same Wash-CAP members who are unable to discern some or all aural movie
2 content are literate and can read captions that display spoken content and other aural
3 information in visual text form.

4 4. Defendants Regal, Cinemark, and AMC own and/or operate movie theaters in
5 King County, Washington. These movie theaters are public accommodations engaged primarily
6 in the business of exhibiting motion picture and selling concession items. Defendants do not
7 exclude, deny services to, segregate or otherwise treat differently any Wash-CAP member, and
8 offer admissions and concessions for the same price and on the same terms as the general
9 public.

10 5. Movies are created by movie studios and made available to movie exhibitors.
11 Many but not all of the movies shown in King County by Regal, Cinemark, and AMC have
12 captions provided at no extra charge to the theaters. To display the captions, the theaters must
13 purchase, install and maintain certain equipment.

14 6. After the inception of this case, Defendants Regal, AMC, and Cinemark began
15 implementing the conversion of their King County multiplex theaters to digital projection.
16 Instead of using film, the visual and aural content of the movie is converted to digital
17 information, and is transmitted to theaters by computer disc or over the Internet. Regal and
18 Cinemark have completed that conversion at those King County theaters that are the subject of
19 this lawsuit, and AMC plans to do so (with the possible exception of the Factoria multiplex) by
20 the end of 2011.

21 7. Generally speaking, movie captions are exhibited in the form of “open-captions”
22 or “closed-captions.” Open-captions are exhibited on the movie screen (conceptually similar to
23 foreign film subtitles) and are visible to the entire movie audience. Closed-captions, on the
24 other hand, are exhibited on seat-based or individual-based display devices used by specific
25 members of the audience, and are not visible to the entire movie audience.

26 8. When theaters have been converted to digital projection, as the defendants have in
27 this case, no special equipment is required to show open-captioned movies. Movie studios have
28 created open-captioned digital files for some, but not all, movies. Movie exhibitors that exhibit
29 films using digital cinema may obtain these digital open-captioned files and then exhibit them
30 using their digital projectors.

31 9. For theaters that have been converted to digital projection, there are currently
32 three technologies that exist to exhibit movies with closed-captions.

1 **WGBH's Rear Window Captioning System ("RWC"):** Movie exhibitors may
2 purchase and exhibit closed-captioned movies in 35 mm or digital cinema using RWC
3 equipment. When movies are exhibited using RWC, movie captions provided by the studios are
4 displayed on individual plexiglass reflectors affixed to cupholders in theater seats (the captions
5 are reflected from a light-emitting diode text panel or "datawall" mounted at the rear of the
6 movie theater) and are visible only to patrons who request and use the reflective panel. RWC
7 costs approximately \$9,000 for digital auditoriums plus approximately \$110 for each plexiglass
8 reflector. Reflectors are usable in any auditorium. There is an additional one-time licensing fee
9 of \$1,000 per auditorium.

10 **USL's Closed-Captioning System:** Movie exhibitors may purchase equipment called
11 the USL Closed-Captioning System and exhibit closed-captioned movies in digital cinema using
12 such equipment. When movies are exhibited using the USL Closed-Captioning System, movie
13 captions provided by the studios as part of the digital cinema file are displayed on LCD receivers
14 affixed to cupholders in theater seats or on receivers imbedded in special eyeglasses (the captions
15 are transmitted via an infrared emitter and encoder connected to the digital cinema server) and
16 are visible only to patrons who request and use the receivers. The USL Closed-Captioning
17 System costs approximately \$2,500 per movie auditorium with capacity of 250 or less and
18 \$4,000 for auditoriums seating more than 250. The viewing devices cost approximately \$450
19 each and can be used in any auditorium. Eyeglasses, available by third-party manufacturer Sony,
20 are expected to cost approximately \$1,485 per unit.

21 **Doremi's CaptiView Closed-Caption Viewing System:** Movie exhibitors may purchase
22 equipment called the Doremi CaptiView Closed-Caption Viewing System and exhibit closed-
23 captioned movies in digital cinema using such equipment. When movies are exhibited using the
24 Doremi CaptiView Closed-Caption Viewing System, movie captions provided by the studios are
25 displayed on LCD receivers affixed to cupholders in theater seats (the captions are transmitted
26 via wireless technology connected to the digital cinema server) and are visible only to patrons
27 who request and use the receivers. Doremi has not yet provided pricing information for the
28 CaptiView system when used with third-party digital projection systems.

10. After this Court's initial ruling that the WLAD required movie theaters to take
actions reasonably possible in the circumstances to make their movie soundtracks
understandable, and following their completion of digital conversion, Regal and Cinemark
equipped all of their multiplexes that are subject to this litigation with sufficient captioning

1 equipment to enable them to display captions for all showings of all movies for which captions
2 have been prepared.

3 11. Regal completed the conversion of all auditoriums in all of its King County first-
4 run multiplexes in February of 2011. Regal equipped all of those auditoriums to show closed-
5 captioned movies in February and March of 2011. Regal has made closed-captioned movies
6 available for all showings of all films for which captions have been provided since March of
7 2011. Regal has also continued to interact with deaf and hard of hearing guests, train its
8 managers and staff on captioned movie exhibitions, and advertise captioned movie show times
9 on its website.

10 12. Cinemark completed conversion of all auditoriums at its Federal Way multiplex
11 in May of 2010. It installed closed-captioning equipment in all of those auditoriums and trained
12 its personnel on captioning systems in November of 2010. It has made captioned movies
13 available for all showings of all films for which captions have been provided, interacted with
14 deaf and hard of hearing guests, and advertised its captioning show times for feature movies that
15 come with captioning content on its website and in local print advertising, from December 2010
16 to the present.

17 13. AMC has converted all auditoriums at its Southcenter 16 and its OakTree 6 to
18 digital projection. AMC's Pacific Place 11, Kent Station 14 and Woodinville 12 are scheduled
19 to be converted to digital projection by the end of 2011. AMC is engaged in lease negotiations
20 for its Factoria 8 multiplex, and has not yet determined whether it will convert those
21 auditoriums to digital projection.

22 14. AMC asserts that it is not yet in a position to ascertain what proportion of its
23 auditoriums will be equipped to show captions following digital conversion. It states that it
24 will, at a minimum, equip one or two auditoriums at each of its King County multiplexes that
25 will be converted to digital projection, and claims that it would be unreasonable for it to do
26 more.

27 15. Based on information concerning the size of the auditoriums at each of AMC's
28 six King County multiplexes (including Factoria), the total cost to AMC of equipping all of the
67 auditoriums to show captions using the USL closed-captioning system would be roughly
\$300,000, or somewhat less than \$4,500 per auditorium.

16. Based on publicly available AMC financial data, AMC in fiscal 2010 realized net
cash flow from operating activities of \$258 million. The per-auditorium net cash flow, which the

1 parties have stipulated may be applied on a pro-rata basis to AMC's King County operations,
2 was \$57,525 per auditorium for that fiscal year.

3
4 **CONCLUSIONS OF LAW**

5 1. As to injunctive relief against Regal and Cinemark, the Court finds that these
6 claims are moot. However, the claims for declaratory relief against these defendants remain.

7 2. As to claims against AMC regarding its future digital conversion plans, the Court
8 finds that the claims are ripe for adjudication. The parties agreed at oral argument on February
9 18, 2011 that the Court could make decisions based on the Defendants' commitments even
10 though the plans had not yet been implemented. Applying a cost benefit analysis, AMC has
11 committed to equip one to two auditoriums per multiplex (depending on multiplex size) with
12 new digital compatible closed-captioning equipment. Plaintiff argues that AMC can afford to do
13 more. The Court does not need any additional facts. There is no need to delay a ruling. The
14 Motion to Dismiss due to Ripeness is DENIED.

15 3. Defendants argue that Plaintiff has no viable claim for declaratory relief against
16 any Defendant under the WLAD because that statute does not authorize granting declaratory
17 relief. The Court disagrees. WLAD specifically permits the Court to issue all remedies provided
18 by the Civil Rights act of 1964. The portion of that Act dealing with public accommodations
19 permits injunctions, damages and "other orders." That same remedy provision is also
20 incorporated into Title III of the Americans with Disability Act. Moreover, the mandate that the
21 WLAD be interpreted liberally for the accomplishment of its purposes supports the authority to
22 grant declaratory relief. The purposes of the law would be frustrated if declaratory relief were
23 not permitted. Hence, the Court GRANTS the Plaintiff's Motion for Declaratory Relief.

24 4. Defendant movie theaters are "places of public accommodation" within the
25 meaning of the WLAD. RCW 49.60 et seq.

26 5. Hearing loss is a sensory disability within the meaning of the WLAD.

27 6. Defendants provide the same service to Plaintiff's members as they provide to
28 other patrons. However, providing Plaintiff's members with the same service as is provided to
non-disabled patrons does not permit Plaintiff's members to fully enjoy movies at Defendants'
theaters because they are unable to understand some or all of the dialogue and other aural
information.

1 7. Because “same service” does not allow Plaintiff’s members to fully enjoy the
2 movies, Defendants are required to offer “reasonable accommodation” instead of “same service.”
3 WAC 162-26-080.

4 8. “Reasonable accommodation” is defined as “action, reasonably possible in the
5 circumstances, to make the regular services of a place of public accommodation accessible to
6 persons who otherwise could not use or fully enjoy the services because of the person's sensory,
7 mental, or physical disability.” WAC 162-26-040.

8 9. The regulations further define “accessible” as “usable or understandable by a
9 person with a disability.” WAC 162-26-040.

10 10. Open and closed captioning makes movie soundtracks understandable to
11 Plaintiff’s members, who cannot otherwise understand the soundtracks because of their sensory
12 disabilities.

13 11. Defendants are required by the WLAD to offer captioning, or another equally
14 effective method of making soundtracks understandable, to the extent it is reasonably possible in
15 the circumstances for each Defendant to do so.

16 12. By equipping all of their King County multiplexes that are the subject of this
17 litigation to enable them to show closed-captions for all films for which captions have been
18 prepared, and by committing to maintain that equipment, properly train staff in its operation, and
19 by committing to publicizing their closed-captioned offerings, Defendants Regal and Cinemark
20 have taken all steps reasonably possible in the circumstances to make their movie soundtracks
21 understandable. Those actions satisfy those Defendants’ obligations to Plaintiff’s members and
22 other similarly situated individuals under the present circumstances.

23 13. With respect to Defendant AMC, the remaining issue is to determine which type
24 of accommodation is reasonably possible for AMC to provide. The scope of a “reasonable
25 accommodation” is not unlimited—it must be an action that is “reasonably possible in the
26 circumstances” (WAC 162-26-040(2)), and courts should consider “the cost of making the
27 accommodation, the size of the place of public accommodation, the availability of staff to make
28 the accommodation, the importance of the service to the person with a disability, and other
factors bearing on reasonableness in the particular situation.” WAC 162-26-080(2); *see also Fell*
v. Spokane Transit Auth., 128 Wash. 2d 618, 642 (1996).

1 14. Open and closed-captioning are means of providing accessibility to movie
2 theaters for Plaintiff's members and other individuals with substantial hearing loss. Both
3 methods are commercially available.

4 15. Although open-captioning would not cost Defendant any money, given the other
5 technology now available, Defendants have convinced the Court that requiring open-captioning
6 is not a commercially feasible option and would impose an undue burden on AMC.

7 16. Nevertheless, closed-captioning is a viable option for AMC. AMC's overall net
8 cash flow from ongoing operations in fiscal 2010 was \$258 million. The maximum one-time
9 cost to equip all of its King County auditoriums with closed-caption technology to show
10 captioned movies is estimated at \$300,000, or \$4,500 per auditorium. AMC's net cash flow per
11 auditorium for that year was \$57,525 per auditorium. Those undisputed facts demonstrate that it
12 would be reasonably possible for AMC to equip all of its King County auditoriums to show
13 captioned movies upon conversion to digital projection. Because not all movies come with
14 captions, it may be possible for AMC to equip fewer than all auditoriums and still display
15 captions for every showing of every movie for which captions have been prepared.

16 17. AMC has offered no evidence to refute the conclusion that it can afford to equip
17 enough King County theaters with closed-captioning equipment to enable it to display captions
18 for every showing of every movie for which captions have been prepared.

19 18. Regal and Cinemark have equipped enough auditoriums at their King County
20 multiplex to display captions for every showing of every movie for which captions have been
21 prepared. That fact demonstrates the facial plausibility of offering complete access to captions.

22 19. AMC argues that in the small window of time that Defendant Cinemark provided
23 closed-captioning, only a limited number of patrons used it. This is not a compelling argument
24 to the Court. WLAD is a civil rights law. The issue is not how many patrons have used the
25 technology provided, but rather, whether an individual with a sensory disability has the legal
26 right to have access to the movies when technology is now present to allow that access without
27 impeding on other patron's experience and it is feasible for the defendant to provide it.

28 20. The Court renews its findings that closed-captioning is a reasonable
accommodation under WLAD and this finding neither denies the Defendants' due process rights,
nor overreaches into an administrative agency's role.

1 **FINAL ORDER**

2 Based on the foregoing Findings of Fact and Conclusions of Law, the Court ORDERS as
3 follows:

4 1) WALD, RCW 49.60 et seq., requires movie theaters to take steps reasonably
5 possible in the circumstances to make their movie soundtracks understandable to people with
6 hearing loss. Closed-captioning is a technologically and commercially available means of
7 making soundtracks understandable. Unless a theater can devise an equally effective method of
8 making soundtracks understandable to people for whom Assistive Listening Devices are
9 insufficient, closed-captioning is required to the extent that it is reasonably possible
economically for each Defendant to provide it.


10 2) By equipping those theaters subject to this litigation with sufficient equipment to
11 enable them to offer closed captions for every showing of every movie for which captions have
12 been prepared, Defendants Regal and Cinemark have fulfilled their present legal obligations
13 under WLAD. Therefore, Plaintiff's claim for injunctive relief is DISMISSED as moot against
14 those Defendants. Should circumstances materially change in the future, such as by the
15 development of new technologies, or should Regal or Cinemark cease offering captions for every
16 available movie, nothing in this Order prevents Plaintiff or any other party from seeking relief
that it would then be reasonably possible for Regal or Cinemark to provide.

17 3) Defendant AMC has ample financial resources to equip its theaters that are the
18 subject of this litigation with sufficient equipment to enable it, upon completion of conversion of
19 those theaters to digital projection, to offer closed-captions for every showing of every movie for
20 which captions have been prepared. AMC is therefore ORDERED to equip all theaters in King
21 County that it converts to digital projection with sufficient captioning equipment to offer closed-
22 captions for every showing of every movie for which captions have been prepared. AMC is
23 ORDERED to install such equipment within 90 days of completion of conversion to digital
24 projection. AMC is further ORDERED to maintain such equipment, to train its staff in the use
25 of such equipment, and to publicize the availability of captioned movies in its print and internet
26 advertising and in its multiplex lobbies.

27 4) Having obtained a declaratory order applicable in the future to all Defendants, and
28 an injunctive order against AMC, Plaintiff is the prevailing party. Pursuant to RCW
49.60.030(2), Plaintiff is entitled to recover all costs of suit, including a reasonable attorneys'

1 fee. Counsel for Plaintiff will submit a request for fees and costs within ten (10) days of the date
2 of this Order.

3 DATED this 22nd day of July, 2011.

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7 Judge Regina S. Cahan

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